Federal Court Cour fédérale

Date: 20220316

Docket: IMM-1512-21

Citation: 2022 FC 356

Ottawa, Ontario, March 16, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MOHAMMAD AJZACHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mohammad Ajzachi, seeks judicial review of a decision of the Immigration Appeal Division [IAD], dated February 1, 2021, dismissing his appeal against a decision refusing to issue a permanent resident visa to his wife.

[2] The Applicant was born in Iran. He has been a Canadian citizen for approximately 40 years. The Applicant's wife is a citizen of Cuba. The Applicant met his wife in February 2017, while he was a tourist in Cuba. They married a year later in March 2018.

[3] In June 2018, the Applicant submitted a sponsorship application for his wife. It was rejected on February 19, 2020. The immigration officer was not satisfied that the marriage between the Applicant and his wife was genuine and that it had not been entered into primarily for the purpose of acquiring status in Canada under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The immigration officer noted several concerns in the Global Case Management System, including the age difference of 42 years between the Applicant and his wife, as well as the lack of evidence demonstrating their compatibility.

[4] The Applicant subsequently appealed the immigration officer's decision to the IAD pursuant to subsection 63(1) of the IRPA.

[5] In a decision dated February 1, 2021, the IAD dismissed the appeal. It concluded that the relationship between the spouses was "not genuine in some respects, and their intent in marrying was primarily for immigration purposes".

[6] The determination of whether a marriage is genuine or entered into for immigration purposes is a question of mixed fact and law, reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Ta v Canada (Citizenship and Immigration)*, 2021 FC 323 at para 7; *Kusi v Canada (Citizenship*

and Immigration), 2021 FC 68 at para 6 [*Kusi*]; *Bourassa v Canada (Citizenship and Immigration)*, 2020 FC 805 at para 23).

[7] When determining whether a decision is reasonable, the Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The onus is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[8] I agree with the Applicant that the IAD's decision must be set aside.

[9] Subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] provides that a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership: (a) was entered into primarily for the purpose of acquiring any status or privilege under the IRPA; or (b) is not genuine. As the tests under paragraphs 4(1)(*a*) and 4(1)(*b*) of the IRPR are disjunctive, the Applicant must demonstrate that the marriage is both genuine and that it was not entered into for the purpose of acquiring status in Canada (*Kusi* at paras 8-9; *Chen v Canada (Citizenship and Immigration)*, 2018 FC 840 at para 10; *Onwubolu v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 19 at paras 13, 15).

[10] In this instance, the IAD concluded that the spouses' relationship was "not genuine in some respects". While an assessment under paragraph 4(1)(*b*) of the IRPA involves the consideration of various criteria, the IAD was required to make a determination on whether the marriage was genuine or not. A finding that the marriage is "not genuine in some respects" suggests that it is in other respects. The IAD's finding on this issue is not sufficiently transparent and intelligible.

[11] The Respondent conceded at the hearing that the IAD had badly expressed itself. I am not persuaded, however, that the IAD's statement is a mere error in formulation, especially since the IAD referred to it on more than one occasion in its reasons.

[12] The Respondent is correct in stating that such error was not determinative as the IAD also found that the marriage was entered into primarily for immigration purposes.

[13] The IAD found that the rapid development of the relationship, the lack of a common language in the beginning of the relationship and the Applicant's failure to state that he would continue to visit his wife in Cuba should the appeal be dismissed, all raised doubts on the integrity of the marriage.

[14] The Applicant argues that the IAD unduly focused on events that occurred when he met his wife and should have instead examined the couple's intent or motivation at the time of marriage one year later.

[15] In my view, it was reasonably open to the IAD to examine the couple's relationship when they first met. However, the couple married thirteen (13) months later. The evidence demonstrated that the Applicant returned to Cuba at least three (3) other times in the same year before returning to marry his wife. While the IAD is presumed to have considered all of the evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) and is not required to address all of the documentary evidence in its reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16), the Applicant's numerous trips to Cuba before the wedding were equally relevant in assessing whether they had a *bona fide* intention of pursuing a genuine relationship at the time of marriage. The IAD's failure to meaningfully engage with this evidence leads me to infer that it was overlooked.

[16] In the circumstances, I find that the IAD's decision must be set aside on the basis that it does not satisfy the criteria of justification, transparency and intelligibility set out by the Supreme Court of Canada in *Vavilov*. Accordingly, the application for judicial review is allowed. The decision is set aside and the matter is referred back for redetermination by a different panel.

[17] No questions of general importance were proposed for certification, and I agree that none arise.

JUDGMENT in IMM-1512-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;

2. The decision is set aside and the matter is remitted back to a different panel for redetermination; and

3. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1512-21
STYLE OF CAUSE:	MOHAMMAD AJZACHI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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