Federal Court  Cour fédérale

Date: 20221007

Docket: IMM-8251-21

Citation: 2022 FC 1386

Toronto, Ontario, October 7, 2022

PRESENT: Madam Justice Go

BETWEEN:

ABEL MESFIN GEBREMEDHIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Abel Mesfin Gebremedhin [Applicant] seeks judicial review of the Immigration Appeal Division [IAD]'s decision dated November 1, 2021 to dismiss his sponsorship appeal [Decision].

[2] The Applicant sponsored Ms. Mars Taddese Tesfaendrias as a spouse under the family class pursuant to s. 12 of the *Immigration and Refugee Protection Act*, SC 2001, c.27 [*IRPA*].

[3] The Applicant, now aged 38, was born in Eritrea and lived in Sudan between 2009 and 2013 as a convention refugee. Through the Group of Five refugee sponsorship program, the Applicant was granted permanent residence status in Canada in 2013. Ms. Tesfaendrias, now aged 24, was also born in Eritrea. In June 2017, Ms. Tesfaendrias fled to Sudan, where she currently holds refugee status.

[4] The Applicant and Ms. Tesfaendrias' brother, Efrem, became close friends while they were both living in Sudan, and the latter suggested introducing the Applicant to Ms. Tesfaendrias. The Applicant first spoke to Ms. Tesfaendrias over the phone in February 2017. They continued to communicate via phone and online messaging. The Applicant travelled to Sudan in 2018 to meet with Ms. Tesfaendrias in person on February 6. On February 8, 2018, they got married.

[5] Ms. Tesfaendrias' permanent resident application was refused by the visa office in October 2019 [Visa Office refusal] on the grounds that her marriage to the Applicant did not satisfy s. 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. The Applicant appealed the Visa Office refusal to the IAD.

[6] The IAD dismissed the Applicant's appeal on the ground that the Applicant did not meet his onus to demonstrate that the marriage was not entered into primarily for the purpose of

acquiring any status or privilege under s. 4(1)(a) of the *IRPR*. The IAD did not make a determination on the genuineness of the marriage under s. 4(1)(b) of the *IRPR*.

[7] I agree with the Applicant that the Decision was unreasonable. For the reasons set out below, I grant the application for judicial review.

II. Issues and Standard of Review

[8] The Applicant submits that the IAD erred by:

(a) dismissing evidence concerning the genesis and development of the relationship as an arranged marriage;

(b) applying Western paradigms in assessing the primary purpose of the marriage; and

(c) placing too much weight on Ms. Tesfaendrias' refugee status in assessing the primary purpose of the marriage.

[9] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*].

[10] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record

before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94, 133-135.

III. Analysis

[11] Subsection 4(1) of the *IRPR* sets out the test for determining whether or not Ms. Tesfaendrias qualifies to be sponsored as a spouse as a member of the family class:

Bad faith	**Mauvaise foi**
4 (1) For the purposes of these Regulations, 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	**4 (1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) is not genuine.	**b)** n'est pas authentique.

[12] While the test is disjunctive, the IAD misstated s. 4(1) as a conjunctive test twice in the Decision. Having said that, I disagree with the Applicant that the IAD's misstatement of the test negatively affected its assessment of other factors.

[13] I also do not find all of the Applicant's arguments persuasive. However, I agree that overall, the IAD erred by failing to grapple with the evidence concerning the Applicant's and his spouse's cultural backgrounds, which in turn led to the IAD's unreasonable assessment of the primary purpose of the marriage.

A. *Did the IAD unreasonably dismiss evidence in establishing the primary purpose of the Applicant's marriage?*

[14] In the Decision, the IAD concluded that the genesis of the relationship is unclear, finding a lack of evidence of the attraction, feelings, and interest between the couple, particularly pertaining to the period between February and June 2017 after their first contact. The IAD further pointed to an "insufficiency of information" demonstrating whether "they were friends or romantic interests."

[15] In addition, the IAD found that the development of the relationship was not established, as it did not find that the Applicant provided "meaningful insight" as to why he came to realize that Ms. Tesfaendrias was the "perfect match" when he proposed. The IAD similarly found that Ms. Tesfaendrias provided no details of her emotions, thoughts, and reasons for attraction to the Applicant between these months.

[16] The Applicant argues that the IAD erred by disregarding evidence on the genesis and development of the relationship as an arranged marriage. The Applicant relies on *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration),* [1999] 1 FC 53 [*Cepeda-Gutierrez*] for the proposition that the IAD must assess and explain why it disregards evidence that runs contrary to findings on central issues. The Applicant further quotes from *Provost v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1310 at para 30, which references *Cepeda-Gutierrez* at paras 14-17:

> It is true that the Board will be presumed to have considered all of the evidence before it, but when there is relevant evidence which runs contrary to the Board's findings on the central issue, in this case

> the genuineness of the marriage, the Board has the duty to analyse that evidence and to explain why it does not accept it or prefers other evidence on that point.

[17] The Applicant refers to the transcript from the IAD hearings to submit that the IAD disregarded evidence pertaining to the nature of the relationship as an arranged marriage:

> MC: When did your brother suggest you to your husband as a potential match?
>
> AS: After Coming here he was telling me how a good person he was, even when I was in Eritrea, he was telling me what a good person he was going to introduce me to him.
>
> MC: What do you mean by after coming here?
>
> AS: After coming to Sudan, he told me that he is the potential match, and I did not dislike him, I liked him
>
> MC: Sorry, maybe not being clear, after you got to Sudan, he told you about him
>
> AS: when I was in Eritrea, he was telling me that he had a friend he was going to introduce me to him

[18] The Applicant supports his argument further by submitting that the IAD did not have grounds to disregard evidence presented by the parties at the IAD hearing because no evidence to the contrary was present, and the IAD did not find any credibility issues with the testimonies: *Abebe v. Canada (Minister of Citizenship and Immigration),* 2011 FC 341 at para 36.

[19] At the hearing before this Court, the Applicant added further that the genesis of his relationship with his spouse, as summarized in the Decision, could not be clearer: they were introduced to each other by Ms. Tesfaendrias' brother, they connected, and then started

communicating. The Applicant asked, what else could they have said about the genesis of the relationship?

[20] The Respondent argues that the IAD reasonably concluded based on the evidence before it that the genesis and development of the relationship were unclear, namely that the Applicant did not explain how the "development from potential to actual marriage occurred." The Respondent relies on *Milak v. Canada (Minister of Citizenship and Immigration)*, 2021 FC 749 [*Milak*] at paras 19-23 and *Tran v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1035 [*Tran*] at para 24 to show that evidence of factors such as topics of conversation and initial impressions was reasonably considered by the IAD in making its assessment.

[21] I reject the Respondent's arguments, and instead agree with the Applicant. I say that for the following reasons.

[22] First of all, the Decision did not once address evidence suggesting that the marriage between the Applicant and his wife was an arranged marriage, nor did it acknowledge the Applicant and Ms. Tesfaendrias' cultural background, beyond restating some of the Applicant's statements about what men in his culture look for in a woman. At the hearing, the Respondent cited the IAD's summary of the couple's testimony as indication that it had acknowledged their marriage was arranged. I disagree. The term "arranged marriage" did not once appear in the nine-page Decision. The IAD's recounting of evidence regarding the couple's relationship did not amount to an acknowledgement of even the potential that their marriage was arranged.

[23] While the Respondent relies on *Milak* and *Tran* above to defend the IAD's treatment of evidence, I do not find these decisions assist the Respondent.

[24] In *Milak*, the IAD did not find the couple's story credible and questioned how they met, given the lack of communication records: *Malik* at para 11. In this case, the IAD did not cite credibility as a concern. As the Applicant submits, the evidence about how the couple met and how they communicated with each other, as well as other salient aspects of their relationship, was largely consistent.

[25] I also note that in *Tran*, the Court recognized the IAD's explicit acknowledgement of the reality of cultural differences, which led the Court to find that the IAD demonstrated "cultural awareness" in its weighing of evidence: *Tran* at paras 29-31. Here, there was no such acknowledgement in the Decision.

[26] Further, while limited, there was some evidence before the IAD concerning the cultural context within which the relationship between the Applicant and Ms. Tesfaendrias came to be. Both the Applicant and Ms. Tesfaendrias gave evidence that they were introduced to each other through Efrem, Ms. Tesfaendrias' brother, as a potential match for each other. As the Decision noted, Efrem told the Applicant about Ms. Tesfaendrias' upbringing in a convent school and her good character. The Applicant testified that he thought Ms. Tesfaendrias to be a good match because "there are not many ladies in Canada that are good in accordance with the [Applicant's] culture and who are also virgins."

[27] As noted above, while the Decision briefly referenced the Applicant's evidence about his culture, the IAD did not engage in any analysis as to how the cultural milieu might have played a role, if any, in shaping the development of the relationship in question. In my view, the absence of any analysis of the cultural context of the couple's relationship supports the Applicant's argument that the IAD ignored such evidence.

[28] Indeed, as the Applicant points out, the genesis of his relationship with his spouse was clear. In finding that it was not, the IAD was searching for evidence explaining "what they felt, and why they fell in love." As I will explain further below, this stated requirement appears to be based more on the panel's own preconception about how relationships should develop, and less on the sufficiency of evidence about the reality of the couple's relationship.

[29] The Respondent counters that the IAD did not downplay the intention of the couple's introduction as an arranged marriage. The Respondent points to an exchange from Ms. Tesfaendrias' interview with the visa officer as evidence contrary to the Applicant's assertion that the introduction was meant to be that of an arranged marriage. The Respondent also submitted at the hearing that nothing in the record suggests that this is the kind of arranged marriage in the traditional sense, and that the Applicant and his spouse did testify that they liked each other, making their relationship a romantic one.

[30] I reject these arguments. The IAD did not address the issue of arranged marriage one way or another. As such, I cannot accept the Respondent's argument that the IAD has determined that the relationship in question was not an arranged marriage, whether it was because of what Ms.

Tesfaendrias said to the visa office, or because the couple testified to having feelings for each other. Finally, I reject the Respondent's attempt to create a false dichotomy by suggesting that the Applicant must prove either they are in a romantic relationship fueled by love, or theirs is an arranged marriage devoid of any feelings for each other. There is not a scintilla of evidence to suggest that people who enter into an arranged marriage cannot also have feelings for their chosen partner.

B. *Did the IAD unreasonably apply Western paradigms in assessing the primary purpose of the Applicant's marriage?*

[31] The IAD found that the Applicant and Ms. Tesfaendrias did not adequately address how conversations of marriage came up. The IAD also found insufficient detail about the feelings, emotions, and thinking behind the decision to marry before meeting in-person and getting married two days after their first in-person contact in February 2018.

[32] With respect to the couple's compatibility, the IAD found a lack of detail from both the Applicant and Ms. Tesfaendrias as to their understanding of each other's character and their compatibility. The IAD found that Ms. Tesfaendrias gave "broad, general depictions" of the Applicant, lacking "the depth and understanding of the [Applicant's] character that is expected… as a romantic partner… and conveys why she fell in love… and why she wanted to marry him."

[33] With respect to these findings, the Applicant argues that the IAD erroneously assessed the foundation and growth of the relationship and marriage through Western paradigms. The Applicant relies on *Khan v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1490

[*Khan*] at para 16 for the proposition that relationships must be "examined through the eyes of the parties themselves against the cultural background in which they have lived."

[34] In response to the IAD's concerns about the timeframe of the relationship, the Applicant submits that "it is normal for couples in arranged marriage to be engaged within nine months from the date of introduction and marry in a year from the day of introduction, and even shorter at times." The Applicant argues that the IAD applied Western norms by requiring more evidence of the development of the relationship and spark of interest between the Applicant and Ms. Tesfaendrias. As a result, the Applicant submits that the IAD erred by ignoring evidence of the arranged marriage and the spouses' shared cultural and religious background by not viewing the arranged marriage from the Eritrean perspective.

[35] The Applicant also argues that the IAD's assessment on compatibility was done through the lens of Western norms, and failed to consider that in an arranged marriage, "it is customarily developed… knowledge in their culture that couple will get to know each other as time goes by and their relationship will get firm and stronger when kids are born." The Applicant cites *Gill v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 122 [*Gill*], which states at para 7 that "by its very nature, an arranged marriage, when viewed through a North American cultural lens, will appear non-genuine."

[36] I note that the Applicant has cited cases that deal with the "genuineness" of marriage as opposed to its "primary purpose": see *Khan* and *Gill*. I also note that *Khan* was decided when s. 4(1) of the *IRPR* still presented a conjunctive test.

[37] However, this Court has confirmed that genuineness of a relationship is "one factor that may be considered in assessing whether a marriage had primarily been entered into for immigration purposes": *Basanti v. Canada (Minister of Citizenship and Immigration)*, 2019 FC 1068 [*Basanti*] at para 28. Justice Gascon further noted in *Basanti* at para 28 that the testimonies of the spouses regarding their intentions at the time of marriage will typically provide the most probative value in the primary purpose analysis.

[38] While the IAD's analysis was framed in the context of assessing the "primary purpose" of the marriage, the factors that the IAD relied on are similar to those that this Court considers to be factors for assessing the genuineness of relationships.

[39] The genuineness test was confirmed in *Padda v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 708, and relies on a list of non-exhaustive factors set out in *Chavez v. Canada (Minister of Citizenship and Immigration)*, 2005 IADD No. 353 [*Chavez*] at para 3:

- intent of the parties to the marriage;
- the length of the relationship;
- the amount of time spent together;
- conduct at the time of meeting, at the time of an engagement and/or the wedding;
- behaviour subsequent to a wedding,
- the level of knowledge of each other's relationship histories;
- levels of continuing contact and communication;
- the provision of financial support;
- the knowledge of and sharing of responsibility for the care of children brought into the marriage;
- the knowledge of and contact with extended families of the parties; and
- the level of knowledge about each other's daily lives.

[40] In the Decision, the factors considered by the IAD to assess the primary purpose of the marriage included: the genesis of the relationship; the development of the relationship; compatibility; discussion of marriage; the length of the relationship; and, future planning. These factors overlap with the following *Chavez* factors: intent of the parties to the marriage; the length of the relationship; the amount of time spent together; and to some extent the level of knowledge about each other's daily lives.

[41] Thus, while the Court's *dicta* in *Khan* and *Gill* apply to genuineness of the relationship, I find that they are applicable when assessing the reasonableness of the IAD's determination as to the primary purpose of the marriage, given the similar factors at play.

[42] To be clear, I am not convinced that all of the submissions made by the Applicant before the Court now about the cultural context of his relationship were advanced before the IAD. I also do not find unreasonable the IAD's assessment that the Applicant and Ms. Tesfaendrias did not adequately address how conversations of marriage came up.

[43] However, as noted above, I find there was some cultural context evidence that was ignored by the IAD.

[44] This lack of regard for cultural context evidence, in my view, resulted in the IAD's adoption of a paradigm that was not culturally responsive – or in the Applicant's words, the adoption of the "Western paradigm" – in its decision-making.

[45] Examples of the IAD's disregard for the cultural context evidence can be found in its insistence that the Applicant and his spouse provide detail about their "feelings" and "emotions", and the spouse to explain "why she fell in love" with the Applicant. In other words, the IAD was applying a set of indicators of a particular notion of marriage, which may or may not comport with that embraced by the Applicant and his spouse.

[46] I agree with the Respondent that the burden is on the Applicant to provide the evidence required to the IAD to establish the cultural lens through which the IAD should have assessed the matter: *Kusi v. Canada (Minister of Citizenship and Immigration)*, 2021 FC 68 [*Kusi*] at para 3. However, I disagree that there was no such evidence before the IAD.

[47] The Respondent also argues that the IAD reasonably found that the testimonies were vague because they included general descriptors rather than a "depiction of a romantic partner."

[48] Herein lies the problem. Subsection 4(1) of the *IRPR* does not demand applicants and their spouse to demonstrate that they are in a romantic relationship. Rather, the test requires applicants to prove that their relationship is "genuine", and that the primary purpose for entering into it is not to acquire immigration status or privilege. The Applicant in this case described his own criteria for choosing his "perfect match." Simply because the Applicant and his spouse did not conform to what a "romantic" relationship should look like does not, *per se*, render their testimonies "vague."

[49] The genuineness of this couple's relationship, and the purpose for their entering into this relationship, should be assessed through the eyes of the Applicant and his spouse against the cultural background in which they have lived, and not through the decision maker's own conception of marriage: *Khan* at para 16.

[50] Also, unlike *Kusi*, where the applicant provided no evidence about the cultural context of his marriage (at para 14), the Applicant did file an article on the modern practice of "assisted marriage" common among the Eritrean diaspora.

[51] The Respondent submits that the article does not address the vagueness of the Applicant's and Ms. Tesfaendrias' testimonies, nor that it provides an explanation for the Applicant's decision to marry his spouse two days after meeting her.

[52] The article in question suggests that the practice of "assisted marriage" is a "new form of arranged marriage" which has seen a rise in Western countries among the Eritrean diaspora. According to the article, this type of assisted marriage appeals to Eritreans in the diaspora because there are few occasions for them to meet people who could become their life partner. The article further notes that there is "an even greater degree of arrangement involved if you are an Eritrean looking for an Eritrean."

[53] On its face, the article appears to bolster the Applicant's submission that his relationship with his spouse is that of an arranged marriage. However, due to the truncated audio recording of the IAD hearing, I am unable to determine whether the Applicant made any representations to

the IAD about the relevance of the article. Still, the fact that it was before the IAD distinguishes this case from *Kusi*.

[54] The evidence connotes that the Applicant's cultural background was integral to the Applicant's decision as to whom he wanted to marry and why. The IAD's failure to consider this critical factor renders the Decision as a whole unreasonable.

C. *Did the IAD unreasonably place too much weight on Ms. Tesfaendrias' refugee status in assessing the primary purpose of the Applicant's marriage?*

[55] As I have already found the Decision to be unreasonable for the reasons set out above, I need not consider whether the IAD also erred by putting undue weight on Ms. Tesfaendrias' refugee status.

[56] I would however observe that assuming the status of the sponsored spouse is a relevant factor in assessing the purpose of entering into the marriage, the fact that Ms. Tesfaendrias is a refugee in Sudan could well make this factor non-determinative. Being a refugee could provide Ms. Tesfaendrias with alternative means of coming to Canada, just as the Applicant has done through the Group of Five sponsorship program.

IV. Conclusion

[57] The application for judicial review is granted.

[58] There is no question for certification.

JUDGMENT in IMM-8251-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is returned for redetermination by a differently constituted panel of the IAD.
3. There are no questions to certify.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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