Federal Court Cour fédérale

Date: 20230104

Docket: IMM-749-22

Citation: 2023 FC 5

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 4, 2023

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

DAIMA ZAMORA ACUNA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Daima Zamora Acuna, is challenging the Immigration Appeal Division [IAD] decision of January 7, 2022 [Decision] dismissing her appeal of a decision by an immigration officer [Officer] refusing the application for a permanent resident visa for her son, Yoannys Aguilera Zamora [Yoannys]. The applicant wanted to sponsor him as a "dependent child" under the family class.

[2] The IAD agreed with the Officer that Yoannys was not a dependent child within the meaning of subparagraph 2(b)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] at the time his visa application was being considered because he had a common-law partner, Lisandra Lara Mendez [Lisandra].

[3] For the following reasons, I find that the IAD decision is reasonable. As a result, the application for judicial review is dismissed.

I. Facts

[4] On May 17, 2013, the applicant became a permanent resident of Canada, sponsored by her spouse. She declared Yoannys, then 13 years old, as a dependent child in that sponsorship application.

[5] In May 2015, the applicant submitted a sponsorship application for Yoannys as a member of the family class. The generic application form included with the application indicates that Yoannys is single.

[6] In January 2019, further to a request to update certain forms regarding his mother's sponsorship application, Yoannys, then 19 years old, declared that Lisandra was his common-law partner and that they had been living in a common-law relationship since August 28, 2016.

[7] Further to this update, Yoannys had an interview with the Officer on May 3, 2019. During that interview, he stated that Lisandra had been his girlfriend for four years, that they lived together with her parents and that, with the money his mother was sending him, he contributed financially to household expenses.

[8] Lisandra accompanied Yoannys at a second meeting on November 12, 2020. He told the Officer that Lisandra had been his girlfriend for five and a half years, that they still lived together at her parents' home and that, with their financial assistance, they were able to support themselves.

[9] After the second interview, a procedural fairness letter was sent to the applicant and to Yoannys, asking them to provide statements about the refusal of the visa application based on the fact Yoannys had a common-law partner and therefore no longer met the definition of a dependent child.

[10] Yoannys explained by email that, in May 2019, he did not make a distinction between a simple romantic relationship and having a common-law partner. He said that at the second interview he had stated he had broken up with his girlfriend and had not seen her for a year. He stated that he never lived with Lisandra, he only spent time with her, and lived instead with his maternal grandmother. As for the applicant, she stated that her son was very nervous and had confused a teenager's romantic relationship with a relationship as common-law partners. She also stated that Yoannys had never lived with his girlfriend and repeated the same explanations her son had given.

[11] In light of the explanations that contIADict Yoannys's statements that were made during the two interviews, on November 23, 2020, the Officer concluded that Yoannys had a common-law partner and denied his application since he did not meet the definition of dependent child under subparagraph 2(b)(ii) of the Regulations.

II. Impugned decision

[12] The applicant appealed the Officer's decision before the IAD.

[13] On January 7, 2022, the IAD made the same finding as the Officer and dismissed the applicant's appeal, stating:

> [7] Ms. Zamora Acuna failed to establish that her son and [Lisandra] did not cohabit for a sufficient amount of time. She also failed to establish that the relationship between her son and [Lisandra] was not conjugal.
>
> [8] The evidence reveals too many significant and relevant contIADictions between the testimony, the written statements, the forms and the interview notes. These problems have not been reasonably explained. This undermines the credibility of Ms. Zamora Acuna's testimony and that of her son. Ms. Zamora Acuna's mother also testified briefly, but her testimony does not sufficiently help the appeal. The same applies to the documentary evidence. The result is that Ms. Zamora Acuna has not met her burden of proof.

III. Issue and standard of review

[14] When an administrative tribunal is interpreting its home statute, there is a presumption that the applicable standard of review is reasonableness (*Bousaleh v Canada (Citizenship and Immigration)*, 2018 FCA 143 at para 40). None of the situations that justify rebutting the

presumption of reasonableness review apply in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 17–25; *Canada Post Corporation v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27).

[15] Thus, the only issue before the Court is whether the IAD decision is reasonable. A reasonable decision is one "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). It must bear the hallmarks of reasonableness, namely, justification, transparency and intelligibility (*Vavilov* at para 99). The reviewing court must adopt a deferential approach and intervene only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13).

IV. Analysis

[16] When a decision was made regarding his permanent resident visa application, Yoannys had to meet the definition of "dependent child" within the meaning of subparagraph 2(b)(i) of the Regulations, which stated, at the time:

dependent child, in respect of a parent, means a child who	***enfant à charge*** L'enfant qui:
(a) has one of the following relationships with the parent, namely,	**a)** d'une part, par rapport à l'un de ses parents :
(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or	**(i)** soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,
…	…

(b) is in one of the following situations of dependency, namely, **(i)** is less than 19 years of age and is not a spouse or common-law partner, or …	**b)** d'autre part remplit l'une des conditions suivantes : **(i)** il est âgé de moins de dix-neuf ans et n'est pas un époux ou conjoint de fait, …

[17] Yoannys, being the biological child of the applicant, met the first component of the definition of "dependent child." However, although he was less than 19 years of age at the time the sponsorship application was filed, the applicant had to show that Yoannys was still a dependent child when the application was processed.

[18] The IAD noted contradictory statements made by Yoannys after his two interviews with the Officer when he was faced with the possibility that the sponsorship application could be denied because he had a common-law partner. The applicant submitted that the Officer had misunderstood Yoannys because of the language barrier. However, the IAD noted that the interviews were conducted in Spanish and the questions asked were not technical or legal.

[19] Yoannys offered a coherent and consistent narrative when describing his intimate long-term relationship with Lisandra in both interviews, which were held several months apart. In my opinion, the IAD correctly found that Yoannys had changed certain significant aspects of his narrative and that he was unable to explain the inconsistencies.

[20] The applicant alleges that the IAD did not review all the characteristics that should be present in a conjugal relationship such as mutual commitment to a shared life, exclusivity, intimacy, interdependence, permanence, appearance of being a couple and presenting themselves

as a couple (*M v H,* 1999 CanLII 686 (SCC), [1999] 2 SCR 3 [*M v H*] at para 59). She submits that the intention of the parties to a relationship is an especially important factor to consider in order to assess the nature of the relationship and that the IAD neglected to perform this analysis. I do not agree.

[21] The facts in this case are rather exceptional. Yoannys himself declared that he had a common-law partner in his updated form. Additionally, during both interviews, Yoannys confirmed several times that Lisandra had been his [TRANSLATION] “girlfriend” for several years and that they lived together.

[22] The characteristics noted in *M v H* assist in assessing a couple’s commitment to each other and represent objective indicators of the couple’s intentions. The IAD weighed the evidence it had before it, including the testimony heard at the hearing, and reached the following conclusion:

> [21] In light of the following, the about-face by Ms. Zamora Acuna and her son regarding his relationship with [Lisandra] has not been reasonably explained. This badly undermines the credibility of their testimony. I also conclude that the version given in the 2019 form and during both interviews is far more consistent than the version provided after their about-face.

[23] Assessing credibility is essentially factual. As the Supreme Court of Canada stated in *Vavilov* at paragraph 125, “[i]t is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings.”

[24] It is in this context that I cannot find that the IAD committed a reviewable error in its analysis of the relationship between Yoannys and Lisandra.

V. Conclusion

[25] The applicant was unable to show that the IAD's conclusion was unreasonable in the sense that it does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." As a result, I find that the IAD's decision is reasonable because it is transparent, intelligible and justified. This application is therefore dismissed.

[26] No serious question of general importance was submitted for certification.

[27] That being said, I feel I must add the following. The process that had been ongoing since the applicant sought to sponsor her son resulted in an unfortunate decision for them. It may seem arbitrary that the success of a sponsorship application could be so closely tied to the rapidity with which a decision is made. However, the Court of Appeal has recognized that "at whatever point in the application process eligibility is determined, a certain level of arbitrariness is inevitable" (*Canada (Citizenship and Immigration) v Hamid*, 2006 FCA 217 at para 40).

[28] I would hope that, in the particular circumstances of this case, Yoannys can turn to other avenues to reunite with his mother in Canada, including an application for permanent residence on humanitarian and compassionate grounds from outside Canada.

JUDGMENT IN IMM-749-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Roger R. Lafrenière"
Judge

Certified true translation
Elizabeth Tan

FEDERAL COURT

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DOCKET:	IMM-749-22
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