

Federal Court



Cour fédérale

Date: 20230112

Docket: IMM-7334-21

Citation: 2023 FC 48

St. John's, Newfoundland and Labrador, January 12, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MARLENE BRIDGETTE RITTIE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Marlene Bridgette Rittie (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Appeal Division (the “IAD”), dismissing her appeal from a refusal of her application to sponsor her husband, Mr. Nomair Anthony Neil, as a member of the family class, as defined in subsection 117(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] The IAD dismissed the appeal because it was not satisfied that the Applicant's marriage was genuine.

[3] The Applicant is a citizen of Canada. She married her husband, a citizen of Jamaica, on December 18, 2015. Subsequently, she applied to sponsor him for permanent residence in Canada, as a member of the family class.

[4] By a decision made on March 13, 2020, an officer refused the application, finding that the marriage of the Applicant and her husband was not a genuine marriage. In the Global Case Management System ("GCMS") notes, among other things, the officer noted that the husband did not demonstrate the level of knowledge about the Applicant that would be expected from a spouse, and the fact that the husband had engaged in a romantic relationship following his marriage with the Applicant, resulting in the birth of a child. The officer learned about this relationship as the result of an anonymous tip.

[5] The IAD conducted a hearing on July 5, 2021, and heard evidence from the Applicant and Mr. Neil.

[6] The Applicant argues that her right to procedural fairness was breached because the officer and the IAD relied on extraneous information. She also argues that the finding about the genuineness of her marriage is unreasonable.

[7] The Minister of Citizenship and Immigration (the “Respondent”) submits that there was no breach of procedural fairness and that the decision is reasonable.

[8] Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[9] The merits of the decision are reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[10] In considering reasonableness, the Court is to ask if the decision under review “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”; see *Vavilov, supra* at paragraph 99.

[11] I will first address the Applicant’s argument about a breach of procedural fairness.

[12] The Applicant complains that the IAD relied on information from an unnamed source about Mr. Neil’s relationship with the mother of the child. She submits that reliance upon information from this unnamed source affected the judgment of the officer and of the IAD. I understand that the Applicant argues that reliance upon information provided anonymously gave rise to a breach of procedural fairness.

[13] I am not persuaded that the IAD's consideration of information about the husband's relationship with the child's mother, even if received by way of a "tip", gave rise to a breach of procedural fairness.

[14] Proceedings before the IAD are recognized as *de novo* hearings; see the decision in *Singh v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1673. This means that the IAD can review new evidence and render its own decision; it is not bound by the original decision-maker.

[15] The IAD noted the information received from the unnamed source. It observed this was not a determinative factor in disposing of the appeal.

[16] In my opinion, no breach of procedural fairness arises from the manner in which the IAD treated the information from the unnamed source.

[17] The focus of the IAD's decision is upon the genuineness of the Applicant's marriage. The IAD found that the marriage was not genuine and had been entered into primarily for the purpose of the husband obtaining permanent residence in Canada.

[18] Subsection 4(1) of the Regulations is relevant and provides as follows:

Bad faith

4(1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a

Mauvaise foi

4(1) Pour application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal

<p>conjugal partner of a person if the marriage, common-law partnership or conjugal partnership</p>	<p>d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :</p>
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(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.

[19] Assessing the genuineness of a marriage, for the purposes of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") and the Regulations, requires assessment of evidence and of the credibility of that evidence; see the decision in *Chavez v. Canada (Minister of Citizenship and Immigration)*, [2005] I.A.D.D. No. 353.

[20] In my view, upon considering the evidence in the Certified Tribunal Record, and the oral and written submissions of the parties, the Applicant has failed to show that the decision of the IAD is unreasonable.

[21] The IAD was mandated to consider and weigh the evidence submitted. That evidence included the testimony of the Applicant and Mr. Neil. The IAD was obliged to assess the genuineness of the marriage. It concluded that the marriage was not genuine and provided reasons for that conclusion.

[22] In my opinion, the reasons are transparent and justifiable; they are supported by the evidence.

[23] In these circumstances, there is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-7334-21

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-7334-21

STYLE OF CAUSE: MARLENE BRIDGETTE RITTIE v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY AUDIOCONFERENCE

DATE OF HEARING: October 4, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JANUARY 12, 2023

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