

Federal Court



Cour fédérale

Date: 20240212

Docket: IMM-4556-23

Citation: 2024 FC 238

Ottawa, Ontario, February 12, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

RAVI HANSRAJH DWARKA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Immigration Appeal Division (the “IAD”) finding that the marriage of the Applicant and his wife was not genuine or was entered into primarily for an immigration purpose. Pursuant to section 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”), the Decision effectively denied the Applicant’s application to sponsor his wife under the family class.

II. Background

[2] Mr. Ravi Hansrajh Dwarka (the “Applicant”) is a 34-year-old citizen of Canada. Ms. Tarmattie Ramiah-Dwarka (“Ms. Dwarka”) is a 27-year-old citizen of Guyana.

[3] The Applicant states that he wanted to get married before he reached the age of 30. In or around January 2018, when he was 28 years old, he travelled to Guyana intending to find someone to marry whose background is similar to his. His parents and brother joined him on this trip.

[4] The Applicant met Ms. Dwarka in Guyana towards the end of January 2018. They were introduced by members of the Applicant’s extended family.

[5] The Applicant and Ms. Dwarka met with both of their families present, and during the meeting, the Applicant’s father and Ms. Dwarka’s father discussed the prospect of a relationship between the two. The Applicant and Ms. Dwarka spoke for around 40 minutes. They were engaged in a small ceremony on January 31, 2018.

[6] After their engagement, the Applicant returned to Canada and Ms. Dwarka stayed in Guyana. However, the Applicant and Ms. Dwarka communicated extensively. The record includes messages that spanned the period of February 2018, immediately following their engagement, to November 2022, when they filed evidence to the IAD. Their conversations, as the IAD described them, “appear to be of a typical relationship, with the couple discussing their day and routine issues”. Both the Applicant and Ms. Dwarka were able to describe various details of each other’s

lives before the IAD, including matters related to their living arrangements, their work, their families, and past relationships.

[7] The Applicant and Ms. Dwarka were married in Guyana in March 2018. Although the Applicant subsequently returned to Canada, he supported Ms. Dwarka financially by providing her with a sum of \$150.00 each month from April 2018 onward.

[8] The Applicant's next visit to Guyana was in September 2021. The Applicant cites the pandemic and civil unrest in Guyana as the cause of the gap between his visits.

[9] In its reasons, the IAD accepted all of the above facts. It also found the Applicant and Ms. Dwarka were generally both consistent in how they described that timeline.

[10] However, the IAD took issue with several perceived discrepancies in the testimonies of the Applicant and Ms. Dwarka. The IAD observed that the Applicant and Ms. Dwarka were not consistent as to when they began communicating with one another after they first met. The Applicant said that they began messaging one another on the same day they met, while Ms. Dwarka stated that she initially declined to give the Applicant her contact information without first consulting with her parents. When the IAD pressed Ms. Dwarka on this discrepancy, she confirmed that the Applicant did message her, but clarified that she thought the IAD was asking when the Applicant first began calling her over the phone. The IAD did not accept Ms. Dwarka's explanation.

[11] As well, the IAD observed some discrepancies regarding the details that the Applicant and Ms. Dwarka know about one another. The Applicant stated that the school in which Ms. Dwarka teaches was closed and that she stopped using her bank account, whereas Ms. Dwarka stated that the school remained open but will be closed in the future, and that she continues to use her bank account. The IAD inferred that, since the Applicant and Ms. Dwarka communicate frequently, these discrepancies are significant and show that the marriage is not genuine.

[12] The IAD also noted that the Applicant and Ms. Dwarka were not consistent as to when they began to be sexually intimate. The Applicant said that he was certain that they were sexually intimate on their wedding night, but did not recall if they were also intimate before that day. Ms. Dwarka, on the other hand, said that she and the Applicant were intimate after the engagement party, and did not know why the Applicant answered otherwise.

[13] The IAD acknowledged that, in a prior statement, the Applicant said that “he and [Ms. Dwarka] are from strict family backgrounds and he was not allowed to date the Applicant openly”. From my review of the record, it is clear that the IAD was referring to the following excerpt by the Applicant on the sponsorship application:

After I returned from Guyana to Canada, I spoke to my wife and decided that I did not want to wait long for the wedding. I was already 28 years old and wanted my wife here before I turned 30. I decided on the wedding date of March 8, 2018. That is when I could have the time off work and be able to travel. During the time between our meeting and my return for our wedding, we spoke several times a day, got to know each other and began to fall in love with each other. This was the first real relationship for both of us. We are both from strict [sic] family background and I was not allowed to date her openly, to tarnish her reputation. I returned on March 5, 2018 to Guyana and we got married on March 8, 2018. [...]

[Emphasis added]

[14] When asked how being intimate with the Applicant before their wedding would not “tarnish her reputation”, Ms. Dwarka clarified that, because it was known that she was engaged to the Applicant, her time with him would have had no effect on her reputation. The IAD subsequently concluded that the Applicant was not truthful in stating that he could not date Ms. Dwarka openly.

[15] Moreover, the IAD was not satisfied with the Applicant’s explanation as to why his parents did not attend his wedding. The Applicant stated that his parents were busy on a business matter, that he perceived the wedding as a formality, and that a reception in Canada would be forthcoming (presumably once Ms. Dwarka is allowed to join him). The Applicant’s father also testified that the wedding in his view was just a formality and that the actual celebration will be in Canada. He confirmed the Applicant’s allegation that he (the father) was occupied by his business. The IAD found this to be unsatisfactory, and concluded that a genuine marriage would have included the Applicant’s family.

[16] The IAD also took note of an exchange in which the Applicant and Ms. Dwarka were discussing the sponsorship application. The Applicant asked Ms. Dwarka to take as many photos as possible of their immigration papers. He also informed her that he will be sending her greeting cards.

[17] The Respondent’s counsel suggested to the IAD that the Applicant was sending greeting cards to Ms. Dwarka to bolster their application. The Applicant stated that he often sends Ms.

Dwarka cards with money. The IAD observed that there was no evidence of any greeting cards within the sponsorship application. Nonetheless, it concluded that the above statements indicate that the Applicant was attempting to bolster the application.

[18] Finally, the IAD observed that the Applicant and Ms. Dwarka were married “hastily”. The IAD acknowledged the Applicant’s statement that he felt he and Ms. Dwarka were compatible because they share the same ethnic, religious, and cultural background, and they both enjoy similar activities. The IAD also noted the Applicant’s view that “if two people like each other then they should marry”, and that he had an opportunity to get to know Ms. Dwarka between the engagement and the wedding. The IAD was not satisfied with this explanation and found the speed of the marriage to indicate that it was not genuine. Notably, the IAD made the following comment about Ms. Dwarka:

Additionally, the [Ms. Dwarka] agreed to marry a man from a foreign country whose family members she had never met, after only speaking with him for 40 minutes.

[19] The IAD concluded that the Applicant’s marriage with Ms. Dwarka was not genuine or was entered into primarily for immigration purposes.

III. Issue

[20] Was the IAD’s finding that the Applicant and Ms. Dwarka’s marriage was not genuine or was entered into primarily for immigration purposes unreasonable?

IV. Analysis

[21] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

[22] The Applicant submits that the IAD's conclusion was not reasonable. He specifically argues that the IAD misapprehended the evidence and weighed it unreasonably. The Respondent, in reply, argues that the IAD is owed deference, that the discrepancies in the evidence are significant, and that it was reasonable of the IAD to conclude that the marriage was not genuine or that it was entered into primarily for immigration purposes.

A. *The Start of the Communication and its Quality*

[23] The IAD was correct to observe that there was some inconsistency between the evidence of the Applicant and that of Ms. Dwarka as to when the Applicant and Ms. Dwarka started communicating after first meeting one another and certain details regarding Ms. Dwarka's banking habits and her ongoing issues at her work. However, the IAD's conclusion that the discrepancies were sufficiently material as to cast doubt on the Applicant's marriage with Ms. Dwarka was unreasonable.

[24] The inference that the IAD attempts to implicitly draw from the above discrepancies is that the Applicant and Ms. Dwarka did not meaningfully communicate or update one another about their life or the state of their affairs, which (if true) would weigh against the genuineness of their relationship. However, this finding disregards *direct* evidence of the communication between the Applicant and Ms. Dwarka. That direct evidence showed that the Applicant and Ms. Dwarka communicated frequently for several years. The written record of their communication went as far

back as February 2018 (immediately after the Applicant and Ms. Dwarka met and became engaged) and November 2022 (when the Applicant submitted his evidence to the IAD). It is sizeable and extensive. According to the IAD's own analysis, the communications "appear to be of a typical relationship, with the couple discussing their day and routine issues".

[25] It is not reasonable nor consistent for the IAD to conclude on the one hand that the Applicant and Ms. Dwarka are indeed communicating frequently and in a manner expected of a "typical relationship, with the couple discussing their day and routine issues", and then to try to imply that there was no meaningful communication between the two because of small and infrequent discrepancies.

[26] The IAD's inference from the above discrepancies was unreasonably microscopic and it showed a misapprehension of the evidence.

B. *The Intimacy between the Applicant and Ms. Dwarka*

[27] The IAD further found that there was an inconsistency in the evidence of the Applicant and Ms. Dwarka as to when they first became sexually intimate. However, upon a closer examination of the evidence provided by the two, as summarized by the IAD, it is evident that no such inconsistency exists. The Applicant stated that he cannot recall if he and Ms. Dwarka were sexually intimate in the period between January 2018, when they became engaged, and March 2018, when they were married. Ms. Dwarka's evidence is that they were intimate during that time. These two statements are not contradictory.

[28] Nor does the Applicant's comment on the sponsorship application that he and Ms. Dwarka "are both from strict [sic] family background and [he] was not allowed to date her openly, to tarnish her reputation" contradict Ms. Dwarka's comments regarding their intimacy. Taken in its context, the Applicant's comment illustrated why his relationship with Ms. Dwarka "was the first real relationship for both" of them. It addressed what they can and cannot do "openly", not what they can do intimately.

[29] Moreover, even if there were inconsistencies in the statements of the Applicant and Ms. Dwarka, the underlying premise of the statements is that they were sexually intimate, be that after January 2018 or after March 2018. It is unreasonable of the IAD to infer that such a minor discrepancy supports the view that the marriage is not genuine in light of this underlying premise.

C. *The Family's Attendance at the Wedding*

[30] The IAD found that the failure of the Applicant's family to attend his wedding supports the claim that the marriage is not genuine. The IAD's finding is premised on the notion that the Applicant's family would not want to, or would not care to, be a part of the Applicant's wedding because the wedding is not genuine.

[31] The IAD's finding unreasonably disregards the totality of the evidence, which shows that the Applicant's family were involved in other ways in his relationship with Ms. Dwarka. It was the Applicant's family that introduced the Applicant to Ms. Dwarka. It was also his parents and his brother who travelled with him from Canada to Guyana to help him find someone to marry. Additionally, the Applicant's family was not completely absent from the Applicant's wedding,

since his cousin and his uncle (as well as both of their families) attended the wedding. Finally, the Applicant's father's evidence attested to the Applicant's position that the wedding reception and celebration was planned to happen in Canada.

[32] The IAD's finding that the Applicant's family failed to attend his wedding and its subsequent inference that they failed to do so because the relationship was not genuine are not supported by the evidence. Those conclusions are unreasonable.

D. *The Greeting Cards*

[33] The IAD held that the Applicant was sending greeting cards to Ms. Dwarka to create an inflated perception that they are in a genuine relationship for the purposes of the sponsorship application. However, immediately before making this finding, the IAD observed that "the [Applicant] did not submit any greeting cards as document evidence to support the sponsorship application". The IAD's finding is internally inconsistent and contradictory. It is unreasonable.

E. *The Hastiness of the Marriage*

[34] The IAD found the Applicant's marriage to Ms. Dwarka was so hasty that it allowed for an inference that the marriage is not genuine.

[35] The IAD noted that the Applicant and Ms. Dwarka were engaged only a few days after they first met and that they hardly took any time to know one another. It further observed that their families did not know each other before the Applicant's engagement with Ms. Dwarka.

[36] There was no evidence before the IAD that suggested that such hastiness is normal in the culture of the Applicant or that of Ms. Dwarka. The only evidence contrary to the IAD's conclusion is that the Applicant wanted to marry Ms. Dwarka before he turned 30, that he loved her and did not want to wait further before marrying her, and that he believes that if two people like one another they should not prolong marriage.

[37] Nevertheless, it was open to the IAD to find that the speed with which the Applicant became engaged to, and then married, Ms. Dwarka supported the possibility that the marriage may not have been genuine or was primarily for an immigration purpose.

[38] However, that inference from the speed of the marriage is not sufficient to determine his sponsorship application. The IAD's decision must weigh that inference against all the other evidence.

F. *The Overall Weighing of the Evidence*

[39] In any event, the overall weighing of the evidence was not reasonable.

[40] The IAD accepted *direct* evidence that demonstrates that, for well over three years after first meeting, the Applicant and Ms. Dwarka communicated extensively and frequently, and in a manner one would expect within "a typical relationship, with the couple discussing their day and routine issues". This was further supported by the IAD's finding that the Applicant and Ms. Dwarka knew many personal details about one another (except on two issues related to Ms. Dwarka's banking and the status of the school in which she works). The IAD also accepted that it

was the Applicant who financially supported Ms. Dwarka, and that he has provided that financial support since April 2018, immediately following their marriage.

[41] The focus on minor inconsistencies in the context of the evidence as a whole was unreasonable.

V. Conclusion

[42] The application is granted.

JUDGMENT in IMM-4556-23

THIS COURT'S JUDGMENT is that:

1. The application is granted and the matter is remitted to a different panel for redetermination.
2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4556-23

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