

Federal Court



Cour fédérale

Date: 20240506

Docket: IMM-10725-22

Citation: 2024 FC 694

Ottawa, Ontario, May 6, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

NADEEM MUSHTAQ WARRAICH

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Nadeem Mushtaq Warraich, seeks judicial review of an October 12, 2022 Immigration Appeal Division (IAD) decision confirming an Immigration Division (ID) decision that found him inadmissible to Canada for misrepresentation under subsection 40(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Warraich is a citizen of Pakistan who became a permanent resident of Canada in March 2009. He was sponsored by his first wife, who he married in Canada in September 2007.

[3] In 2019, Mr. Warraich was referred to the ID for an admissibility hearing on the basis that, when he landed in Canada in March 2009, he did not disclose that his relationship with his first wife had changed and he misrepresented the marriage to his sponsor as genuine.

Mr. Warraich states that a “poison pen” letter from his second wife led to the investigation.

[4] Mr. Warraich married his second wife while he was still married to his first wife.

Mr. Warraich states he married his second wife in Pakistan in May 2008 without being physically present for the ceremony—a marriage referred to as a “proxy marriage”.

Mr. Warraich’s second wife told immigration authorities that there was also a marriage ceremony in Canada in December 2007. Mr. Warraich is no longer in a relationship with either woman.

[5] Following the admissibility hearing, the ID found Mr. Warraich inadmissible and issued a removal order. Based on Mr. Warraich’s evidence that he and his family considered the second spouse to be his wife, the marriage was legitimate in Pakistan, and the couple had a child in March 2009 (the month he became a permanent resident), the ID concluded that Mr. Warraich’s failure to disclose information had foreclosed a line of questioning or investigation that might otherwise have been pursued by immigration authorities.

[6] The IAD dismissed Mr. Warraich's appeal. It found that Mr. Warraich owed a duty of candour to disclose full facts relevant to his entry in Canada and he withheld information that deprived immigration officers of the power to make a decision regarding his entry to Canada based on the full facts. Mr. Warraich married his second wife while he was still married to his first wife, he considered both spousal relationships to be genuine, there had been two marriage ceremonies between Mr. Warraich and his second wife, and he was expecting a child with his second wife when he landed in Canada under a spousal sponsorship application sponsored by his first wife. The IAD considered these to be material facts that ought to have been disclosed to immigration authorities at or before the time of his landing in Canada. The IAD noted that a misrepresentation does not need to be decisive or determinative; a misrepresentation is material if it is enough to affect the process. Mr. Warraich committed a misrepresentation by withholding information about his relationship with his second wife that affected the process of examination, and the removal order was valid.

[7] Mr. Warraich submits the IAD's decision is unreasonable. He states the IAD erred in finding he had a duty to disclose a marriage that, due to legislative amendments in 2015, was a proxy marriage and not legally recognized in Canada when the IAD made its decision.

Mr. Warraich submits that the purpose of section 40 is to maintain the integrity of the *IRPA*. For a spousal sponsorship application, the purpose of review is to assess whether a marriage is genuine and Mr. Warraich states the marriage to his first wife was genuine when he entered Canada. He married his second wife because his first wife refused to return with him to Pakistan to be with his ill father, so Mr. Warraich's father asked him to marry someone else.

Mr. Warraich states his first wife was aware of and gave permission for the arrangement with his second wife, and his second wife and her family were aware of the first marriage.

[8] Mr. Warraich states that his relationship with his second wife was not a legal spousal relationship because he was married to his first wife at the time of the second marriage and he was not physically present at the marriage ceremony in Pakistan. According to section 5 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]:

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| <p>5 For the purposes of these Regulations, a foreign national shall not be considered</p> | <p>5 Pour l'application du présent règlement, l'étranger n'est pas considéré :</p> |
| <p>(a) the spouse or common-law partner of a person if the foreign national is under the age of 18 years;</p> | <p>a) comme l'époux ou le conjoint de fait d'une personne s'il est âgé de moins de dix-huit ans;</p> |
| <p>(b) the spouse of a person if</p> | <p>b) comme l'époux d'une personne si, selon le cas :</p> |
| <p>(i) the foreign national or the person was, at the time of their marriage, the spouse of another person, or</p> | <p>(i) l'étranger ou la personne était l'époux d'une autre personne au moment de leur mariage,</p> |
| <p>(ii) the person has lived separate and apart from the foreign national for at least one year and is the common-law partner of another person; or</p> | <p>(ii) la personne vit séparément de l'étranger depuis au moins un an et est le conjoint de fait d'une autre personne;</p> |
| <p>(c) the spouse of a person if at the time the marriage ceremony was conducted either one or both of the spouses were not physically present unless</p> | <p>c) comme l'époux d'une personne si le mariage a été célébré alors qu'au moins l'un des époux n'était pas physiquement présent, à moins qu'il ne</p> |

the person was not physically present at the ceremony as a result of their service as a member of the Canadian Forces and the marriage is valid both under the laws of the jurisdiction where it took place and under Canadian law.

s'agisse du mariage d'un membre des Forces canadiennes, que ce dernier ne soit pas physiquement présent à la cérémonie en raison de son service militaire dans les Forces canadiennes et que le mariage ne soit valide à la fois selon les lois du lieu où il a été contracté et le droit canadien.

[9] Consequently, Mr. Warraich states the IAD found him inadmissible for misrepresentation based on a failure to disclose circumstances that, at the time of the IAD appeal, amounted to an extramarital affair. It was unreasonable for the IAD to conclude that he committed a misrepresentation for failing to disclose that he was unfaithful to his first wife. According to Mr. Warraich, the IAD passed judgment and its decision reflected a lack of understanding of an agreement between genuinely married people.

[10] Mr. Warraich contends that the only spousal relationship that should have been considered was the marriage to his first wife. The subsection 44(1) report that referred him to the ID for an admissibility hearing wrongly stated that he had misrepresented the marriage to his sponsor as genuine, and the IAD wrongly found that the legality of the marriage is not relevant in deciding whether there was a misrepresentation. Mr. Warraich submits that he was landing in Canada based on a spousal sponsorship application by his first wife, the genuineness of that relationship was a relevant consideration, and since his first marriage was a genuine relationship that had not broken down when he entered Canada, there was nothing to disclose.

[11] The respondent submits the subsection 44(1) report is simply the beginning of the process and it is the IAD's decision that is the subject of this review. The respondent states the IAD reasonably concluded that the legal validity of the second marriage in Canada is irrelevant to the issue of whether Mr. Warraich owed a duty to disclose the relationship with his second wife to immigration authorities at the time of his landing. Despite believing that both marriages were genuine, Mr. Warraich did not disclose his second marriage to a woman who was pregnant and had a child a few days later. Mr. Warraich had an entirely different family from the sponsor he had declared in his application for permanent residence, his relationship with the sponsor had changed, and he chose to remain silent. The respondent argues that an applicant for permanent residence has a duty of candour and a positive obligation to disclose material facts, including a change of marital status; full disclosure is fundamental to the proper and fair administration of the *IRPA*: *IRPR*, s 51; *Bodine v Canada (Citizenship and Immigration)*, 2008 FC 848 at paras 41-44 [*Bodine*]; *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15 [*Baro*]. The respondent adds that, despite the IAD's invitation, Mr. Warraich did not provide submissions on the duty of candour and he still has not addressed the duty of candour in his submissions to this Court.

[12] I find Mr. Warraich has not established that the IAD's decision is unreasonable.

[13] The guiding principles for reasonableness review are set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The reasonableness standard of review is a deferential but robust form of review that considers whether the decision is transparent, intelligible, and justified: *Vavilov* at paras 13, 99.

[14] A permanent resident may be found inadmissible for misrepresentation under paragraph 40(1)(a) of the *IRPA* for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the *IRPA*. Relevant legal principles include that the legislative provision is broad, exceptions to it are narrow, and an applicant has a duty of candour to provide complete, honest, and truthful information when entering Canada: *Brar v Canada (Citizenship and Immigration)*, 2016 FC 542 at para 12; see also *Bodine* at paras 41, 44 and *Baro* at para 15. A misrepresentation need not be intentional, deliberate, or negligent and subsection 40(1) of the *IRPA* encompasses innocent failures to disclose material information: *Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at para 63; *Duquitan v Canada (Citizenship and Immigration)*, 2015 FC 769 at para 10.

[15] The IAD considered Mr. Warraich's argument that his second marriage was not legally recognized in Canada but found that the legality of the second marriage was not the issue. A misrepresentation does not have to be decisive or determinative and it was not necessary for the IAD to determine how disclosure would have influenced the officer's decision. Furthermore, as the respondent points out, section 51 of the *IRPR* imposes an obligation on a foreign national who is seeking to become a permanent resident to inform an officer, at the time of their examination, if they have become a spouse or ceased to become a spouse or if material facts have changed.

[16] The IAD did not pass judgment or err because it failed to understand Mr. Warraich's relationships. I agree with the respondent that the issue before the IAD, and the only issue it addressed, was whether Mr. Warraich complied with the law. I see no reviewable error with the

IAD's findings that section 40 of the *IRPA* is broad and applies to material facts that ought to have been disclosed. The IAD reasonably found that Mr. Warraich had a duty to disclose the second marriage and relationship to immigration authorities as material facts. The IAD made no findings about whether Mr. Warraich was unfaithful or whether a relationship was an extramarital affair. Rather, the IAD considered the relevant evidence, including Mr. Warraich's evidence that the second relationship was a genuine marriage.

[17] The IAD relied on recognized legal principles and reached its findings based on an application of the legal principles to the facts that were before it. While Mr. Warraich disagrees with the IAD's finding that his actions amounted to a misrepresentation, he has not demonstrated a failure of intelligibility, transparency, or justification with the IAD's decision. An applicant's marital history is relevant to a spousal application for permanent residence and is a valid factor for immigration officials take into account: *Baro* at para 16.

[18] For these reasons, Mr. Warraich has not established a reviewable error with the IAD's determination, and this application is dismissed. Neither party proposed a question for certification. I find there is no question for certification.

JUDGMENT IN IMM-10725-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10725-24

STYLE OF CAUSE: NADEEM MUSHTAQ WARRAICH v THE MINISTER
OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

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