

Federal Court



Cour fédérale

**Date: 20241015**

**Docket: IMM-9948-23**

**Citation: 2024 FC 1627**

**Ottawa, Ontario, October 15, 2024**

**PRESENT: The Honourable Madam Justice Blackhawk**

**BETWEEN:**

**SELENNY MARIANA ALVARO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision dated July 18, 2023, of the Immigration Appeal Division (IAD) dismissing the appeal of an application to sponsor the Applicant's spouse as a member of the family class under subsection 12(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (Decision).

[2] The Applicant asks this Court to set the Decision aside and send the matter back for redetermination by a different panel.

[3] For the reasons that follow, this application is dismissed.

## II. Background

[4] The Applicant, Selenny Mariana Alvaro, is a 54-year-old naturalized citizen of Canada. She applied to sponsor her spouse, Cristhian Andres Coloma Salazar, as a member of the family class under subsection 12(1) of the *IRPA*. Mr. Coloma Salazar is a 34-year-old citizen of Ecuador. Mr. Coloma Salazar is the Applicant's fourth spouse.

[5] The Applicant was born in Ecuador and has two sons from previous marriages: an adult and a minor.

[6] Mr. Coloma Salazar works in construction in Ecuador and has a minor son from a previous relationship.

[7] The Applicant met Mr. Coloma Salazar at a friend's house party while she was visiting Ecuador in February 2017. The Applicant claims that she had an instant connection with Mr. Coloma Salazar. She subsequently made five trips to visit Mr. Coloma Salazar in Ecuador between January 2017 and October 2019. On October 30, 2019, the Applicant and Mr. Coloma Salazar married. The Applicant has not returned to Ecuador since the wedding due to the COVID-19 pandemic travel restrictions and her caregiving responsibilities for her terminally ill mother.

[8] The Applicant filed the application to sponsor Mr. Coloma Salazar on August 30, 2021.

[9] On October 27, 2022, an officer with Migration Section of the Embassy of Canada to Colombia (Officer) interviewed Mr. Coloma Salazar at the offices of the International Organization for Migration in Quito, Ecuador. During the interview, the Officer alerted Mr.

Coloma Salazar to concerns regarding the genuineness and primary purpose of his relationship. These included that Mr. Coloma Salazar: i) did not know how many times the Applicant had previously been married; ii) had limited knowledge of the Applicant's children; iii) had limited knowledge of the Applicant's childhood moments; iv) had not attempted to visit, or been visited by, the Applicant since their marriage; and v) provided minimal proof of the relationship. The Officer gave Mr. Coloma Salazar an opportunity to respond to these concerns.

[10] The Officer refused the sponsorship application on November 23, 2022.

[11] On December 9, 2022, the Applicant appealed the Officer's decision to the IAD. The IAD issued its Decision and dismissed the appeal on July 18, 2023. In its reasons for Decision, the IAD stated:

[3] I have considered all the factors I must examine. The couple provided confusing and contradictory evidence about when they met each other's family members. There was contradictory testimony about the proposal, the honeymoon and financial support by the [Applicant]. The wedding was small and no one from the [Applicant's] side attended. The efforts to integrate their children into a joint family are limited and the couple lack knowledge of each other in several areas. There was limited objective documentary evidence to help me contextualize whether this is a real relationship. While there are some indicia of a genuine relationship here, this evidence is insufficient to overcome my concerns. Further, [Mr. Coloma Salazar] appears motivated to leave Ecuador. On a balance of probabilities, this is a marriage which is not genuine, and which was entered into primarily for the immigration of [Mr. Coloma Salazar].

...

[12] The couple's testimony included several important inconsistencies related to several Chavez factors.

...

[38] ... I have considered the factors I am required to examine from Chavez, along with the individual circumstances of the

parties to this relationship. The main indicator of a real relationship here are the many visits made by the [Applicant] to see her husband in Ecuador. However, there is contradictory evidence before me about the proposal, when the couple met each other's family members, whether they had a honeymoon and what it entailed, and the financial support by the [Applicant]. There has been little effort to integrate the children into the new family unit. There is a lack of knowledge of each other's lives. There is limited objective documentary evidence to contextualize the above evidence, and I am particularly concerned about the lack of communications evidence from the early stages of the relationship. The positive factor is insufficient to outweigh the numerous problems with the evidence in this appeal, discussed above. My examination of the Chavez factors shows a non-genuine marriage.

[39] My conclusion that the marriage is not genuine informs my second conclusion that the marriage was primarily for immigration. The assessment of the primary purpose looks at conduct around the time of the wedding. In this case, my credibility concerns related to the relationship development and the proposal make me question the intentions of [Mr. Coloma Salazar] at the time of the wedding. Further, the couple had a small wedding, which [Mr. Salazar's] mother and brother did not attend.

[40] [Mr. Coloma Salazar] appears motivated to leave Ecuador. He has lived in North America previously. [Mr. Coloma Salazar] lived in the United States, and the [Applicant] said he told her he lived there before 2012 or 2011. However, [Mr. Coloma Salazar] told the visa officer he previously lived in the United States from 2006-2015, but he lost his visa to live there when he stayed away for too long. Also, the notes in the Record indicate that [Mr. Coloma Salazar] applied for a work permit to Canada in 2013, but he denied this fact at the visa office and at the hearing, and the [Applicant] was unaware that he had previously applied to come to Canada. I am concerned that [Mr. Coloma Salazar] obfuscated the recency of his stay in the US and his previous work permit application to Canada from the [Applicant]. [Mr. Coloma Salazar] was clearly looking for the chance to travel abroad, and he met the Applicant within a few years of his return from the USA. All these facts support a finding that the primary purpose of the marriage was for [Mr. Coloma Salazar's] immigration.

III. Issues and Standard of Review

[12] The issues raised in this judicial review application are:

- A. Did the IAD err by making numerous credibility findings without allowing the Applicant the opportunity to respond?
- B. Did the IAD ignore testimonial evidence and unreasonably conclude that the marriage was not genuine and was entered into for immigration purposes?

[13] The applicable standard of review in with respect to the IAD decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86).

[14] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, 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).

[15] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[16] This Court has clarified that questions regarding the genuineness of a marriage are factual determinations and the decision maker’s determinations are entitled to deference (*Idrizi v Canada (Citizenship and Immigration)*, 2019 FC 1187 [*Idrizi*]):

... Whether a marriage was entered into primarily for the purpose of immigration or is genuine is a highly factual inquiry and

decision-makers are entitled to deference from reviewing courts. This is particularly the case when the decision-maker has the benefit of having questioned the spouses in person: see *Kim v Canada (Citizenship and Immigration)*, 2016 FC 1141 at para 9; *Ma v Canada (Citizenship and Immigration)*, 2016 FC 1283 at para 7; *Pabla v Canada (Citizenship and Immigration)*, 2018 FC 1141 at paras 11-13; *Wong v Canada (Citizenship and Immigration)*, 2019 FC 1017 at para 13; and *Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 13.

[*Idrizi* at para 21; see also *Boyacioglu v Canada (Citizenship and Immigration)*, 2021 FC 1356 at para 32.]

[17] Breaches of procedural fairness are reviewable on a correctness standard. In other words, a “reviewing exercise... ‘best reflected in the correctness standard’ even though strictly speaking no standard of review is being applied” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR] at para 54, citing *Eagle’s Nest Youth Ranch Inc. v Corman Park (Rural Municipality #344)*, 2016 SKCA 20 at para 20; see also *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). Generally, when reviewing an allegation of breach of procedural fairness, a reviewing court is concerned with the fairness of the process, having regard to all the circumstances (*CPR* at paras 54–55).

#### IV. Analysis

[18] An applicant “must demonstrate both that the marriage was not entered into primarily for an immigration purpose and that the relationship is genuine” (*Ferraro v Canada (Citizenship and Immigration)*, 2018 FC 22 at para 12; *Idrizi* at para 27 (emphasis added)).

[19] The Applicant argued that the IAD made numerous credibility findings regarding the genuineness of the marriage without providing her an opportunity to respond, in breach of her right of procedural fairness.

[20] In support of this argument, the Applicant drew an analogy with refugee jurisprudence. This Court has noted that in the context of a refugee claim, if the Refugee Protection Division does not provide an applicant an opportunity to address specific credibility concerns, this a breach of procedural fairness (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 1123 at para 32).

[21] In addition, the Applicant argued that the IAD ignored the testimonial evidence of the Applicant and Mr. Coloma Salazar in its conclusions that the marriage was not genuine and solely for immigration purposes.

[22] The Respondent argued that this is a spousal sponsorship, not a refugee claim; therefore, the onus rests with the Applicant to provide the facts and evidence to support her claim. The Applicant failed to provide sufficient information to support her application.

[23] The central question to be determined when issues of procedural fairness are raised is, taking into account the particular context and circumstances, did the process followed by the administrative decision maker afford the parties a right to be heard, and a full and fair opportunity to know and respond to the case against them (*CPR* at para 56). No deference is owed to the decision maker on issues of procedural fairness.

[24] In *Chavez v Canada (Minister of Citizenship and Immigration)*, [2005] IAD TA3-24409 [*Chavez*], the IAD set out the factors (*Chavez* Factors) that may be considered to determine the genuineness of a marriage, including but not limited to:

The genuineness of the marriage is based on a number of factors. They are not identical in every appeal as the genuineness can be affected by any number of different factors in each appeal. They can include, but are not limited to, such factors as the 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, behavior subsequent to a wedding, the level of knowledge of each other's relationship histories, level 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, as well as the level of knowledge of each other's daily lives. All these factors can be considered in determining the genuineness of a marriage.

[*Chavez* at para 3.]

[25] The Respondent noted that the application for a sponsorship of a family member takes into account the *Chavez* Factors. Specifically, Part C of the application form provides applicants an opportunity to set out details and information concerning the relationship. These questions track the *Chavez* Factors. In addition, the Respondent noted that the interview of the Applicant and Mr. Coloma Salazar is based on the *Chavez* Factors. In other words, the Respondent says that there is no breach of procedural fairness as the Applicant knew the case that must be met and had the onus to provide complete accurate information in their application.

[26] The Applicant submitted that while there were some inconsistencies in the testimony and the application, these were minor and attributable to "memory" issues.

[27] I respectfully cannot agree. In my opinion, the Applicant is requesting that this Court re-weigh and re-consider the evidence. The onus was on the Applicant to put forward her best case and to ensure that the information set out in the application was complete, relevant, convincing, and unambiguous (*Kaur v Canada (Citizenship and Immigration)*, 2018 FC 657 at para 21, citing *Shahzad v Canada (Citizenship and Immigration)*, 2017 FC 999 at paras 19, 40 and *Canada (Citizenship and Immigration) v Genter*, 2018 FC 32 at para 13). The conclusions reached by the IAD regarding the discrepancies and inconsistencies in the evidence were reasonable.



[28] Further, taking into account the circumstances and evidence, I do not find that there has been a breach of procedural fairness. The Applicant knew the case she needed to meet and was provided an opportunity to provide that information to immigration officials through the application process. The onus was on the Applicant to provide clear, complete information.

[29] A review of the record highlights that there are some significant differences in the Applicant's and Mr. Coloma Salazar's evidence. Accordingly, the IAD Decision that the marriage was not genuine and was for immigration purposes was reasonable. The Decision is clear, cogent, and justified in light of the evidence before them. When read as a whole, the Applicant has failed to demonstrate that the Decision is unreasonable.

V. Conclusion

[30] The Applicant is essentially asking this Court to step in on judicial review to reweigh the evidence and conclusions reached by the IAD, which is not the proper role of judicial review.

[31] In light of the evidence the IAD Decision is reasonable, and I do not find any breach of procedural fairness.

**JUDGMENT in IMM-9948-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question is certified.

**“Julie Blackhawk”**

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-9948-23

**STYLE OF CAUSE:** SELENNY MARIANA ALVARO v THE  
MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 5, 2024

**JUDGMENT AND REASONS:** BLACKHAWK J.

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