

Date: 20080124

Docket: IMM-862-07

Citation: 2008 FC 97

Toronto, Ontario, January 24, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

BIBI AISHA NOORHASSAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant seeks judicial review of the decision of the Immigration and Appeals Division of the Immigration and Refugee Board (IAD), dated February 2, 2007 (the Decision), which disallowed the appeal of the Applicant's sponsorship application for a permanent resident's visa for her spouse. The refusal of the Applicant's spouse's visa application was made by a visa officer under s. 4 of the *Immigration and Refugee Protection Regulations* SOR/2002-227, because he found that the marriage is not genuine and was engaged in primarily for the Applicant's spouse to gain the status of a permanent resident in Canada.

[2] The first finding made in the Decision is with respect to the Applicant's first marriage and how it resulted in the Applicant, the appellant at the IAD hearing, gaining permanent residence status in Canada:

The appellant testified at the appeal hearing. She is a permanent resident in Canada. She came to Canada in 1999 to visit her sister. At the time, her first husband, Lahindra Mauth Mohit, was renting a room in her sister and brother-in-law's apartment. He was a Canadian citizen, having immigrated to Canada years before from Guyana as a dependent son of his parents. The appellant married Mr. Mohit and he sponsored her in September 1999. On December 5, 2001, the appellant was landed in Canada. Less than six months later, she separated from her first husband in May 2002. She testified that she had found him to be abusive and violent when he drank alcohol so she did not wish to stay with him. She also testified that she had considered the possibility that her sister and her first husband were having an extramarital affair with each other. The Minister's counsel suggested to the appellant in cross-examination that she married her first husband only to gain her permanent resident's status in Canada. The appellant denied this. Nevertheless, the panel notes that the actual marriage did not long survive after the appellant received her status in Canada based on it.

[Emphasis added]
(IAD Decision, p.2)

[3] The "note" made by the IAD is essentially a finding that the Applicant's first marriage was not genuine and, therefore, her evidence with respect to the genuineness of her current marriage should not be believed. It is agreed that this conclusion is stated in the next paragraph of the Decision, which begins with the sentence "[t]he panel did not find the appellant to be a credible witness". As to the impact of this finding, Counsel for the Respondent makes this argument:

The Appeal Division found that because the Applicant's first marriage was also a marriage of convenience it impacted negatively on her credibility. The fact that the Applicant engaged in a previous marriage of convenience to facilitate her own immigrations status is

highly relevant and must be considered in the context of this second attempt to be involved in the same act.

(Respondent's Memorandum of Argument, p. 6)

[4] When an applicant swears to tell the truth, there is a presumption that his or her evidence is truthful (*Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.)). Failure to give clear reasons for a negative credibility finding renders the finding as patently unreasonable (*Hilo v. Canada*, (1991) 130 N.R. 236 (CA) *Valtchev v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1131). In the present case, because the IAD failed to clearly state how the extraneous fact it "notes" provides an evidentiary basis for the negative credibility finding made, and because the IAD failed to provide any clear reasons for rejecting the Applicant's sworn evidence, I find that the negative credibility finding is patently unreasonable. As this finding had the effect of driving the rejection of the Applicant's appeal, I find that the IAD's decision is made in reviewable error.

ORDER

Accordingly, I set aside the IAD's decision and refer the matter back to a differently constituted panel for re-determination.

“Douglas R. Campbell”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-862-07

STYLE OF CAUSE: BIBI AISHA NOORHASSAN v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: January 22, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: January 24, 2008

APPEARANCES:

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