

Date: 20080130

Docket: IMM-59-07

Citation: 2008 FC 91

BETWEEN:

Virginia PASION

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of a decision by the Immigration Appeal Division (the IAD) that the marriage between the female applicant and her spouse (hereinafter the applicant) was not genuine and was entered into primarily for the purpose of acquiring status pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

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[2] The female applicant is a Canadian and the applicant is a citizen of the Philippines. The female applicant and the applicant were married on January 7, 2005. In April 2005 the female applicant filed an application to sponsor the applicant and his daughter. This application was denied on March 8, 2006. The female applicant appealed this decision to the IAD, which despite the favourable recommendation of counsel for the Minister of Citizenship and Immigration (the Minister), found that:

[4] . . . the appellant has not succeeded in proving, on a balance of probabilities, that the relationship is genuine and was not entered into primarily for the purposes of acquiring any status or privilege under the *IRPA*, and accordingly, the appeal is dismissed.

[3] The IAD based its decision on the many inconsistencies, contradictions and improbabilities noted by it in the evidence, especially regarding the testimony of the female applicant and the applicant:

[23] Overall, the tribunal found that many of the applicant's answers were evasive and sometimes contradictory. The tribunal was not convinced of the credibility of the applicant and feels that many questions were not answered to the tribunal's satisfaction.

[4] Consequently, the IAD found that the applicant was excluded from the "family member" category as defined in subsection 1(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) and was not a member of the family class under paragraph 117(1)(a) of the Regulations.

[5] The female applicant basically objected to the assessment of the facts by the IAD, in view of the latter's conclusions that the applicant was not credible and that the marriage between himself and the female applicant was not genuine.

[6] However, as the respondent pointed out, the IAD did raise the following numerous discrepancies:

- the haste with which the applicant asked the female applicant to marry him, even before he had seen and met her;
- the circumstances of the first marriage proposal;
- the presence in Canada of the applicant's sister as a factor which could be an incentive for him to come to Canada;
- the reply given by the applicant when asked whether he married the female applicant in order to immigrate to Canada: he answered [TRANSLATION] "not particularly";
- the contradictions in the answers given by the applicant regarding the date he asked the female applicant to marry him for the second time;
- the decision to have a civil marriage in the Philippines rather than a religious one, although the applicant said he was very religious, and the various contradictory explanations given by the applicant to explain this decision;
- the absence of the female applicant's mother and the applicant's parents at the marriage;
- the contradictions in the evidence submitted regarding the number of persons present at the marriage and reception;
- the lack of frequent and regular contact between the female applicant and applicant: they spoke twice a month on the telephone and exchanged e-mails, but no e-mails were

entered in evidence; further, the female applicant has never visited the applicant since their marriage;

- the contradiction between the testimony by the female applicant and by the applicant as to whether they discussed plans for their future if the appeal failed.

[7] Accordingly, after reviewing the evidence it appears that the IAD relied on a number of inconsistencies, contradictions and improbabilities.

[8] The female applicant had to show on a balance of probabilities that her marriage with the applicant was genuine and was not primarily for the purpose of acquiring any status or privilege under the Act (*Morris v. Minister of Citizenship and Immigration*, 2005 FC 369, [2005] F.C.J. No. 469 (T.D.) (QL)). The question of whether a marriage is genuine is essentially one of fact and the standard of review applicable to this question is that of patent unreasonableness (*Froment v. Minister of Citizenship and Immigration*, 2006 FC 1002, [2006] F.C.J. No. 1273 (T.D.) (QL)). It is also well settled that the IAD may base its decision on inconsistencies, contradictions and improbabilities in the evidence (see *inter alia* *Nguyen v. Minister of Citizenship and Immigration*, 2004 FC 709, [2004] F.C.J. No. 882 (T.D.) (QL), and *Grewal v. Minister of Citizenship and Immigration*, 2003 FC 960, [2003] F.C.J. No. 1223 (T.D.) (QL)).

[9] In the case at bar, the Court in the circumstances does not have to substitute its own assessment of the facts for that made by the IAD.

[10] At the same time, the female applicant appeared to some extent to be objecting that the IAD demonstrated bias in its comments and a closed mind regarding the parties.

[11] The test applicable to determine whether there was a breach of procedural fairness due to bias is whether a reasonable and well-informed member of the community would perceive bias (see *Mohamed v. Minister of Citizenship and Immigration*, 2006 FC 696, [2006] F.C.J. No. 881 (T.D.) (QL)). In my opinion, the female applicant did not succeed in showing that a reasonable person would perceive bias in the case at bar. Rather, it seems to the Court that the female applicant objected to the weight given by the IAD to certain points, in particular the fact that the applicant's daughter called the female applicant "Mommy" and the fact that the female applicant sent money to the applicant.

[12] The female applicant also objected to the fact that the IAD waited until 4 a.m. in the Philippines to contact the applicant so he could testify. However, I note that it was the female applicant's counsel who asked the IAD to call the applicant, without ever mentioning the late hour in the Philippines. Moreover, the IAD did not consider it necessary to hear the testimony of other witnesses and the female applicant made no objection in this regard. In my view, in the circumstances a reasonable person would not perceive bias in the case at bar.

[13] Finally, the female applicant argued that the IAD had imposed on her a heavier burden than that of a balance of probabilities.

[14] The burden of evidence applicable to the question of whether a marriage is genuine is a question of law, and so the applicable standard of review is that of correctness (*Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982). In my view, there is nothing in the IAD's reasons to indicate that it was looking for certainty regarding the genuineness of the female applicant's marriage to the applicant. The only time the IAD referred to certainty was when it considered the submissions of counsel for the Minister. The IAD several times mentioned that the female applicant had not discharged the burden of proof on a "balance of probabilities". Accordingly, I feel that the IAD applied the correct burden of proof.

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[15] For all these reasons, this Court's intervention is not warranted and the application for judicial review is dismissed.

"Yvon Pinard"
Judge

Ottawa, Ontario
January 30, 2008

Certified true translation

Brian McCordick, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-59-07

STYLE OF CAUSE: Virginia Pasion v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 9, 2008

REASONS FOR JUDGMENT BY: the Honourable Mr. Justice Pinard

DATED: January 30, 2008

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