

Date: 20080220

Docket: IMM-1175-07

Citation: 2008 FC 221

Ottawa, Ontario, February 20, 2008

PRESENT: The Honourable Orville Frenette

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

NORMAN J. CHAMPAGNE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of the Immigration Appeal Division (IAD), dated February 28, 2007, wherein the IAD overturned the refusal of a permanent resident visa for the Respondent's wife. The visa officer, in Singapore, Malaysia, had found that the Respondent's marriage was not genuine for the purposes of the IRPA, pursuant to section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The Respondent did not file an application record and he failed to appear at the scheduled date of the hearing, in Toronto on January 17, 2008. The Applicant's counsel insisted that the hearing proceed.

I. The facts

[3] Mr. Champagne is a 44-year old resident of Cornwall, Ontario, where he has lived on an Ontario Disability Support Pension since 2004. It is unlikely that he will ever be able to return to work, as he has serious health problems, including epilepsy, liver problems and complications stemming from a triple bypass open heart surgery in September 2005 and has had a brain tumour removed. He is facing surgery to repair problems caused when a vein was removed during the heart surgery. Before requiring disability benefits, Mr. Champagne worked in construction and in a factory in Cornwall. Mr. Champagne owns his home in its entirety and has reasonable financial security.

[4] From 1975 to 1985, Mr. Champagne worked as a volunteer helping Vietnamese families settle in Cornwall and made friends in that community. He also became interested in Southeast Asia and has learned to speak some Vietnamese. Two of his friends from that time are uncles of his wife, My Tran Le. In 1999, when she was 18, the uncles decided it was time they introduce Mr. Champagne to her and did so while he was on a three-week visit to Vietnam. He had an epileptic seizure while in Vietnam.

[5] After he returned to Canada, Mr. Champagne and Ms. Le maintained some contact via the internet and by occasional telephone calls. Three years later, in 2002, Mr. Champagne suggested marriage. Ms. Le agreed in December of that year, after discussing it with her parents. Mr. Champagne returned to Vietnam in March 2003, and the couple married on April 7, 2003. They travelled briefly after their wedding, and after two weeks Mr. Champagne returned to Canada on April 28, 2003. They stayed in touch by internet, telephone and the occasional letter.

[6] Mr. Champagne sponsored Ms. Le from Vietnam as a member of the family class. That application was refused in April, 2004. He appealed that decision to the IAD, and it is that decision for which the Minister has sought judicial review. Between the initial refusal of his wife's application and the appeal hearing, Mr. Champagne had open heart surgery.

[7] A planned visit by Mr. Champagne to his wife in the winter of 2005 – 2006 was made impossible by his heart surgery and subsequent recovery. He did spend a month with her and her family in between the two IAD hearing dates, in the summer of 2006. The couple remain in regular contact and he continues to send support in the amount of roughly \$50 per month.

II. The visa officer's decision

[8] The application for a permanent resident visa for the Applicant's wife was refused because he found that the marriage was not genuine and had been entered into primarily for the purpose of acquiring status or privilege under the IRPA.

[9] The officer's reasons can be summarized as follows:

- A. The facts elicited during the interview did not demonstrate a genuine relationship between the parties.
- B. Conflicting information regarding the genesis and nature of the relationship was presented.
- C. The parties were unable to demonstrate an ongoing and meaningful communication.
- D. The circumstances of their relationship were inconsistent with the norms and expectations of their cultures.
- E. The significant age difference between the parties
- F. There was strong evidence of pre-existing pull factors to Canada because of the other relatives already here and who are the primary contact between the applicant and his spouse.

III. The appellate decision of February 28, 2007

[10] The IAD found that the marriage was genuine and was not entered into primarily for the purpose of acquiring status in Canada.

[11] The panel heard testimony from the appellant, the Applicant's uncle, Huu Ha Duc and from the Applicant by teleconference. The panel stated that to assess the genuineness of a marriage, a broad range of factors had to be considered.

[12] The reasons for the appellate decision begin with the following declaration:

The panel found this was a difficult case to decide. On the one hand, the appellant appeared to be very genuine and the panel found him to be truthful and credible. On the other hand, the applicant's evidence, both from her interview with the visa officer and her testimony by teleconference at the appeal hearing, was problematic. The appellant himself admitted that some of her answers were not consistent with his and could not explain why she said some of the things she said. For example, she stated they did not talk on the telephone until after they were married; the appellant had indicated they talked on the telephone between their first meeting in 1999 and their marriage in 2003. She said at both her interview and at the appeal hearing that he lives in Toronto. The appellant noted that she has been writing him letters for years in Cornwall and obviously knows where he lives. There were a number of unresolved and contradictory issues in the applicant's evidence which could cast doubt on the genuineness of the relationship and the applicant's intentions in terms of immigrating to Canada.

[13] Then the panel went on to conclude that it was influenced by the fact that the relationship had lasted seven years and the marriage approximately four years.

[14] This affirmation is very misleading because the evidence shows the relationship was originated by the Applicant's uncles, who in 1999, decided their niece was old enough at 18 to begin the relationship.

[15] The time spent together is also deceiving because in fact the parties spent one week with the Applicant and her uncle. There they communicated and talked about marriage in late 2002 and agreed to marry in December 2002.

[16] The Respondent went to Vietnam in March 2003; married on April 7, 2003 and spent about two weeks with his wife before returning to Canada on April 28, 2003. He returned to Vietnam from July 13, 2006 to August 13, 2006.

IV. Unresolved and contradictory issues

[17] The panel began its reasons with the following statement “There were a number of unresolved and contradictory issues in the applicant’s evidence which could cast doubt on the genuineness of the relationship and the applicant’s intentions in terms of immigrating to Canada”.

[18] Some of those discrepancies and contradictions in the evidence were:

- A. The visa officer stated that Ms. Le was unable to communicate with him because of her inadequacy in the English language;
- B. The age difference and culture difference. Ms. Le was 18 years old, the respondent was 43 years old;
- C. The introduction of the parties was done by Ms. Lee’s uncle. When the uncles decided she was, at age 18, old enough, their meeting was organized by the latter;
- D. The telephone calls made by the respondent to Ms. Le, were made in Ms. Le’s uncle’s house where the latter translated the conversation because of her inability to communicate in English;
- E. The respondent said they talked ever day or week after the marriage. She said they spoke once a month;

- F. In 2003, they spent one week together and then the respondent went alone to Thailand before returning to Canada on April 28, 2003.
- G. She told the officer she thought the respondent resided in Toronto, while he resides in Cornwall;
- H. She knew nothing about the respondent's major surgery in 2005, yet they were married in 2003.

V. Issue

[19] Did the IAD err in its decision?

VI. Standard of review

[20] The standard of review when reviewing the genuineness of a marriage for the purposes of section 4 of the *Regulations* is patent unreasonableness: *Donkor v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1089.

VII. Analysis

[21] In *Donkor*, my colleague Justice Richard G. Mosley held that the language of section 4 required that a marriage must be both not genuine and entered into for the sake of gaining status under the IRPA. I reproduce the relevant section here for ease of reference:

4. For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner,

4. Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait, le partenaire

<p>a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.</p>	<p>conjugal ou l'enfant adoptif d'une personne si le mariage, la relation des conjoints de fait ou des partenaires conjugaux ou l'adoption n'est pas authentique et vise principalement l'acquisition d'un statut ou d'un privilège aux termes de la Loi.</p>
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[22] The IAD correctly noted this test, as well as the focus on the intention of the applicant for permanent residency, as she is the one who wishes to gain status under the Act. The IAD then considered the evidence before it and decided that the marriage was genuine and that the permanent resident visa should be granted.

[23] The Minister submits that the panel relied on the belief of Mr. Champagne in the validity of the marriage rather than on the objective evidence about the intention of Ms. Le in coming to its determination and is thus in error. She further contends that the numerous discrepancies between the testimonies of the couple show that this is not merely an unsupported conclusion, but one which is insupportable. She argues that the visa officer was right to be concerned about the age difference between the couple and the inconsistency of the marriage with the norms, traditions and expectations of Ms. Le's culture. The Minister contended at the IAD hearing that this marriage is merely a means for Ms. Le to immigrate to Canada in order to join her family members already resident here.

[24] The purpose of judicial review is, as is well known to the Minister if not the self-represented respondent, to determine whether an error has been made which is sufficient to require determination by a different panel. Given the standard of review applicable to this case, that of patent unreasonableness, I must find that the decision of the IAD is perverse, capricious or without regard to the evidence before it in order to overturn it.

[25] The facts of this case overwhelmingly reveal that the marriage between an 18 year old Vietnamese woman and a 43 year old male Canadian citizen was organized and arranged by the woman's uncles with the obvious intent of helping her to immigrate to Canada.

[26] She was unable to communicate with the officer in English and although the respondent seems to have acquired some knowledge of the Vietnamese language, it seems impossible for them to have communicated at a distance as they claim.

[27] Furthermore, the numerous contradictions and inconsistencies between the parties' versions of the facts and events cast grave doubts upon their credibility and the plausibility of their explanations.

[28] The IAD had no valid basis to interfere in the visa officer's decision, which was clearly based upon the proven facts of this case.

[29] Therefore, the IAD decision dated February 28, 2007 is perverse, capricious and cannot be sustained by a reasonable interpretation of the evidence. It is thus patently unreasonable and must be overturned.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application be granted. No questions will be certified.

"Orville Frenette"

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1175-07

STYLE OF CAUSE: MCI
v.
Norman J. Champagne

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 17, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** FRENETTE D.J.

DATED: February 20, 2008

APPEARANCES:

Leanne Briscoe

FOR THE APPLICANT

No appearance

FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims,
Deputy Attorney General of Canada

FOR THE APPLICANT

Self-Represented

FOR THE RESPONDENT