Date: 20080410

Docket: IMM-3669-07

Citation: 2008 FC 456

Montréal, Quebec, the 10th day of April 2008

PRESENT: THE HONOURABLE MR. JUSTICE MAURICE E. LAGACÉ

BETWEEN:

THÉRÈSE BERGERON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is challenging, by way of a judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), a decision of the Immigration Appeal Division of the Immigration and Refugee Board (the panel), dated August 24, 2007, refusing her spouse's application for permanent residence.

Facts

[2] The applicant is a Canadian citizen aged 69 years and divorced since 1974. She met her future spouse, Salem Mansouri (the applicant for permanent residence), at a beach during a trip to Tunisia in October 2001. Mr. Mansouri is a citizen of Tunisia and is 32 years old.

[3] They fell in love at first sight and stayed together until the applicant's departure for Canada three days later. The applicant returned to see Mr. Mansouri in Tunisia in November 2002 and twice more in 2003. Captivated, the applicant married Mr. Mansouri in Tunisia on October 18, 2003.

[4] Then, the applicant returned to Canada and paid visits to Mr. Mansouri in Tunisia between 2004 and 2006. Between these meetings, they communicated by telephone and by mail.

[5] The applicant sponsored Mr. Mansouri's application for permanent residence, which was refused on April 29, 2005, by an immigration officer at the Canadian embassy in Paris (the officer), on grounds that, in his opinion, "the marriage . . . was not genuine and was entered into primarily to acquire a status or privilege under the Act".

[6] The applicant appealed the officer's decision, but the panel confirmed its validity. This application is in regard to the panel's decision.

Impugned decision

[7] In deciding that the marriage is not genuine within the meaning of the Act, the panel noted the following negative factors: the partners' difference in religion, culture and life experience; the numerous inconsistencies in their stories; the absence of Mr. Mansouri's family members from the wedding contrary to Tunisian tradition; the limited number of wedding photographs; the few social and family outings of the couple; and Mr. Mansouri's family's acceptance of the applicant despite the significant age difference of 37 years. Although the panel did not doubt the applicant's good faith and noted a real attachment to Mr. Mansouri, it did not believe in Mr. Mansouri's good faith.

Issues

[8] Essentially, there are two issues here:

(a) Is the panel's decision unreasonable?

(b) Did the panel allow the applicant to be heard or was it biased?

Standard of review

[9] Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, the standard of review applicable to a decision of the panel on a pure question of fact, such as whether a marriage is bona fide, is reasonableness.

[10] The decision that the applicant is challenging was made at a hearing *de novo* in the broadest sense. The onus is, therefore, on the applicant and the sponsored person to prove, on a balance of probabilities, that section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations), does not exclude the sponsored spouse. The determination of whether a marriage is bona fide therefore involves findings of fact and the sorting and weighing of evidence (*Khera v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 632, [2007] F.C.J. No. 886 (QL)).

[11] Furthermore, this Court considers it a given that the panel took into account all the evidence available to make its decision and analyzed it in its entirety to accept only those pieces that supported its findings.

[12] Since the Court has not heard the evidence, it does not have the panel's advantage of assessing the credibility of the applicant and Mr. Mansouri. That is why, based on the Supreme Court of Canada decision in *Dunsmuir, supra*, the Court owes great deference to a decision of an administrative tribunal protected by a privative clause and dealing with a question of pure fact, as in this case. This is especially true when the tribunal is acting in "a discrete and special

administrative regime in which [as] the decision maker [it] has special expertise" (*Dunsmuir*, at paragraph 55).

Analysis

(a) Is the panel's decision unreasonable?

[13] The applicant claims that the panel did not take into account all the evidence on the record. The Court has reread the evidence as well as the decision and cannot share her opinion. The evidence was indeed considered. In fact, in argument, the applicant is not challenging so much the panel's consideration of the evidence as its interpretation and the findings that were based on it. In short, the panel did not give the same weight to the evidence as the applicant does.

[14] In this case, the panel had the advantage of interviewing the applicant and Mr. Mansouri before finding that their difference of age and religion was a factor against their application. Moreover, that point was discussed in sufficient detail at the interview.

[15] Before this Court, the applicant has simply repeated most of the explanations she gave to the panel regarding the various negative factors that it relied on in discounting these explanations and finding as it did in the decision.

[16] The panel identified inconsistencies, contradictions and several implausibilities in the evidence that support its decision. It is true that the applicant and Mr. Mansouri tried to

circumvent them, but their explanations did not persuade the panel to find differently than it did. The onus was on the couple to satisfy the panel with sufficiently credible evidence to allow it to follow up on their application in accordance with section 4 of the Regulations, which reads as follows:

4. For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, 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.	4. Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait, le partenaire 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.

[17] Unfortunately, the applicant did not satisfy the panel, "based on the preponderance of the evidence, that her relationship with the applicant is genuine and was not entered into primarily to acquire a status or privilege under the Act".

[18] After analyzing this evidence and the decision that the applicant is challenging, the Court finds no unreasonable errors that would warrant its intervention to substitute its own opinion for that of the panel in question, in light of the deference owed to it concerning its decision on a purely factual question.

(b) Did the panel allow the applicant to be heard or was it biased?

[19] A reading of the transcript reveals that the applicant and Mr. Mansouri were given the opportunity to be heard. Therefore, the Court will not linger on that completely unfounded question.

[20] As for the applicant's claim that the panel was biased, the Court would recall the criterion used to assess a reasonable apprehension of bias, as stated in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at page 394 and mentioned in other judgments, including *Paison v. Canada (Citizenship and Immigration)*, 2008 FC 91, at paragraph 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)).

[21] After rereading and analyzing the transcript, the evidence on the record and the impugned decision, the Court does not accept the applicant's claim that the panel was biased. Although it sometimes intervened to clarify certain points, this is not a case where "an informed person, viewing the matter realistically and practically – and having thought the matter through –" could conclude that the panel was biased.

[22] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

FOR ALL THESE REASONS, THE COURT:

DISMISSES the application for judicial review.

"Maurice E. Lagacé"
Deputy Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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