

Date: 20090113

Docket: IMM-1000-08

Citation: 2009 FC 14

Ottawa, Ontario, this 13th day of January 2009

Present: The Honourable Mr. Justice Pinard

BETWEEN:

ABDUL HANNAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), of a decision rendered by the Immigration and Refugee Board, Immigration Appeal Division (the “IAD”), dated February 11, 2008.

[2] Abdul Hannan (the “applicant”) is a 40-year-old citizen of Bangladesh. In January 2002, he landed in Canada as a permanent resident. At the time, he declared himself to be single. During the

hearing before the IAD member, he stated that he came to Canada as a dependant of his mother, who was sponsored by his sister.

[3] On February 11, 2002, about one month after his arrival in Canada, the applicant's daughter, Jenifa Hannan, was born, the result of an alleged secret relationship with a woman in Bangladesh. The applicant claims that he married the child's mother, Rizma Begum, on October 11, 2002. He did not declare the child to Canadian immigration authorities until he sponsored her mother on February 10, 2006, with her as an accompanying dependant, under the "family class", pursuant to subsection 13(1) of the Act. The applicant submitted a Marriage Certificate and *Nikah Nama* obtained in Bangladesh to the Canadian High Commission in order to prove their married status. At the same time, Ms. Begum applied for permanent residence status, pursuant to subsection 12(1) of the Act.

[4] On September 19, 2006 the Immigration Officer responsible for the file sent a letter to Ms. Begum, with the following warning:

Our investigator in Dhaka visited the Kazi Office for Ward No. 11 and met with the official there. The officer stated that the *Nikah Nama* has not been registered with any of the Sylhet City Corporation's Kazi offices. They concluded that your *Nikah Nama* is fraudulent.

[5] In a letter dated October 3, 2006, Ms. Begum responded with a letter stating:

As you have mentioned in the letter that your investigator visited the Kazi office responsible for Ward No. 11 of Sylhet City Corporation. Here, I would like to clarify the fact that Ward No. 11 is the old number of Sylhet [*sic*] Municipality. Ward No. 11 of Sylhet Municipality has now turned into Ward No. 23 & 24 of Sylhet City

Corporation. Therefore, it is obvious that there would be no proof of registration of my Nikah Nama in the Kazi office responsible for Ward No. 11. In my Marriage Certificate, which I have also submitted before you, it is clearly mentioned on the top of the certificate.

My Nikah Nama which I have submitted is not a fraudulent document. It is hundred percent [*sic*] genuine and authentic.

Therefore, before making any final decision on my file, I would ask you to please verify the authenticity of my Nikah Nama with the Kazi office responsible for Ward No. 23 & 24 of Sylhet City Corporation (old Ward No. 11 of Sylhet Municipality).

[6] This was followed up with two further letters by Ms. Begum, received by the High Commission's Immigration Department on October 12 and 20, 2006, respectively, that sought to further explain the source of the controversy, and provided the address of the Kazi in Bangladesh who Ms. Begum claimed had in fact registered the marriage.

[7] The sponsorship application was denied. In a refusal letter dated October 12, 2006, the Immigration Officer informed Ms. Begum of his assessment that the *Nikah Nama* submitted in support of her application was fraudulent; accordingly, she did not meet the definition of a member of the family class, pursuant to paragraph 117(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. In a second letter, also dated October 12, the Immigration Program Manager explained that Ms. Begum's application could not be approved because she was inadmissible under paragraph 40(1)(a) of the Act due to misrepresentation, re-iterating the findings of the investigators, and adding that "Ward 11 did not exist in 2002 when the Nikah Nama was purportedly issued". Consequently, Ms. Begum's allegation in her letter that Ward No. 11 under the old system had been re-numbered as Wards 23 and 24 was deemed "not credible".

[8] The refusal was appealed, pursuant to subsection 63(1) of the Act. A hearing before the IAD was held on November 8, 2007. On February 11, 2008, the IAD rendered its decision, dismissing the appeal.

[9] The applicant states the heart of the matter plainly at paragraph 3 of his Memorandum:

. . . the entire issue in this case is whether the marriage certificate and Nikah Nama are valid and whether they were registered in the right place;

[10] This is a question of fact, and the IAD is therefore entitled to a high degree of deference (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 51; *Bielecki v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 524, 2008 FC 442, at paragraph 12; *Canada (Minister of Citizenship and Immigration) v. Bryan*, [2006] F.C.J. No. 190, 2006 FC 146, at paragraph 43). Indeed, the respondent outlines four reasons the IAD could properly conclude that the documents in questions were inauthentic, essentially summarizing the concerns cited in the decision itself:

1. Section 1 of the *Nikah Nama* does not mention the Ward number, and the applicant has provided no explanation for this absence.
2. The fact that the vakil who represented the bride also solemnized the marriage is anomalous, and could not be explained by the applicant.
3. There were many discrepancies between the marriage certificate and the registry document bearing the number 2/2002.
4. Ward No. 11 did not exist in Sylhet Pourashova in 2002, the year of the alleged marriage.

[11] In my view, none of these reasons stands up to even a somewhat probing examination. First, Ms. Begum, in her letter received October 12, 2006 by the Immigration Section of the High Commission of Canada in Singapore, points out correctly that, despite its absence from the *Nikah Nama*, the Ward number is plainly visible in the Marriage Certificate. In any event, no one has argued that such a discrepancy, on its own, provides a sufficient ground for a finding of invalidity.

[12] Second, no evidence has been adduced by either party about the role of a *vakil* in a Muslim marriage ceremony; I therefore have no basis for assessing the claim that such a dual role is suspect, and no reason to so find.

[13] Third, the claimed discrepancies (*i.e.*, between the *Nikah Nama* located by the investigators in what is now Ward No. 11 and the *Nikah Nama* submitted by the applicant) have, in fact, been explained, in so far as the applicant and Ms. Begum have repeatedly asserted that the investigation was undertaken in the wrong Ward. It does not seem at all implausible to me that such discrepancies would result from a search of the wrong registry, if such was the case. In effect, this point encapsulates the basic position of the applicant: the investigators, on whose findings the Immigration Officer and the IAD rest their conclusions, investigated the wrong place by going to the *present* Ward No.11 (formerly Ward No. 2), rather than to what was Ward No. 11 in 2002 (and has since been re-named Wards 23 and 24). This apparent error was pointed out by Ms. Begum in her letters of October 2006.

[14] Fourth and finally, the letter from the Bengali lawyer and its appendices, provided to the IAD before the hearing, are uncontradicted evidence that Ward No. 11 was in fact in existence at the

time of the alleged marriage – which refutes one of the principal bases for rejecting Ms. Begum’s application, and for finding her claims incredible. In so far as the statement of the Kazi officer (in what is now Ward No. 11) to the investigators regarding the number of Wards in Sylhet Pourashova has been put in doubt, so too, I would think, is his blanket assertion that the marriage is not registered “in any Ward” (my emphasis) in the Sylhet City Corporation.

[15] At paragraph 22 of its decision, the IAD writes:

... the existence of Ward 11 alone is insufficient to rebut the investigators’ findings, in effect, the appellant did not submit any explanation with regards to the discrepancies related to the number on the certificate and the page of the registrar. The exhibits A-1 to A-6 were not submitted to the embassy by the appellant for verification.

[16] For the reasons stated above, I cannot agree with this assessment.

[17] As for the finding of inadmissibility based on misrepresentation, it clearly depends on a prior finding of the invalidity of the supporting documents. Because, in my view, the IAD’s decision regarding the validity of the Marriage Certificate and *Nikah Nama* is unreasonable, I need not consider the question of misrepresentation.

[18] For all the above reasons, the application for judicial review is allowed and the matter is sent back to the IAD for re-determination by a differently constituted panel.

JUDGMENT

The application for judicial review of the decision rendered by the Immigration Appeal Division (the “IAD”) of the Immigration and Refugee Board on February 11, 2008 is allowed. The matter is hereby sent back to a differently constituted panel of the IAD for re-determination.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1000-08

STYLE OF CAUSE: ABDUL HANNAN v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 9, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Pinard J.

DATED: January 13, 2009

APPEARANCES:

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