



Date: 20111223

Docket: IMM-2158-11

Citation: 2011 FC 1515

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 23, 2011

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

MARIE CARMELLE JOSEPH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (the Act), of a decision of the Immigration Appeal Division of the Immigration and Refugee Board (the panel) dated March 10, 2011, dismissing the appeal filed by the female applicant of the refusal of the sponsored permanent resident visa application filed by her spouse under section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations).

Background

A. Factual background

[2] The female applicant is a 44-year-old Canadian citizen. She was born in Haiti and obtained permanent residence in Canada in December 1996.

[3] The female applicant alleges that she met Grégory Destournel (the applicant) for the first time in 2002 at the movies while she was in Haiti. The applicant is now 34 years old and a citizen of Haiti.

[4] The female applicant asserts that she had lost contact with the applicant but got back in touch with him in 2008.

[5] On June 5, 2009, the female applicant married the applicant in Haiti.

[6] The female applicant sponsored her spouse's permanent resident visa application on July 15, 2009.

[7] Following an interview with the immigration officer, the applicant's permanent residence visa application was refused on May 10, 2010.

[8] On June 7, 2010, the female applicant appealed this decision to the panel under subsection 63(1) of the Act.

[9] The hearing before the panel was held on February 18, 2011.

B. The impugned decision

[10] In its decision of March 10, 2011, the panel refused the permanent resident visa application and found that the female applicant had failed to show that her marriage to the applicant was genuine and not entered into primarily for the purpose of enabling the applicant to acquire a status or privilege in Canada.

[11] The panel noted that the immigration officer denied the permanent resident visa application because the applicant could not satisfactorily address some concerns that the immigration officer had about their file. These concerns included:

- a. Lack of knowledge of the lives of the female applicant's family members who live in France;
- b. Lack of knowledge of the female applicant's economic activities in Canada;
- c. Lack of proof of communication and of transfer of funds;
- d. Lack of proof of the female applicant's visit.

[12] With respect to the female applicant's testimony during the hearing, the panel found that several aspects of her story were not credible. Essentially, the panel noted that the female applicant's credibility was tainted by the following facts:

- a. In her testimony, the female applicant explained that she met her spouse for the first time at the movies in 2002, when she was visiting Haiti. They exchanged telephone numbers. However, they lost touch afterwards because the female applicant stated that she had changed her telephone number after an argument with the applicant. The female applicant could not give further details regarding the disagreement or the circumstances surrounding the argument.
- b. The applicant could not remember the telephone number she had prior to 2008 although she said that she had not changed her telephone number

during this period since her arrival. This statement contradicted a previous statement of the female applicant that she had changed her telephone number following the argument with the applicant.

- c. The female applicant could not provide an explanation for the contradiction regarding how long she had known the applicant's cousin, Maxeau Claude.
- d. The female applicant's explanations of the difference in religion between her and her spouse (the female applicant is Protestant and the applicant is Catholic) were not clear. The panel stated that this difference showed that there was "some incompatibility".
- e. Under cross-examination, the female applicant did not answer the questions directly, give any details in her answers or reveal certain relevant information until she was asked the question several times.

[13] As a result, the panel found that the female applicant's conduct, [TRANSLATION] "taken together with the various examples given previously, [led] the panel to find that [the female applicant] did not give credible and trustworthy testimony" (panel's decision, para. 21).

[14] However, the panel noted that explanations on the applicant's lack of knowledge of the female applicant's economic activities were satisfactory. The panel added that the evidence also showed that the applicant had indeed gone to visit her spouse on two occasions: in March 2010 and in September 2010. However, by rejecting the application, at para. 24 of the decision, the panel stated that [TRANSLATION] "although this evidence was not called into question, the female applicant's general lack of credibility during her testimony leads the panel to find that the visits and communication with the applicant took place for the primary purpose of persuading the panel that the relationship was in good faith."

II. Issue

[15] The issue is the following:

Did the panel commit a reviewable error in determining the female applicant's credibility and the genuineness of the marriage?

III. Relevant statutory provisions

[16] Subsections 12(1) and 13(1) of the *Immigration and Refugee Protection Act* provide:

Family reunification

12. (1) a foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a canadian citizen or permanent resident.

Regroupement familial

12. (1) la sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

Right to sponsor family member

13. (1) A Canadian citizen or permanent resident may, subject to the regulations, sponsor a foreign national who is a member of the family class.

Droit au parrainage : individus

13. (1) Tout citoyen canadien et tout résident permanent peuvent, sous réserve des règlements, parrainer l'étranger de la catégorie « regroupement familial ».

[17] Subsection 4(1) of the *Immigration and Refugee Protection Regulations* states the following:

Bad faith

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

Mauvaise foi

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

or a conjugal partner of a person	partenaire conjugal d'une
if the marriage, common-law	personne si le mariage ou la
partnership or conjugal	relation des conjoints de fait ou
partnership	des partenaires conjugaux, selon
(a) was entered into primarily	le cas :
for the purpose of acquiring any	a) visait principalement
status or privilege under the	l'acquisition d'un statut ou d'un
Act; or	privilège sous le régime de la
(b) is not genuine.	Loi;
	b) n'est pas authentique.

IV. Applicable standard of review

[18] The panel's findings on credibility and the genuineness of the marriage are subject to the reasonableness standard since they only raise questions of fact (see *Yadav v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 140, [2010] F.C.J. No. 353; *Harris v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 932, [2009] F.C.J. 1144). Consequently, the Court must determine whether the panel's decision falls within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47).

V. Arguments

[19] Essentially, the female applicant submitted that the panel's decision is unreasonable and incorrect. She alleged that the panel based its decision purely on the peripheral facts that did not relate to the genuineness of her relationship with her spouse. She also argued that the panel failed to provide reasons and its finding regarding the lack of credibility is not warranted.

[20] The respondent reiterated the panel's findings regarding the credibility of the female applicant's testimony. The respondent argued that the female applicant's testimony was evasive,

lacked spontaneity and was contradictory and submitted that the Court cannot reassess the female applicant's explanations or the conclusions drawn by the panel (*Kabir v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 907, [2002] F.C.J. 1198). The respondent submitted that, as trier of fact, only the panel can determine how much weight to give the evidence (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 347, [2002] F.C.J. 461). Also, under *Khera v. Canada (Minister of Citizenship and Immigration)* 2007 FC 632, [2007] F.C.J. No. 886 and *Froment v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1002, [2006] F.C.J. No. 1273 [*Froment*], the respondent argued that the panel can take several factors into consideration in its assessment of the genuineness of a relationship—such as differences in age, religion, culture or language.

VI. Analysis

[21] After reading the evidence and hearing the parties, the Court is of the view that the panel erred in concentrating initially on its analysis of some minor or secondary inconsistencies to a level that reached a microscopic analysis (*Attakora v. Canada (Minister of Employment and Immigration)* (F.C.A.) (1989), 99 N.R. 168, [1989] F.C.J. No. 444 and *Djama v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. 531 (F.C.A.), see also *Huang v. Canada (Minister of Employment and Immigration)*, 2008 FC 346 at para. 10, 69 Imm L.R. (3d) 286; *Chen v. Canada (Minister of Employment and Immigration)*, 2007 FC 270 at para. 16, 155 A.C.W.S. (3d) 929). For example, the panel drew a negative inference and placed too much weight on the fact that the female applicant had different telephone numbers and that she could not explain this in detail (panel's record, pp. 161-164).

[22] Second, and more importantly, the panel noted its decision that because there is a [TRANSLATION] “difference in the spouses’ religions and the fact that the appellant is protestant and the applicant is catholic shows some incompatibility” (panel’s record, para. 18). With respect, the panel should not have made such a statement without supporting its finding on the evidence, which it failed to do. The Court finds that, in the circumstances, this finding of the panel on “the incompatibility” of religions is unsubstantiated and is in fact a mere generalization. Therefore, the panel erred when it failed to explain how there was “incompatibility” between the religions of the female applicant and the applicant.

[23] As a consequence, the application for judicial review will be allowed.

[24] There is no question to certify.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is allowed and the matter is remitted for redetermination before a differently constituted panel. No question is certified.

“Richard Boivin”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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