

Federal Court



Cour fédérale

**Date: 20121003**

**Docket: IMM-9696-11**

**Citation: 2012 FC 1169**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, October 3, 2012**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**JEAN LYONEL PIERRE**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application for judicial review filed by the Minister of Citizenship and Immigration, in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of the decision by the Immigration Appeal Division (IAD) of the

Immigration and Refugee Board dated November 25, 2011. This decision allowed the appeal by Jean Lyonel Pierre (Mr. Pierre) of the visa officer's decision refusing the sponsorship application of Isemela Joseph (Ms. Joseph) under section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR).

[2] For the following reasons, the Minister's application for judicial review is dismissed.

## II. Facts

[3] In July 2006, Mr. Pierre met Ms. Joseph during a trip to Haiti.

[4] On July 30, 2008, during another trip, Mr. Pierre married Ms. Joseph.

[5] Ms. Joseph filed an application for permanent residence in the family reunification class. On March 12, 2010, the visa officer rejected Ms. Joseph's application for permanent residence. The Officer writes:

[TRANSLATION]

“Yet the facts presented have not convinced me that your marriage is genuine and was not entered into for the sole purpose of immigrating to Canada. Indeed, one expects that the story of how you met would be credible, that the development of the relationship would be obvious and that the couple would make the effort to have a moving and memorable wedding ceremony and to maintain a strong and serious bond through regular contact. But the facts presented in your interview and the photos and documents provided do not show it. In addition, the sparse documentation submitted as evidence of the communication between you does not show the genuineness of the relationship, an intimacy between you and your sponsor or an emotional or material investment. Further, you have

spoken very little about your sincere intention to build a life together as spouses” (see page 22 of the Tribunal Record)

[6] Ms. Pierre appealed to the IAD. At the hearing, the Minister alleged that there is no evidence proving that Ms. Joseph’s identity is a ground for rejecting the visa application. However, The IAD allowed Mr. Pierre’s appeal on the ground that he “successfully discharged his burden of proof and demonstrated, on a balance of probabilities, the applicant’s identity, the genuineness of his marriage to her and the fact that its primary purpose was not to acquire a privilege under the [IRPA]” (see the IAD decision at para 65).

[7] On December 22, 2011, the Minister filed an application for judicial review of the IAD’s decision.

### III. Legislation

[8] Subsection 12(1) of the IRPA and subsection 4(1) the IRPR state that:

#### 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.

#### Bad faith

#### 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.

#### Mauvaise foi

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

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

(b) is not genuine.

4. (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :

a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

b) n'est pas authentique.

#### **IV. Issues and standard of review**

##### **A. Issues**

1. *Is the affidavit of Catherine Raymond admissible in this case?*
2. *Has Ms. Joseph's identity been proven?*
3. *Did the IAD err in finding that Ms. Joseph belongs to the family reunification class defined in subsection 12(1) of the IRPA?*

##### **B. Standard of review**

[9] A decision on the genuineness and nature of a relationship under section 4 of the IRPR is essentially based on facts, such that this type of decision is subject to the reasonableness standard (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 417, [2010] FCJ No 482, at

para 14; *Zheng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 432, [2011] FCJ No 544, at para 18).

[10] Further, “It is established law that an appeal before the IAD is an appeal *de novo* (*Provost v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1310, 2009 FC 1310, [2009] FCJ No 1683 (QL), at para 25). Thus, the applicant must persuade the IAD, and not the Court, that the marriage is genuine or was not entered into primarily for the purpose of gaining status under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). This Court’s jurisdiction is relegated to that of review and it is not to tamper with the IAD’s discretion if that discretion was reasonably exercised” (see *Ma v Canada (Minister of Citizenship and Immigration)*, 2010 FC 509, 368 FTR 116, at para 32).

[11] It is important to note that “reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (see *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47 (*Dunsmuir*)).

## **V. Positions of the parties**

### **A. Position of the Minister**

[12] The affidavit of Catherine Raymond is admissible, because contrary to what Mr. Pierre alleges, the affidavit does not contain any confidential information as part of the IAD's alternative dispute resolution. Ms. Raymond's allegations are based on the content of the appeal book compiled by the Canada Border Services Agency. Subsection 81(1) of the *Federal Courts Rules* (SOR/98-106) requires that the affiant have a personal knowledge of the facts in the written testimony. Thus, without concrete evidence of a breach of the confidentiality obligation imposed by subsection 20(4) of the *Immigration Appeal Division Rules* (SOR/2002-230), Ms. Raymond's affidavit is admissible.

[13] The Minister also submitted that the IAD does not take into account several pieces of evidence in the record. He alleged that Mr. Pierre did not submit any letters, birthday cards, proof of residential lease in Haiti, or records of telephone calls or plane tickets. In short, there is no evidence that the marriage is genuine and, specifically, that there are true emotional ties between Mr. Pierre and Ms. Joseph.

[14] Mr. Pierre filed photos of the marriage ceremony as evidence. However, the spouses signed the marriage register in an apartment, an unusual procedure to say the least, according to the Minister.

[15] The Minister further submitted that the IAD does not take into account that the spouses saw each other only six times since they first met in 2006.

[16] The Minister also pointed out several contradictions between the spouses' testimony. Among other things, Ms. Joseph testified that she had immediately agreed to begin a romantic

relationship with Mr. Pierre, contrary to his statement. She also stated that Mr. Pierre does not have grandchildren, when he has five. These contradictions, according to the Minister, clearly establish that the spouses do not know each other.

[17] The Minister also noted the lack of emotional interdependence between the spouses. This lack of affection is due to the fact that there is a great difference in age between Mr. Pierre and Ms. Joseph. He submitted that Ms. Joseph agreed to [TRANSLATION] “have a romantic relationship with Mr. Pierre because her family circumstances were not good. She knew that this man could bring her financial security, housing and everything she needed”. She stated that [TRANSLATION] “her family accepts the age difference because he gives her mother money and he contributes to her family’s financial situation” (see the Applicant’s Record at page 138, para 26).

[18] The Minister also alleged that Ms. Joseph did not clearly establish her identity since all the documents filed for that purpose were issued after December 9, 2006. Ms. Joseph alleged that her birth certificate was destroyed by hurricane Jeanne in 2004. The Minister called into question that she was able to live for two years without identification. He also called into question the role that Ms. Joseph gave to Haiti’s national archives in this matter.

## **B. Position of Mr. Pierre**

[19] Mr. Pierre submitted that Ms. Raymond’s affidavit should not be part of the record. Ms. Raymond alleged in her affidavit that she represented the Minister in the IAD’s alternative dispute resolution. Her participation in the IAD’s alternative dispute resolution undermines her

credibility because it is impossible to know whether confidential information was used to support the affidavit. Further, Ms. Raymond allegedly withheld certain facts in her affidavit of February 6, 2011.

[20] As to Ms. Joseph's identity, according to Mr. Pierre, the IAD reasonably found that Ms. Joseph's testimony was plausible and that her documents were destroyed because of hurricane Jeanne in 2004.

[21] Moreover, Mr. Pierre alleged that the Court must consider the IAD's decision as a whole to determine whether or not there is reasonableness.

[22] Mr. Pierre again stated that he speaks to his spouse by telephone every day and that he supports her financially. He pointed out that there is a sincere and genuine romantic relationship that has been evolving between them since 2006.

## **VI. Analysis**

### ***1. Is the affidavit of Catherine Raymond admissible in this case?***

[23] Under subsection 81(1) of the *Federal Courts Rules*, Ms. Raymond's affidavit is admissible. Ms. Raymond drafted the affidavit as Hearing Officer with the Canada Border Services Agency and representative of the Minister of Citizenship and Immigration in alternative dispute resolution at the Immigration Appeal Division. This affidavit also relies on the information contained in the appeal



record written by Border Services. When the admissibility of an affidavit must be determined, the Court has to take into account the “reality of the surrounding circumstances. It depends, among other things, on the office or qualifications of the [affiant] and whether it is probable that a person holding such office or having such qualifications would, of his own knowledge, be aware of the particular facts” (see *Smith Kline and French Laboratories Ltd v Novopharm Ltd*, [1984] FCJ No 223). In this case, Ms. Raymond has a personal knowledge of the facts alleged in her affidavit. In addition, this information is found in the Tribunal Record and they cannot be considered confidential.

**2. *Has Ms. Joseph’s identity been proven?***

[24] The IAD’s finding that “with no evidence that the identity documents issued are fraudulent, the appellant has established the applicant’s identity, on a balance of probabilities” (see the IAD’s decision at para 24) is reasonable in this case. Ms. Joseph’s explanation that her identification documents were destroyed by hurricane Jeanne in 2004 is within a range of possible, acceptable outcomes with respect to the context of the case and the applicable law (see *Dunsmuir*, above, at para 47).

**3. *Did the IAD err in finding that Ms. Joseph belongs to the family reunification class defined in subsection 12(1) of the IRPA?***

[25] The IAD did not err in finding that Ms. Joseph belongs to the family reunification class defined in subsection 12(1) of the IRPA.

[26] The Court notes that the criteria to decide whether a relationship is genuine are not exhaustive. The case law cited by the Minister, i.e. *Bustamante v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1198, [2011] FCJ No 1466, lists some criteria identified by the Supreme Court of Canada. However, the IAD cannot be criticized for having relied on some evidence relating to certain criteria rather than others (see *Ouk v Canada (Minister of Citizenship and Immigration)*, 2007 FC 891, [2007] FCJ No 1157, at para 13; and *Khera v Canada (Minister of Citizenship and Immigration)*, 2007 FC 632, [2007] FCJ No 886, at para 7).

[27] The RPD's decision is based on the following criteria:

1. Compatibility;
2. Evolution of the relationship;
3. Wedding celebration;
4. Communication and travel;
5. The spouses' knowledge of one another
6. Financial assistance;
7. Intention of the parties to the marriage;
8. Combined effect of all the factors and the credibility of the parties.

[28] In this case, the last criterion seems vital since it encompasses all the other criteria. The spouses filed as evidence a registration of religious wedding ceremony (see page 66 of the applicant's record), eight photos of their marriage ceremony (see pages 68-70 of the applicant's record), 39 money transfer receipts from Mr. Pierre to Ms. Joseph, totalling approximately \$3,920 in American dollars, not including the shipping of non-perishable items.

[29] As to the credibility of Ms. Joseph and Mr. Pierre, the contradictions noted by the Minister are minor and do not undermine their entire narrative because they do not go to the heart of their

application (see *Akyol v Canada (Minister of Citizenship and Immigration)*, 2010 FC 359, at para 15).

[30] Considering the context of the case, the Court notes that the IAD decision is within the possible outcomes, since Mr. Pierre showed that he entered into a genuine marriage. According to the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para 14, “the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at ‘the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes’ (para 47)”. The Court must show deference toward the IAD’s decision. The IAD’s decision is reasonable taken as a whole and refers to all the evidence (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, at para 17). The Court may have arrived at a different conclusion. However, its role is not to reassess the same evidence; it is limited to ensuring that the panel has considered all the evidence in reaching its decision and that its finding is within the range of possible outcomes.

## **VII. Conclusion**

[31] For the above reasons, the IAD’s decision is reasonable and is within the possible and acceptable outcomes in respect of the facts and law (see *Dunsmuir*, above, at para 47). The application for judicial review is therefore dismissed.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that**

1. The application for judicial review is dismissed; and
2. There is no question of general importance to certify.

“André F.J. Scott”

---

Judge

Certified true translation

Catherine Jones, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-9696-11

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION  
v  
JEAN LYONEL PIERRE

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** July 3, 2012

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

**DATED:** October 3, 2012

**APPEARANCES:**

Ian Demers

FOR THE APPLICANT

Guy Nephtali

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Myles J. Kirvan  
Deputy Attorney General of Canada  
Montréal, Quebec

FOR THE APPLICANT

Guy Nephtali, Counsel  
Montréal, Quebec

FOR THE RESPONDENT