Federal Court Cour fédérale

Date: 20121023

Docket: IMM-2036-12

Citation: 2012 FC 1210

[ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, October 23, 2012

Present: The Honourable Mr. Justice Pinard

BETWEEN:

Beti PEREZ ACHAHUE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of Marie-Claude Paquette, a member of the Immigration Appeal Division (the IAD or the panel) of the Immigration and Refugee Board (the IRB), brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, (the Act). The IAD rejected the application of Beti Perez Achahue (the applicant) to sponsor her spouse, Abdelkebir Kamouni, as a member of the family class. The IAD concluded that the Applicant's marriage was not genuine and was entered into primarily for the purpose of acquiring a status or privilege under the Act.

[2] The first contact between the applicant and Mr. Kamouni was by telephone on December 22, 2007. It was arranged by Naima, who is Mr. Kamouni's sister and a friend of the applicant's.

[3] Mr. Kamouni is 34 years old and is a citizen of Morocco. He is Muslim and speaks Arabic and some French. This was his first marriage.

[4] The applicant is 46 years old and is originally from Peru. She arrived in Canada as a refugee in 1996. She speaks Spanish and French. This was her second marriage.

[5] After many telephone conversations, the applicant travelled to Morocco for the first time in December 2008, for a total of 18 days, accompanied by Naima. The applicant met Mr. Kamouni in person for the first time on December 21, 2008. On December 31, 2008, Mr. Kamouni asked her to marry him.

[6] The evidence shows that the applicant's passport contains a stamp of the Canadian Embassy in Morocco dated December 30, 2008, the day before the proposal.

[7] The evidence also reveals that Mr. Kamouni had unsuccessfully tried to obtain a visitor's visa to Canada in January 2008. He allegedly forgot to inform the applicant of this.

[8] In March 2009, the applicant returned to Morocco for a week. A marriage and a [TRANSLATION] "party" took place on March 4, 2009.

[9] The applicant then applied to sponsor Mr. Kamouni as a member of the family class. The application was rejected on April 7, 2010. Despite this rejection, the spouses apparently remained in contact through letters and telephone calls.

[10] The applicant returned to Morocco for her vacation in July 2010. The spouses allegedly held a [TRANSLATION] "formal" wedding celebration in August 2010, as they had been [TRANSLATION] "short on time" in March 2009.

[11] The applicant also allegedly visited Mr. Kamouni in July 2011 during her summer vacation.

[12] The applicant appealed the rejection of the sponsorship application to the IAD. The appeal was dismissed on February 6, 2012. That decision is the object of this application for judicial review.

[13] The IAD's negative decision is based on a number of contradictions and inconsistencies with respect to the date of the proposal, the wedding, the spouses' future plans, Mr. Kamouni's failure to inform the applicant that his visa application had been denied, the language of communication and correspondence, the [TRANSLATION] "co-ownership" of the applicant's house and certain financial issues.

* * * * * * * *

[14] The following provisions of the Act and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] are relevant:

Immigration and Refugee Protection Act

63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	**63.** (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.
66. After considering the appeal of a decision, the Immigration Appeal Division shall (*a*) allow the appeal in accordance with section 67; (*b*) stay the removal order in accordance with section 68; or (*c*) dismiss the appeal in accordance with section 69.	**66.** Il est statué sur l'appel comme il suit : *a*) il y fait droit conformément à l'article 67; *b*) il est sursis à la mesure de renvoi conformément à l'article 68; *c*) il est rejeté conformément à l'article 69.
67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, (*a*) the decision appealed is wrong in law or fact or mixed law and fact; (*b*) a principle of natural justice has not been observed; or (*c*) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	**67.** (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé : *a*) la décision attaquée est erronée en droit, en fait ou en droit et en fait; *b*) il y a eu manquement à un principe de justice naturelle; *c*) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.
(2) If the Immigration Appeal Division allows the appeal, it shall set aside the original decision and	(2) La décision attaquée est cassée; y est substituée celle, accompagnée, le cas échéant, d'une mesure de renvoi, qui aurait dû être rendue, ou l'affaire est renvoyée devant l'instance compétente.

substitute a determination that, in its opinion, should have been made, including the making of a removal order, or refer the matter to the appropriate decision-maker for reconsideration.

68. (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

(2) Where the Immigration Appeal Division stays the removal order
(*a*) it shall impose any condition that is prescribed and may impose any condition that it considers necessary;
(*b*) all conditions imposed by the Immigration Division are cancelled;
(*c*) it may vary or cancel any non-prescribed condition imposed under paragraph (*a*); and
(*d*) it may cancel the stay, on application or on its own initiative.

(3) If the Immigration Appeal Division has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under this Division.

(4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible on grounds of serious criminality or criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.

68. (1) Il est sursis à la mesure de renvoi sur preuve qu’il y a — compte tenu de l’intérêt supérieur de l’enfant directement touché — des motifs d’ordre humanitaire justifiant, vu les autres circonstances de l’affaire, la prise de mesures spéciales.

(2) La section impose les conditions prévues par règlement et celles qu’elle estime indiquées, celles imposées par la Section de l’immigration étant alors annulées; les conditions non réglementaires peuvent être modifiées ou levées; le sursis est révocable d’office ou sur demande.

(3) Par la suite, l’appel peut, sur demande ou d’office, être repris et il en est disposé au titre de la présente section.

(4) Le sursis de la mesure de renvoi pour interdiction de territoire pour grande criminalité ou criminalité est révoqué de plein droit si le résident permanent ou l’étranger est reconnu coupable d’une autre infraction mentionnée au paragraphe 36(1), l’appel étant dès lors classé.

69. (1) The Immigration Appeal Division shall dismiss an appeal if it does not allow the appeal or stay the removal order, if any.

(2) In the case of an appeal by the Minister respecting a permanent resident or a protected person, other than a person referred to in subsection 64(1), if the Immigration Appeal Division is satisfied that, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case, it may make and may stay the applicable removal order, or dismiss the appeal, despite being satisfied of a matter set out in paragraph 67(1)(*a*) or (*b*).

(3) If the Immigration Appeal Division dismisses an appeal made under subsection 63(4) and the permanent resident is in Canada, it shall make a removal order.

69. (1) L'appel est rejeté s'il n'y est pas fait droit ou si le sursis n'est pas prononcé.

(2) L'appel du ministre contre un résident permanent ou une personne protégée non visée par le paragraphe 64(1) peut être rejeté ou la mesure de renvoi applicable, assortie d'un sursis, peut être prise, même si les motifs visés aux alinéas 67(1)*a*) ou *b*) sont établis, sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

(3) Si elle rejette l'appel formé au titre du paragraphe 63(4), la section prend une mesure de renvoi contre le résident permanent en cause qui se trouve au Canada.

Immigration and Refugee Protection Regulations

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.

* * * * * * * *

[15] Before me at the hearing, counsel for the applicant focused her pleadings on the IAD's assessment of the facts.

[16] It should be noted that the appeal to the IAD is a *de novo* appeal, in which the IAD must consider afresh whether the person sponsored as a spouse, common-law partner or conjugal partner is a member of the family class (see *The Minister of Employment and Immigration v. Gill* (1991), 137 N.R. 373 (F.C.A.) and *Kahlon v. The Minister of Employment and Immigration* (1989), 97 N.R. 349 (F.C.A.)).

[17] As established by the case law, the onus was on the applicant to demonstrate to the IAD, on a balance of probabilities, that her spouse met the requirements of section 4 of the Regulations (see, *inter alia*, *Mohammed c. The Minister of Citizenship and Immigration*, 2055 FC 1442 and *Mohamed v. The Minister of Citizenship and Immigration*, 2006 FC 696, 296 F.T.R. 73 [*Mohamed*]).

[18] With respect to the relevant issue, namely, whether the marriage is genuine or whether it was entered into for the purpose of acquiring a status under the Act, it is well established in the case law that reasonableness is the applicable standard (see *Chen v. The Minister of Citizenship and Immigration*, 2011 FC 1268, *Singh v. The Minister of Citizenship and Immigration*, 2006 FC 565 [*Singh*] and *Mohamed*, above).

[19] This is a question of fact that boils down to the credibility of the spouses (*Sidhu v. The Minister of Citizenship and Immigration*, 2012 FC 515 [*Sidhu*]). This Court must therefore show considerable deference in determining whether the findings are justified, transparent and intelligible and fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paragraph 47). It is not open to this Court to reassess the evidence that was before the panel (*Zrig v. Canada (The Minister of Citizenship and Immigration)*, 2003 FCA 178, [2003] 3 F.C. 761 at paragraph 42).

[20] This Court must consider the impugned decision as a whole (*Singh* and *Sidhu*, above) and not engage in a microscopic examination of the evidence; nor may this Court dissect the panel's decision (*Singh* citing *Carrillo v. The Minister of Citizenship and Immigration*, 2004 FC 548).

[21] I also adopt the following comments of my colleague, Justice Robert L. Barnes, in *Gan v. The Minister of Public Safety and Emergency Preparedness*, 2006 FC 1329, as my own:

> [16] It is not sufficient for an Applicant seeking judicial review to identify errors with respect to a few of the Board's findings of fact or some weaknesses in its analysis of the evidence. A decision will be maintained if it can be seen to be supported by other factual findings reasonably made.

[22] In my view, the applicant's arguments require a microscopic examination of the panel's decision. Having read the decision as a whole, heard the submissions of counsel for the parties and reviewed the relevant evidence, I am satisfied that the IAD took into consideration the

evidence before it and rendered a reasonable decision falling within a range of possible, acceptable outcomes.

[23] As for the arguments developed in the written submissions of counsel for the applicant, I am of the view that his suggested application of sections 63, 66, 67, 68 and 69 of the Act and subsection 4(1) of the Regulations is clearly inconsistent with the case law cited above with respect to the *de novo* nature of the appeal before the IAD and to the appellant's burden of proof.

[24] Finally, with respect to the argument of counsel for the applicant that the IAD's reasons were inadequate, which he also mentions in his written submissions, I am of the opinion that *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, is applicable. Therein, the Supreme Court of Canada wrote the following:

> Reasons need not include all the arguments or details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result. If the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[25] Furthermore, perfection is not the standard, and the reasons need not be exhaustive: "If the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met" (*Canada Post Corporation v. Public Service Alliance of Canada*, 2010 FCA 56, [2011] 2 F.C.R. 221).

[26] I am of the view that this requirement was met in this case. The panel provided detailed reasons that permit one to understand why it made its decision. The mere fact that the applicant disagrees with the panel's factual findings does not amount to a reviewable error (*Sidhu*, above).

[27] There is nothing in the remaining written submissions referred to by counsel for the applicant that leads me to conclude that the IAD committed an error reviewable by this Court.

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

[29] I agree with counsel for the parties that this is not a case for certification.

JUDGMENT

The application for judicial review of a decision of a member of the Immigration Appeal Division of the Immigration and Refugee Board brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"

Judge

Certified true translation
Francie Gow, BCL, LLB

Federal Court Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2036-12
STYLE OF CAUSE:	Beti PEREZ ACHAHUE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 10, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	PINARD J.
DATED:	October 23, 2012

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