

Federal Court



Cour fédérale

**Date: 20130702**

**Docket: IMM-5788-12**

**Citation: 2013 FC 731**

Ottawa, Ontario, this 2<sup>nd</sup> day of July 2013

**Present: The Honourable Mr. Justice Roy**

**BETWEEN:**

**GRACE OMOLARA TAIWO**

**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 made on May 15, 2012 by the Immigration Appeal Division of the Immigration and Refugee Board (the “IAD”), refusing the appeal of Mrs. Grace Omolara Taiwo (the “applicant”) of a visa officer’s denial with respect to the sponsorship of Mr. Raphael Agboola, a citizen of Nigeria. The applicant wished for Mr. Agboola to become a permanent resident as a member of the family class. The appeal was heard pursuant to

section 62 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”); the judicial review is sought in accordance to section 72 of the Act.

[2] The applicant claims that Mr. Agboola is her spouse. The IAD agreed with the visa officer that the marriage was not genuine for the purposes of the Act.

[3] Subsection 13(1) of the Act allows sponsorship for permanent residence as a member of the family class. Section 117 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”) defines a sponsor’s spouse as being a member of the family class.

[4] It is section 4 of the Regulations that creates the issue in this case in that it excludes from consideration some spouses:

**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.

#### Issue and Standard of Review

[5] The only issue for consideration in this judicial review application is whether or not the marriage was entered into primarily for the purpose of acquiring a status under the Act or is not genuine. Both the visa officer and the IAD concluded that it was.

[6] The standard of review on this application is reasonableness. In *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011] 3 SCR 654, the Court ruled with respect to mixed questions of fact and law that the standard of review is presumably reasonableness. The parties do not disagree. This is simply an application of the facts on the law, a mixed question of fact and law, which attracts a standard of reasonableness. It follows that it will be for the applicant to satisfy this Court that the decision was not reasonable. As pointed out in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190:

[47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, 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.

Deference is owed to the decision-maker.

### Facts

[7] The facts involved in the determination of whether or not a marriage is genuine, or not primarily for the purpose of acquiring any status under the Act, are of course critical. In this case, the set of facts with which the decision-maker had to contend was particularly convoluted. Actually, this is part of the reasons why the appeal had to be dismissed in that the applicant and Mr. Agboola

had stories that were so convoluted and contradictory that it was reasonable for the IAD to conclude as it did. The burden is on the applicant to show that the marriage is genuine. Where the evidence is deficient, that demonstration will be lacking.

[8] The applicant entered Canada from Nigeria in November 2003 and acquired permanent resident status on May 31, 2005. She became a citizen in 2009. She is in her mid-30s and the mother of four children. Her first child was born before she met Mr. Agboola.

[9] It appears that the couple met fortuitously in November 2003. The relationship evolved quickly in December 2003, leading to the birth seven months later of a child, according to the applicant. However, Mr. Agboola was deported back to Nigeria on January 4, 2004. He returned to Canada, illegally, in May 2005. He was detained, starting in January 2006 and deported again in April. The couple were married in March 2006, while Mr. Agboola was still detained, but before he was deported. The applicant filed a sponsorship application in June 2008. What happened between those dates remained very much unclear in spite of lengthy interrogations and opportunities given to shed light on the relationship. Three children were allegedly born of that union. One on July 4, 2004, the second on March 26, 2006 and the third on August 8, 2009.

[10] Mr. Agboola is in his mid-40s and is a citizen of Nigeria. Basically, the applicant relies on the three children that are said to be the children of the relationship to establish that there exists a marriage not entered into primarily for the purpose of acquiring a status under the Act. However, the immigration history of Mr. Agboola leaves a cloud over the issue. The quality of the relationship did not dispel that cloud, quite the opposite.

[11] The applicant's spouse has come to Canada on a number of occasions since 2001 and has been deported back more than once. While in Canada, he married a first time, in June 2001, just before his refugee claim was heard and decided, in September of that year. Mr. Agboola's then wife did not try to sponsor him; the marriage ended in divorce in February 2006, but it is claimed that the spouses separated in October 2003, just before Mr. Agboola met the applicant.

### The Impugned Decision

[12] To say the least, it was difficult for the decision-maker to assess this case. The IAD concluded that there was a fundamental lack of credibility on the part of both the applicant and Mr. Agboola. The IAD was incapable of piecing the story together.

[13] One would have thought that the existence of children would militate in favour of the genuineness of the marriage. Indeed the applicant contends that it could be decisive. That was acknowledged as such. But the IAD found numerous discrepancies in the stories and confusion about the history of the couple, including the children. At paragraph 16 of its decision the IAD spoke in terms of "the evidence about the children is, like all of the evidence, shrouded in mystery".

The IAD goes on:

While the most palatable and preferred inclination is to accept what has been told about conception and paternity of the children notwithstanding the couple's lack of credibility in other areas of testimony, an objective analysis of the available evidence does not support that approach in this case.

[14] The IAD found that there was a lack of clarity concerning a number of factors that are considered to assess whether a marriage is genuine and not primarily for the purpose of acquiring an immigration related status. They are not insignificant: timing of the births and paternity, when did

the couple spend time together, a lack of clarification about the delays in moving along the sponsorship application filed in June 2008, questions about Mr. Agboola's history and time spent with the family, coupled with his numerous attempts to come to Canada, including a failed refugee application in 2001. The many attempts to come to Canada by Mr. Agboola can certainly tend to show that it has been a primary pursuit of his to obtain status in Canada.

[15] In the end, the IAD found that not only were the issues that concerned the visa officer unresolved, but more inconsistencies and credibility issues emerged as part of the appeal as the applicant and her husband were heard. Far from clarifying issues, the testimonies, and in particular that of the applicant, lacked credibility. Actually, the IAD provides telling examples of significant "discrepancies and unresolved areas of confusion", going from uncertainty about paternity to when and where the couple would have spent time together over a period of many years.

[16] It is that decision that is now challenged before this Court. The applicant must show, on a balance of probabilities that, not only is there another outcome possible, that is that the marriage was genuine, but that the outcome reached by the IAD, which is that the marriage is not genuine and was entered primarily for acquiring status under the Act, is not in a range of possible and acceptable outcomes.

### Analysis

[17] The applicant has not discharged her burden. I have reviewed the evidence and, like the IAD, I have found that the evidence of the applicant and Mr. Agboola in support of the genuineness of their marriage was not cogent. It actually stretched credibility.

[18] The applicant argues that the couple's credibility is not impugned. This is not what the IAD found. Not only was their credibility put in doubt, but the story as told was objectively less than persuasive.

[19] It is certainly true that the existence of children will play in favour of the genuineness of a marriage (*Gill v Canada (Minister of Citizenship and Immigration)*, 2010 FC 122). That was readily acknowledged by the IAD and it was stressed repeatedly by the applicant. As already pointed out, even the evidence about the children is left very much unclear after an attempt at a close examination. One would have expected clarity on this. It was not forthcoming. But such is not the only issue. Other considerations are at play. It is rather the lack of clarity and specificity about the marriage that is problematic. Put together, the IAD was left with serious doubts about what it called "the intentions underlying the marriage". Given the evidence, this conclusion is amply supported.

[20] The only question this Court has to answer is whether the IAD's decision has been shown to be unreasonable. The burden was on the applicant to make that demonstration on a balance of probabilities. In order to be successful, at a minimum, the evidence must be consistent to have a chance to be persuasive. It was simply impossible to decipher out of the testimonies of the applicant and Mr. Agboola what the true situation was. What would appear to be simple questions that ought to receive simple and straightforward answers became inconsistencies, contradictions and implausibilities. The decision-maker was left with something so inconsistent and unclear that the marriage could not be found to be genuine. In the circumstances, the Court must defer to the IAD which has the added advantage of having the witnesses testify in front of it.

**JUDGMENT**

The application for judicial review of a decision made on May 15, 2012 by the Immigration Appeal Division of the Immigration and Refugee Board, denying the appeal of the applicant of a visa officer's denial with respect to the sponsorship of Mr. Raphael Agboola, is dismissed. No question for certification has been proposed and the Court finds that none arises.

“Yvan Roy”

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5788-12

**STYLE OF CAUSE:** GRACE OMOLARA TAIWO v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** May 7, 2013

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

**DATED:** July 2, 2013

**APPEARANCES:**

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