

Federal Court



Cour fédérale

Date: 20140821

Docket: IMM-3683-13

Citation: 2014 FC 816

Toronto, Ontario, August 21, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

NHUT VO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION AND
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

[1] The Immigration Appeal Division of the Immigration and Refugee Board concluded that Nhut Vo had failed to establish that his relationship with his current wife, Thi Tuyet Trinh Le, was a genuine marriage and had not been entered into primarily for immigration purposes.

[2] One of the reasons cited by the Board for dismissing Mr. Vo's appeal was his failure to provide evidence with respect to the couple's plans for the future. According to Mr. Vo, this finding was unfair as the Board never asked him any questions about this issue. Mr. Vo also asserts that the Board's conclusion with respect to the genuineness of the marriage was unreasonable.

[3] For the reasons that follow, I have concluded that Mr. Vo was not treated unfairly in this matter, and that the Board's decision was reasonable. Consequently, his application will be dismissed.

I. Background

[4] The marriage in question was Mr. Vo's third marriage and his third attempt to sponsor a woman for permanent residence in Canada. After his first common law marriage ended, Mr. Vo applied to sponsor a fiancée in 1995. It appears that he subsequently withdrew his sponsorship when that relationship broke down. Mr. Vo married his second wife in 2004, and he sponsored her soon thereafter. She came to Canada from Vietnam in 2005, however the couple divorced shortly after her arrival.

[5] Mr. Vo married Ms. Le in Vietnam in 2007, and applied to sponsor her soon thereafter.

[6] Following an interview with Ms. Le, a visa officer refused Mr. Vo's application to sponsor his wife. The officer was not satisfied that the marriage was genuine and that it had not been entered into primarily for the purpose of acquiring a status or privilege under the Immigration and Refugee Protection Act, S.C. 2001, c. 27.

[7] It is apparent that the visa officer had a number of concerns with respect to the genuineness of the marriage. Amongst other things, the visa officer concluded that Ms. Le's description of Mr. Vo personal qualities, as well as her explanation as to what the couple had in common and what their plans were for the future, were all "generic" responses. The visa officer also found that Ms. Le had "shared nothing to demonstrate a marriage of almost 4 years". As a result of these and other concerns, the sponsorship was refused.

[8] Mr. Vo appealed this decision to the Board. The Board's decision to dismiss that appeal is the subject of this application for judicial review.

II. The Procedural Fairness Issue

[9] After reviewing the evidence adduced on the appeal, the Board concluded that a number of the concerns identified by the visa officer (such as Mr. Vo's failure to disclose the sponsorship of his fiancée in 1995 and a possible ongoing relationship between Mr. Vo and his common law wife) had been adequately addressed through new evidence provided by Mr. Vo.

[10] The Board noted, however, that the couple had presented no evidence regarding any plans that they may have had for their life together in Canada. This concern, when taken into account with other concerns, such as the paucity of information as to how the relationship between Mr. Vo and Ms. Le had developed and the limited amount of time that the couple had spent together over the course of their marriage, led the Board to conclude that Mr. Vo had not met his evidentiary or persuasive burden.

[11] As a consequence, the Board was not satisfied that the marriage was genuine and that it had not been entered into for immigration purposes.

[12] Mr. Vo takes particular issue with the Board's finding regarding the lack of evidence with respect to the couple's plans for their life together in Canada given that the Board member did not ask any questions about this issue at the appeal hearing. According to Mr. Vo, the failure of the Board to flag this issue and give him an opportunity to address it resulted in a denial of procedural fairness.

[13] Given that what is at issue here is a question of procedural fairness arises, the task for the Court is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 43.

[14] The onus was on Mr. Vo to establish the genuineness of his marriage. It was not for the Board or the respondent's counsel to make his case for him through questions or cross-examination.

[15] The decision letter from the visa officer made it clear that the officer had discussed her concerns with Ms. Le at the interview, and Ms. Le had been afforded a fair opportunity to address those concerns.

[16] In the course of the appeal process, Mr. Vo was provided with the visa officer's "CAIPS" notes of the interview with Ms. Le in which the officer's concerns were clearly spelled out. One of these concerns was the lack of information that had been provided with respect to the couple's plans for their life together in Canada. As a consequence, Mr. Vo was made fully aware of the nature of Canadian immigration authorities' concerns with respect to the genuineness of his

marriage, and the reasons for those concerns. He was, moreover, afforded a fair opportunity to address those concerns at his appeal hearing before the Immigration Appeal Division.

[17] This situation may be contrasted with the circumstances that confronted the Federal Court of Appeal in *Sadeghi v Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 337, [2000] F.C.J. No. 675. In *Sadeghi*, a breach of procedural fairness was found to have occurred where an applicant had not been made aware of an officer's concerns, nor given an opportunity to address them.

[18] I have thus not been persuaded that there was a breach of procedural fairness in this case.

III. Was the Board's Decision Reasonable?

[19] Mr. Vo also takes issue with the reasonableness of the Board's decision.

[20] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190 and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para. 59, [2009] 1 S.C.R. 339.

[21] In applying the reasonableness standard, it is not for this Court to reweigh the evidence that was before the Board: *Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para. 99, 459 N.R. 367.

[22] In this case, the Board accepted that some evidence of the evidence before it, including that relating to money transfers and telephone calls, suggested that the marriage was genuine. Other evidence, such as the circumstances of the couple's courtship, the speed of the proposal, Ms. Le's limited knowledge of the details of Mr. Vo's life in Canada, Mr. Vo's history of failed sponsorships, and the lack of information with respect to the couple's plans for their life together in Canada suggested that the marriage had been entered into for immigration purposes.

[23] It is apparent from a review of the Board's reasons that it carefully assessed the evidence before it, weighing the evidence that supported a finding that the marriage was genuine against the evidence leading to the contrary conclusion. What Mr. Vo now seeks is to have this Court re-weigh the evidence that was before the Board and come to a different conclusion. This is not the role of the Court sitting in judicial review of a Board decision, nor has Mr. Vo persuaded me that the Board's decision was unreasonable.

IV. Conclusion

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

V. Certification

[25] Mr. Vo proposes the following question for certification:

Whether the onus being on an applicant requires that the applicant anticipate and answer concerns that may be in the mind of the Board member that may or may not arise in the reasons for refusal.

[26] This is not an appropriate question for certification as the answer to the question would not be dispositive of this case. Mr. Vo was not asked to "anticipate and answer concerns that might be in the mind of the Board member". He had been fairly put on notice that there were concerns with respect to the genuineness of his marriage and the nature of those concerns. He

was then afforded a fair opportunity to address those concerns before the Immigration Appeal Division.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3683-13

STYLE OF CAUSE: NHUT VO v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND THE MINISTER OF PUBLIC
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