

Federal Court



Cour fédérale

Date: 20140915

Docket: IMM-1405-14

Citation: 2014 FC 877

Ottawa, Ontario, September 15, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KULWANT SARAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of Lynne Cunningham, a panel member of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board at Calgary, Alberta, to dismiss the Applicant's appeal of a decision to refuse his wife's permanent resident visa as a member of the family class.

I. Issue

[2] Was the decision of the IAD unreasonable?

II. Background

[3] The Applicant is a citizen of Canada. He emigrated in November 1996 as a dependant of his mother. He married his first wife in March 2002 in India. After sponsoring her to come to Canada in April 2005 she admitted to marrying him only to come to Canada. The couple separated in September 2005, and divorced officially on February 22, 2007.

[4] The Applicant and his second wife are both Sikh by religion. The Applicant suffers from a physical disability and his wife suffers issues with her leg as a result of contracting polio as a child.

[5] The couple were married in India on May 3, 2009. The Applicant then flew back to Canada on July 1, 2009. He has returned to India every year except 2011 for approximately 5 and a half months each visit.

[6] The couple maintains that when the Applicant is in India, they live as husband and wife in their ancestral home in Sadowal, in Punjab and that they have recently begun trying to conceive a child.

[7] Mr. Saran provided differing answers to the Officer and the IAD with respect to his intentions to sponsor his wife. He told the Officer that the 2 year delay in sponsorship was because he was moving from British Columbia to Alberta and wanted to be settled before her arrival. At the IAD hearing, Mr. Saran testified that he told his wife and her family that he would not be sponsoring her to Canada as he did not trust that she would not leave him after arriving in Canada.

[8] On May 30, 2012, Ms. Kaur attended an in person interview with Citizenship and Immigration Canada [CIC]. Following the interview, the Officer refused the Applicant based on his finding that the marriage was not legal as the Bride and Groom did not walk around the Holy Book four times as is customary in Sikh tradition. This fact is admitted by the Applicant and is not in dispute. The Officer also found that the marriage was not genuine.

[9] The IAD held an oral hearing for the Applicant's appeal of the Visa Officer's decision to reject his application on February 3, 2014. The Applicant attended in person with counsel and his wife testified via telephone. The IAD dismissed the Applicant's appeal on February 7, 2014.

[10] The decision of the Visa Officer and the IAD to refuse the Applicant's wife's application was based entirely on the determination that the marriage was not genuine and was primarily for the purpose of the Applicant's wife to acquire status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

III. Standard of Review

[11] The standard of review is reasonableness (*Strulovits v Canada (Minister of Citizenship and Immigration)*, 2009 FC 435 at para 40; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51).

IV. Analysis

[12] The Applicant submits that the IAD failed to consider cogent evidence in their decision and thus have committed a reviewable error. The IAD hearing was to be a hearing *de novo* at which the “totality of the evidence adduced by the Applicant” was to be considered. Their failure to take into account evidence such as the financial support the Applicant provided his wife, as well as their period of cohabitation after marriage, and to focus only on minor contradictions, lead them to make unreasonable findings lacking in justification and intelligibility.

[13] Further, the Applicant submits that the IAD as well as the Officer made their decision by applying an inappropriate and unreasonable level of cultural bias. “The ‘genuineness’ of the relationship must be examined through the eyes of the parties themselves against the cultural background in which they have lived” (*Khan v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1490 at para 16).

[14] There were a number of reasons why the IAD decided the Applicant's marriage lacked credibility:

- a. Despite claiming to spend a cumulative 18 months with his wife over the past several years, neither spouse actually knows very much of the other spouse (examples are given about inconsistencies and gaps in their testimony about their personal lives with one another);
- b. There was a glaring difference in answers to questions - - the precision with which certain information was provided (dates) against the long pauses to some answers which the Applicant and his wife would be reasonably expected to know for example, the frequency and times in which they communicate by telephone; whether the Applicant lives with his brother or a cousin; when the Applicant visited his wife in India in 2013;
- c. There was little objective evidence that supported their contention that they are a married couple or that they have spent any time together.

[15] The Visa Officer's concern over the formal validity of the marriage does not appear reasonable. However, the issue of the formal validity of the marriage was given little weight or reliance by the IAD in their decision and is thus not a determinative issue.

[16] While the IAD is required to consider all the evidence before it, there is a presumption that they have done so and thus are not required to mention all the evidence in their reasons (*Lai v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 at para 90).

[17] I find that the IAD considered the totality of the evidence, including the evidence of financial support that the Applicant supplied, as well as the length of time the couple spent together after their marriage before he left for Canada, in addition to the time spent visiting India (namely the evidence the Applicant claims was unreasonably ignored).

[18] Moreover, the IAD reviewed the Applicant's and his wife's testimony about their months spent cohabitating when he is in India, the witnesses' credibility and discrepancies in their testimony, and found that little objective evidence was submitted supporting the genuineness of the marriage.

[19] I do not accept that the interpretations of the Applicant and Appellant's relationship by the IAD and the Visa Officer project strong Western ideals on the couple, to the point where evidence contrary to their assumptions has been unreasonably discounted.

[20] While there is some evidence that points to the validity of this marriage, there is also evidence that points to its lack of genuineness. It was within the Visa Officer and the IAD's reasonable discretion to find that the marriage is not genuine.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1405-14

STYLE OF CAUSE: KULWANT SARAN v THE MINISTER OF
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