Federal Court  Cour fédérale

Date: 20150623

Docket: IMM-8200-14

Citation: 2015 FC 779

[REVISED ENGLISH TRANSLATION]

Ottawa, Ontario, June 23, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

SOEURETTE SERAPHIN

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision dated October 27, 2014, of the Immigration Appeal Division dismissing the appeal of the decision of the immigration officer [the officer] refusing the application for a permanent resident visa in the family class filed by her husband, Claude Junior Auguste.

[2] After having read the parties' records and having considered their written and oral submissions, the application for judicial review shall be dismissed for the reasons outlined below.

I. Background

[3] The applicant first arrived in Canada on April 13, 2002, and obtained permanent residence on December 2, 2003, having been sponsored by her ex-husband. The applicant and Mr. Auguste met each other on July 5, 2006 in Haiti, when the applicant was there on a visit. In July 2008, Mr. Auguste asked the applicant to marry him and, on August 9, 2008, they became engaged. The applicant and Mr. Auguste decided to marry one year later. The applicant and Mr. Auguste were married on August 29, 2009 in Haiti. In March 2010, the applicant took steps to bring her sister to Canada, the sister having lost her daughter in the January 2010 earthquake. In December 2010, the applicant began the process of sponsoring Mr. Auguste.

[4] On February 14, 2011, Mr. Auguste went to the Canadian Embassy in Haiti for an interview with the officer. On February 22, 2011, the officer confirmed the refusal of Mr. Auguste's application for a permanent resident visa in the family class. The officer was not satisfied that the relationship between Mr. Auguste and the applicant was [TRANSLATION] "genuine and bona fide".

[5] In March 2011, the applicant appealed the refusal of her sponsorship application for Mr. Auguste to the IAD.

[6] On November 12, 2014, the IAD dismissed the applicant's appeal on the basis that she had not demonstrated that the marriage had not been entered into primarily for the purposes of acquiring status and privilege for Mr. Auguste under the IRPA.

II. Issues

[7] In the applicant's view, the IAD erred in the following ways:

1. The IAD employed the wrong legal test to assess whether the marriage had been entered into primarily for the purposes of acquiring status or privilege under the IRPA;

2. The IAD cast doubt on the genuineness of the relationship without providing an explanation, thereby failing to comply with the rules of natural justice; and

3. The IAD failed to adequately explain the reasons for its decision, preventing the appellant from understanding its reasoning in a manner consistent with the rules of natural justice and administrative law.

III. Analysis

[8] The applicant essentially argues that:

- The IAD did not assess the primary purpose of the marriage at the time it was entered into, as required by the test under paragraph 4(1)(*a*) of the IRPR (*Singh v Canada*

(Minister of Citizenship and Immigration), 2014 FC 1077 at para 20 [*Singh*]). Indeed, few elements of the decision refer to the time of the marriage.

- The IAD's reasons are insufficient to support its conclusions; and

- The IAD's reasons are tendentious and fail to take into account her explanations and those of Mr. Auguste. For example, the applicant explained that she had only two weeks of vacation per year, which is why she only visited Haiti once a year, but the IAD did not consider this explanation.

[9] In this case, I agree with the respondent that the IAD applied the correct test with regard to paragraph 4(1)(*a*) of the IRPR. Moreover, and as the respondent noted, there is no specific test to establish whether a marriage is genuine (*Stuart v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1139 at para 24), and this principle may be extended to the assessment of the purpose of the marriage (*Patry-Shala v Canada (Minister of Citizenship and Immigration)*, 2015 FC 187 at paras 8-9). I am also satisfied that the IAD applied the correct standard of proof under subsection 4(1) of the IRPR, namely, the balance of probabilities (*Singh* at para 13).

[10] Thus, the credibility of the applicant and of Mr. Auguste are relevant considerations for assessing the primary purpose of the marriage in 2009. It is for the IAD to determine the weight to be assigned to various factors when assessing the purpose of the marriage (*Canada (Minister of Citizenship and Immigration) v Chen*, 2013 FC 215 at para 39).

[11] In that sense, I am of the view that there was sufficient persuasive evidence to justify the IAD's finding that it did not believe Mr. Auguste in its assessment of the purpose of the marriage.

[12] The IAD concluded that the marriage had been primarily entered into for the purpose of acquiring a status or privilege under the IRPA. I am satisfied that in this case, the IAD weighed all of the evidence in reaching this conclusion and the fact that the IAD considered factors that occurred after the couple had entered into the marriage does not constitute a reviewable error. Thus, in light of the following factors, I find that it was reasonable to have concluded that the couple's marriage falls under the exclusion at paragraph 4(1)(*a*) of the IRPR:

- Mr. Auguste apparently professed his love for the applicant on June 25, 2007, and subsequently decided to marry her after having met her only a few times;

- Mr. Auguste traveled to Panama from May 6 to May 14, 2008, to buy clothes for the wedding but asked the applicant to marry him in July 2008;

- Mr. Auguste obtained a notarized document granting custody of his child to the applicant a few days before his interview with the officer;

- Mr. Auguste gave contradictory testimony about when he raised the idea of marriage with the applicant and about when she met his family for the first time;

- Neither the applicant nor Mr. Auguste were able to provide clear testimony as to when Mr. Auguste asked the applicant to marry him.

- Mr. Auguste stated that he had never been in a serious relationship prior to meeting the applicant, when in fact he had a child from a previous relationship;

- Mr. Auguste told the visa officer that he was unaware that the applicant had been married previously and that she had immigrated to Canada by way of sponsorship;

[13] It is important to take into account the fact that the applicant had only traveled to Haiti once a year, for a total of one month, between July 2006 and August 2009, before the couple entered into the marriage. Although the applicant explained that she was limited by the amount of annual leave she could take, the fact remains that the couple had met few times before deciding to marry. In addition, the fact that the applicant only began the process of sponsoring her husband in December 2010 casts a negative light on the purpose of the marriage. I do not accept the applicant's argument that she concentrated her efforts first on taking steps to bring her sister, a victim of the January 2010 earthquake, to Canada, as one process does not preclude the other.

[14] Nor do I accept the applicant's argument that Mr. Auguste did not understand the officer's question when she asked him whether he was aware that the applicant had been married before and that it was by way of sponsorship that she had immigrated to Canada. In short, the hearing transcript shows that Mr. Auguste was not a credible witness.

[15] The Court agrees that the IAD could have fleshed out its reasons; however, in light of *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland*], the reasons for a decision must be read together with the outcome and the decision should be upheld where, read as a whole, the decision serves the purpose of showing whether the result falls within a range of possible outcomes (*Newfoundland* at para 14). I believe that the IAD pointed out in its decision the elements it found to be problematic, which in turn leads us to the conclusion that the decision falls within a "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

JUDGMENT

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified

"Peter Annis"
Judge

Non-certified translation

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8200-14
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