

Federal Court



Cour fédérale

Date: 20160304

Docket: IMM-3570-15

Citation: 2016 FC 279

Ottawa, Ontario, March 4, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

S.S.R.

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 or the Act] challenging an Immigration Appeal Division [IAD or the Board] decision refusing the Applicant's appeal from a visa officer's refusal to grant the Applicant's wife a permanent resident visa under the Spousal Sponsorship provisions of the Act. The Applicant is seeking to have the decision set aside and sent back for redetermination by a differently constituted panel.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The Applicant, S.S.R., is a citizen of India who was himself sponsored in the past by his ex-wife. As a result, the Applicant became a permanent resident upon arrival in Canada on January 17, 1987. The couple married on April 5, 1987 and have two Canadian born children. They separated in 2005 and divorced in 2009.

[4] The Applicant's wife, K.K.R., is a citizen of India with two daughters aged 22 and 24. She married her first husband in 1989. He travelled to Canada in 2004 where he filed a refugee application. His parents and siblings live in Canada. K.K.R. remained married to him until he passed away in 2010. She lived with her two daughters on his family's property in India until it is alleged that the deceased husband's family asked them to leave following his death.

[5] The Applicant travelled to India from February 2010 to April 2010, but did not meet his wife or any other potential spouse as he claimed to have had no intention of re-marrying.

[6] At some point in late 2010, the Applicant claims to have contacted a friend to assist him in finding a suitable wife. As a result, the Applicant was provided with his spouse's telephone number. He claims to have initiated their first contact via telephone in December 2010.

[7] On January 6, 2011, the Applicant travelled to India without having seen a photo of his intended spouse. On January 18, 2011, he met her in person, along with her two adult daughters,

mother, brother and sister-in-law. They decided to get married on the same day. The marriage ceremony occurred four days later on January 22, 2011. The marriage did not follow local custom, without the usual delay following the death of the husband, having some 200 persons in attendance, and at place removed from the wife's neighbourhood and with many family and relatives not attending.

[8] On July 13, 2011, the Applicant's spouse's permanent resident application was received. She was interviewed on April 5, 2012. The same day, the application was refused owing to the visa officer's determination that the marriage was not genuine and entered into primarily for the purpose of acquiring status or privilege under the Act.

[9] The Applicant appealed the visa officer's decision to the IAD. A *de novo* hearing was held, where the Applicant, his spouse and her daughter testified over two sittings on January 30, 2015 and May 2015. At the first hearing documentary evidence was provided showing that the appellant had received a pardon for nine criminal convictions, but the documentation was incomplete. The second sitting was scheduled to provide the Applicant an opportunity to provide evidence and submissions as to whether he met the requirements for sponsor pursuant to paragraph 133(1)(e) of the *Immigration and Refugee Protection Regulations* [the Regulations] despite his 9 criminal convictions.

[10] On July 7, 2015, the Board dismissed the appeal. This is the decision under current judicial review.

II. Impugned Decision

[11] The Board set out three issues to be determined. First, whether the Applicant discharged his onus that the marriage was genuine or not, and entered into primarily for immigration purposes. Second, whether sections 133(1)(e) and 133(2) of the Regulations applied as a result of his past criminal convictions. Third, whether there were sufficient humanitarian and compassionate [H&C] factors to warrant special relief.

[12] The Board concluded that the Applicant did not meet his onus of proving that the marriage was not entered into primarily for immigration purposes. Consequently, the second and third issues were no longer relevant.

[13] In arriving at its conclusion that the marriage was entered into primarily for immigration purposes, the Board made adverse credibility findings based on numerous ambiguous answers and inconsistencies among the couple's testimonies and their documentation, some of which include: the date of their initial contact; knowledge of the Applicant's parents and their reason for not attending the wedding; the date of the Applicant's divorce and whether he sought another potential wife prior to marrying his spouse; the Applicant and his spouse's intention for marrying one another and their wedding ceremony which was performed in a manner contrary to their community's social norms; the Applicant's work history and the financial support provided to his spouse and her daughters; and the Applicant's spouse's two failed attempts to obtain a Temporary Resident Visa to Canada since April 2010.

III. Legislative Framework

[14] The following provision of the Regulations is applicable in these proceedings:

<p>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</p> <p>(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or</p> <p>(b) is not genuine.</p>	<p>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 :</p> <p>a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;</p> <p>b) n'est pas authentique.</p>
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IV. Issue

[15] The only issue argued was whether the Board erred in law in finding that the marriage was entered into primarily for the purpose of acquiring status or privilege under the IRPA.

V. Standard of Review

[16] The parties agree that an IAD appeal of an immigration officer's spousal sponsorship application refusal attracts a standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*].

VI. Analysis

[17] The Applicant submits that the Board erred in concluding that the wife's intention in marrying the Applicant was unclear. He argues that the panel failed to consider relevant factors, misinterpreted and ignored the evidence before it and made illogical and unintelligible findings that are not based in the evidence and are actually contradicted by the evidentiary record.

[18] The Court notes that the IAD found neither the Applicant nor his spouse to be credible. At the beginning of its analysis, the Board provided numerous examples of inconsistencies among the Applicant's testimony, his spouse's testimony and the documentation. For the most part, the Applicant did not attempt to challenge these reasons.

[19] In addition, the Board described many other inconsistencies and changed testimony as it dealt serially with each of the issues raised before it. The Board concluded that the testimony of both parties was often confusing, and that the Applicant failed to answer questions directly. The transcript supports these conclusions, including the many instances cited in the transcript where the panel member was required to ask the witness to answer the question posed. Such overall negative credibility findings provide a reasonable foundation for the Board's rejection of the spouses' declarations of their motivation to marry.

[20] The Applicant's principal submission was that the Board erred in not finding that the intention of the parties was genuine, given some of the similarities in their situations relating to their age, marital situations and reasonable desire to start over again. This submission overlooks

the many reasons provided by the IAD undermining a reasonable intention that could be ascribed to the Applicant and his spouse for marrying based upon general experience of why and how persons enter into a marriage. The first inconsistency relates to the strikingly unusual genesis of the initial contact, the immediacy of their agreeing to marry, the speed with which the marriage ceremony was carried out some four days afterwards, the breach of local customs of the marriage ceremony, including its size for a second marriage, where it was held outside of the spouse's neighborhood and the minimal family attendance.

[21] With respect to the mutual suitability of the Applicant and the spouse, the Board's rejection of the genuine intention to marry is also reasonable given the lack of time to develop and consider the nature of their relationship, when reasonable judgment before entering into serious long-term relationship would raise serious concerns about the chances of a successful marriage.

[22] The Applicant had a serious criminal record that included violent domestic abuse, assault with a weapon, restraining orders and a failed marriage with him remaining estranged from his ex-spouse and children. As the wife similarly claimed to be the victim of a failed marriage caused by her husband's abandonment, it would seem reasonable that before making a life-long commitment for her and her family, that the Applicant would not immediately be considered a suitable candidate.

[23] The Court also finds reasonable the Board's rejection of the genuineness of the spouse's motivation to marry the Applicant as a means to attain financial settlement and stability for her

and her daughters. The evidence strongly supports the conclusion that the Applicant was not in a position to financially settle the family in Canada. He provided no probative evidence to corroborate his claims to have a suitable financial situation from his employment as a truck driver, such as income tax assessments or letters from employers in the 2010-2011 period.

[24] Moreover, in a letter to the Parole Board in 2013, whereby the Applicant re-applied for a pardon for his extensive criminal convictions, his acknowledgement is noted that in September 2010, just four months prior to the marriage, he was on social assistance and unemployed. It was only at that time that he indicated that the pardon would help him obtain work as a truck driver. This employment was advanced as the basis for his financial situation that the spouse was apparently relying on to provide financial stability.

[25] The Court similarly does not find unreasonable the IAD's conclusion that an important motivating factor in support of the marriage was the desire of the deceased husband's parents (and four siblings) to have the two granddaughters and their mother come live with or near them in Canada.

[26] Part of this reasoning relates to the Board's skepticism that the spouse's relationship with her deceased husband was on bad terms. He left the family in 2004 to travel to Canada where he initiated a refugee claim which apparently remained outstanding until his death in 2010. The spouse first testified that the deceased husband had not provided for her and her children after he moved to Canada. However, she was caught up in another inconsistency and ultimately acknowledged that he sent the family money, but claiming it was not enough. The amounts

provided by the deceased husband were not corroborated, it is assumed because they were not initially admitted. The spouse also was described as weeping while she gave evidence about her deceased husband. In these circumstances, the Board's skepticism is reasonable when there is no objective evidence to suggest that the deceased husband was not continuing to provide for the family and that his intention would be to reunite the family in Canada were he to obtain permanent residency.

[27] The Applicant had also argued that her husband's parents had treated her and her two daughters badly by turning them out of the deceased husband's family home in India. Apart from her unreliable testimony, there is no evidence to contradict the strong presumption that grandparents would have normally been imbued with strong feelings of love and affection for their grandchildren or nieces, and this regardless of how things stood between the parents. Given the death of their son, and accepting that the intention of the marriage was to provide stable financial living conditions for the family, it is not unreasonable that the deceased husband's family members would very much want his daughters to live with or near them in Canada, for all the reasons that he had made a refugee claim. This is all the more so when the Applicant and the spouse can offer no apparent reasonable basis for their hasty marriage or means of alleged financial support.

[28] In light of the above, I find the Board's conclusion reasonable that the Applicant and his spouse were not credible in their statements describing their motivation to marry and that they did not establish as a likelihood that it was not entered into for immigration purposes contrary to section 4 of the Regulations.

VII. Conclusion

[29] The application is dismissed. No question is certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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