

Federal Court



Cour fédérale

Date: 20160818

Docket: IMM-681-16

Citation: 2016 FC 942

Ottawa, Ontario, August 18, 2016

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

PAT HODGE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA], for leave to commence an application for judicial review of the decision of an Immigration Appeal Division [IAD] Panel Member dismissing her appeal of the Decision of a Citizenship and Immigration Canada Officer that rejected the Applicant's application to sponsor her husband for permanent residence as a member of the family class.

II. Background

[2] The Applicant was born in Toronto, Ontario on December 21, 1943. The Applicant has resided in several Canadian cities but currently resides in Belleville, Ontario.

[3] The Applicant met her husband, Ayman Mohamed Gaber Hassan, in an online chat room. He is a citizen of Egypt and 30 years younger than the Applicant.

[4] The Applicant testified that most of the men she met in that chat room were looking to come to Canada. The Applicant and Mr. Hassan carried on a relationship online for about two years. The couple married in May 2010, 13 days after meeting each other in person for the first time.

[5] Following their marriage, the Applicant sponsored her husband's application for permanent residence in Canada in February 2011. The application was refused by a visa officer, by decision dated June 14, 2012. That decision was appealed to the IAD.

[6] The IAD Panel Member decided that the couple's marriage was not genuine. The IAD Panel Member held that the couple were culturally, economically, generationally, and financially incompatible. The IAD Panel Member found that the evidence regarding the development of their relationship, the hastiness of their marriage, the lack of family present or celebration on the occasion of their wedding, disparate intentions for the future, lack of mutual plans as a couple, and numerous instances of inconsistent and contradictory evidence led to the conclusion that the

marriage was not genuine. Rather, it had been entered into primarily for immigration purposes, at least insofar as the husband is concerned.

[7] The Applicant argues that the IAD Panel Member made factual errors and ignored evidence in reaching her conclusion.

III. Issue

[8] Is the IAD's decision reasonable?

IV. Standard of Review

[9] The standard of review is reasonableness.

V. Analysis

[10] The impugned decision is factually driven and deference is to be given to the IAD Panel Member's findings of fact, unless it is unreasonable to do so based on the record before the Court.

[11] The Applicant argues that the IAD Panel Member either ignored or misapprehended the evidence on a number of fronts, rendering the decision unreasonable:

- i. The IAD Panel Member erred in ignoring evidence regarding the husband's mother's hospitalization and medical issues, resulting in her inability to attend the wedding.

- ii. The IAD Panel Member failed to consider that the husband's mother's illness was the reason for why the husband's siblings did not attend the wedding.
- iii. The IAD Panel Member failed to consider evidence concerning the Applicant and her husband's arrangements regarding their financial issues.
- iv. The IAD Panel Member erred in stating that the Applicant did not like the way of life in Egypt and never had an intention to live there.
- v. The IAD Panel Member ignored documents from the husband's family members.
- vi. The IAD Panel Member was inconsistent. She found that the Applicant's intention to marry was not genuine. However, she impugned the Applicant's credibility on the basis that the marriage had been "hasty" and not celebrated, that the couple had not discussed where they would live until after the marriage, and that they knew little of each other's past histories.
- vii. Finally, the IAD Panel Member unreasonably held that the evidence of ongoing communications between the Applicant and her husband might be evidence of a desire to build a case for immigration purposes, rather than evidence of a genuine marriage.

[12] Notwithstanding the Applicant's arguments above, the findings of the IAD Panel Member canvassed the concerns in detail, resulting in the decision that the marriage was not genuine:

- i. The IAD Panel Member did not believe that the husband could have devoted as much time as he claimed to have spent talking to the Applicant in a chat room, while also being employed as a supervising engineer;

- ii. The IAD Panel Member concluded that the husband had not been forthright with immigration authorities. The couple's testimony regarding the husband's attempt to obtain a visitor visa to Canada was contradictory. The Applicant testified that she invited her husband to visit Canada to see how they would get along, whereas her husband testified that he wished to travel to Canada to visit her while she was in the hospital due to illness. Both accounts contradict the evidence in the husband's visa application, in which he indicated that he wished to visit a friend he had met on the internet, that he was engaged to another person, and that had no plans to marry in Canada;
- iii. The IAD Panel Member concluded that the couple seemed incompatible for the following reasons:
 - a. The Applicant is 30 years older than her husband;
 - b. The Applicant has not finished high school, was unemployed and receiving disability payments. In contrast, her husband was employed as a mechanical engineer at the time of the marriage;
 - c. The Applicant is divorced, has five children who are older than her husband, and is herself older than his mother. The husband has never been married and has no children;
 - d. The couple live on two different continents and do not easily speak each other's languages;
- iv. Given the great differences between the couple, the IAD Panel Member found it difficult to understand why their marriage occurred so quickly after their first in person meeting (i.e., 13 days after their first in person meeting);

- v. The IAD Panel Member noted that no members of either family attended the couple's wedding in Egypt:
- a. The IAD Panel Member noted contradictions and inconsistencies in the husband's evidence regarding why his family did not attend the wedding. The husband testified that none of his family attended because his mother was in a coma and his family attending was to her in the hospital. However, in a previous interview with a visa officer, he stated only that his mother was unavailable because she was having medical tests;
 - b. The IAD Panel Member noted that it was not credible that, if the husband's mother was in fact in the hospital, the couple would not have visited her at least once in the eight weeks the Applicant was in Egypt;
 - c. The IAD Panel Member noted it was unusual that there was no wedding reception, and that neither family nor friends attended the ceremony;

While the Applicant is correct that the IAD Panel Member erred in stating that there was no documentary evidence in support of the mother's hospitalization, it was but one factor to be considered and does not undermine the overall finding of lack of credibility.

- vi. The IAD Panel Member held that the couple's evidence regarding why they cut their honeymoon short was inconsistent and not credible. The Applicant explained that the couple cut their honeymoon short because her husband was scheduled to begin work in Saudi Arabia. However, the husband testified that the Applicant returned to Canada early to renew her medication, and his evidence showed that he was not to start work in Saudi Arabia until a later date;

- vii. The IAD Panel Member concluded that the couple had neither blended nor made mutual plans regarding their finances. There was no evidence of a joint account and the Applicant lacked knowledge of her husband's income and savings. The couple's evidence regarding how much money the husband provides the Applicant was also found to be inconsistent;
- viii. The IAD Panel Member found that, while the couple has a fair knowledge of each other's families, their testimony regarding the Applicant's relationship with her ex-husband was contradictory;
- ix. The couple's evidence regarding their plans for the future is inconsistent. The Applicant testified that she expects her husband to re-qualify and find work as an engineer when he arrives in Canada. However, the husband testified that he intends to start a business, such as a restaurant, with his wife in Canada;
- x. The IAD Panel Member made a negative inference regarding the nature of the marriage due to the Applicant's failure to visit her husband in Saudi Arabia or in another location. The evidence of electronic communication between the couple is not particularly probative, as it could have been evidence of a desire to build a strong case for immigration purposes;

While I agree with the Applicant that this speculation by the IAD Panel Member should be given little if any weight, when considered with the totality of the other evidence, is not determinative and does not render the decision contextually unreasonable;
- xi. The IAD Panel Member drew a negative credibility finding from the husband's testimony that he did not intend to have any children "now", because it is clear from the Applicant's age that this marriage would never produce children;

[13] I find that the IAD Panel Member's decision that the marriage was not genuine and that it was entered into primarily for immigration purposes is reasonable, justified, transparent and intelligible, and based on a complete review of the evidence on the record. The Applicant has essentially asked the Court to reweigh the evidence before the IAD, which is not the role of the Court. This application should be dismissed.

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-681-16

STYLE OF CAUSE: PAT HODGE V MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 11, 2016

JUDGMENT AND REASONS: MANSON J.

DATED: AUGUST 18, 2016

APPEARANCES:

Dov Maierovitz

FOR THE APPLICANT

Judy Michealy

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dov Maierovitz
Barrister & Solicitor
North York, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT