

Federal Court



Cour fédérale

**Date: 20160824**

**Docket: IMM-706-16**

**Citation: 2016 FC 957**

**Ottawa, Ontario, August 24, 2016**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**BHAGIRATH LAMICHHANE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant challenges a decision of the Immigration Appeal Division [IAD] dismissing his appeal of the decision of a visa officer who refused to grant permanent resident status to the applicant's spouse.

[2] The issue before the officer and the IAD was whether the applicant had met his burden of establishing that the marriage was genuine and had not been entered into for the purposes of his

wife's immigration to Canada. These requirements are set out in subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[3] For the reasons that follow, this application is dismissed. The decision of the IAD was reasonable and cannot be upset.

[4] The relationship of the applicant and his wife developed suddenly and over a long distance. They have been together for only a few days just prior to and immediately after their marriage, and are still living apart. Although there is a child they claim is theirs and who was apparently conceived on their second meeting, the unique circumstances of their relationship and the failure of the wife to testify raised legitimate concerns for the IAD.

[5] The applicant and his wife are both citizens of Nepal. He has status in Canada as a refugee and she was (and may still be) residing in Australia on a student visa. He is 35 and she is 29.

[6] They were introduced on February 15, 2013, over the phone by the wife's cousin who is also a friend of the applicant. This cousin and friend was living in Japan at the time. After three months of phone contact, they first met at the Kathmandu airport on May 3, 2013. They met each other's parents and the applicant proposed to his wife 12 days later on May 15, 2013. Originally the applicant's parents opposed a marriage because she was already married. The applicant testified that his parents later consented when they saw what a good fit they were.

[7] The applicant's fiancée returned to Australia and divorced her husband in August 2013.

[8] The applicant and his fiancée were reunited on October 31, 2013 in India. They then travelled to Nepal and were married on November 8, 2013. They cohabitated for one week before he returned to Canada and she to Australia.

[9] The IAD noted that the applicant had lied on a 2007 application for a work permit in stating that he was married with a child. On his refugee claim he stated that he was single. Before the IAD he testified that he had been advised by the agent who assisted with the work permit to list himself as married with a child as that would assist in obtaining a positive result. The IAD accepted this explanation although it also "did not escape the Panel that a further inconsistency was raised by his explanation as [his] narrative refers to 'friends' having advised him to misrepresent his situation, and not an agent."

[10] Although the IAD accepted the applicant's explanation for the discrepancy in his marital status, and that he had explained why his wife knew nothing of his previous marriage, it stated that his previous untruthful statements went to credibility. "As a result, his evidence in establishing the genuineness of the marriage, and the primary purpose, needs to be strong and reliable."

[11] Although the IAD appears to have accepted that from the applicant's viewpoint the marriage was genuine and not entered into for immigration purposes, he could not testify as to his wife's perceptions and motivations. As the IAD noted at paragraphs 25, 31, and 35:

As the [wife] did not testify, there was no opportunity to explore how her long distance relationship with the appellant led to a decision to meet him followed by a quick engagement and departure back to Australia. There is no evidence before the Panel of phone, online chats, letters or photographs of the relationship from February to May 2013, that speak to genuineness and intentions. There was similarly no opportunity to ensure that the [wife] had the same recollection of events leading up to the marriage, and the same timeframe.

...

Of concern to the Panel was the dearth of evidence provided by the appellant on the specific qualities of the [wife] that made her a good match. As the [wife] was not called as a witness, there was no evidence before the Panel as to why [she], residing in Australia, would be interested in meeting and marrying a man living in Canada.

...

What is critical in establishing the appeal is convincing testimony that illustrates a depth of knowledge and connection reasonably expected in a genuine relationship; and that evidence was lacking from the appellant. [emphasis added]

[12] These are and were valid concerns and the meagre references in the record to conversations the applicant had with his wife do not overcome the lack of direct testimony and the ability of the IAD to cross-examine her.

[13] As to the child, the IAD notes that the medical note provided puts conception prior to the October 31, 2013 meeting in India on October 29, 2013. “But this is also not conclusive.” The applicant stated that they may have conceived the child on that stop over but that “the conception of the child was not planned.” No DNA testing was done or provided to the IAD to confirm paternity.

[14] The IAD appears to accept that the child is a child of the marriage. It refers to this Court's decision in *Gill v Canada (Minister of Citizenship and Immigration)*, 2010 FC 122 as to the relevance of a child of a marriage, but also correctly observes that "a child born of a marriage is not determinative of the genuineness of the marriage, where the lack of credible evidence is so striking that the credibility issues overshadow the evidence concerning the child" citing *Mansro v Canada (Minister of Citizenship and Immigration)* (18 July 2007), IAD VA6-00931, 2007 CarswellNat 4765 at para 14 (Immigration & Refugee Board (Appeal Division)) and *Baljit Kaur Dhaliwal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1182 at para 9.

[15] Notwithstanding the able submissions of counsel, I am not persuaded that the decision of the IAD is unreasonable. It was proper for it to be concerned with the lack of evidence from the wife, which was especially necessary in these unique circumstances and where the husband had previously lied to the immigration authorities.

[16] Neither party proposed a question to be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-706-16

**STYLE OF CAUSE:** BHAGIRATH LAMICHHANE v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 10, 2016

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** AUGUST 24, 2016

**APPEARANCES:**

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