Federal Court  Cour fédérale

Date: 20161006

Docket: IMM-1548-16

Citation: 2016 FC 1124

Vancouver, British Columbia, October 6, 2016

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

BALJIT KAUR DHUDWAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Baljit Kaur Dhudwal, a Canadian permanent resident, married Jagdeep Singh Dhillon, an Indian national, in India. She then attempted to sponsor him as a spouse. Relying on section 4 of the Immigration Regulations, a visa officer dismissed her application, being of the view that the marriage was entered into primarily for the purpose of acquiring status or privilege under the *Immigration and Refugee Protection Act* (IRPA) and was not genuine.

[2] She appealed to the Immigration Appeal Division (IAD) of the Immigration and Refugee Protection Board. The member dismissed her appeal on the basis that her marriage was entered into primarily for the purpose of acquiring status or privilege under IRPA. The two issues are disjunctive, and so she did not consider it necessary to determine if the marriage was genuine. This is the judicial review of that decision.

[3] Immediately following the hearing yesterday, I said I would grant the judicial review and refer the matter back to another member of the IAD for re-determination. These are my reasons.

[4] This was a family affair, an arranged marriage. In an effort to understand the decision under review, I identified the more prominent *dramatis personae*.

[5] The applicant, Ms. Dhudwal, married her first husband, Vahadar Singh Dhudwal in February 2007 in India. He was a permanent resident of Canada, while she was residing in India. He sponsored her as a member of the family class. She became a Canadian permanent resident in June 2008. Shortly thereafter, she and her husband separated.

[6] It is not exactly clear how long they were in Canada before they separated.

[7] Mr. Dhudwal wrote a poison pen letter to the authorities alleging that the marriage was not genuine and that she only married him to gain an immigration advantage. There was an investigation. She says they separated because he was a drunken drug addict. It was decided by the authorities that there was not enough evidence to pursue her.

[8] The applicant and Mr. Dhudwal were divorced by order of the Supreme Court of British Columbia in December 2010.

[9] Baljinder Dhillon, another Canadian permanent resident, is now married to Mr. Dhudwal's sister. There is some triple hearsay to the effect that the applicant and Mr. Baljinder Dhillon may once have been engaged. The applicant denies this.

[10] Hardeep Kaur is the applicant's maternal aunt, and played matchmaker in the current marriage.

I. The Decision

[11] In her reasons, the member of the IAD determined the following:

(a) Husband and wife are not compatible in marital background because she is a divorcee while he was a bachelor. When taken into account with other issues and concerns, this incompatibility took on more significance;

(b) The first marriage was one of convenience notwithstanding the fact that the authorities had found there was insufficient evidence to come to that conclusion;

(c) Balwinder Dhillon was a better match;

(d) There was no satisfactory explanation as to why Ms. Dhudwal and her current husband, Mr. Jagdeep Singh Dhillon, were not considered as a suitable or potential match at the time of the Ms. Dhudwal first marriage in 2007. Husband and wife did not provide sufficient credible evidence to demonstrate why the marriage was carried out in some haste and why they and their families would agree to the marriage when they did, if not primarily for immigration purposes.

II. Standard of Review

[12] It is common ground that the standard of review is reasonableness. What is reasonable? The Supreme Court had once set out three standards of review: correctness, reasonableness, and patent unreasonableness. In *Canada (Director of Investigation and Research) v Southam Inc.*, [1997] 1 SCR 748, the decision which established the reasonableness standard, it was held that an unreasonable decision is one that, in the main, is not supported by reasons that can stand up to a somewhat probing examination.

[13] In *Dunsmuir v New Brunswick*, [2008] 1 SCR. 190, 2008 SCC 9, the Supreme Court abolished the patent unreasonable standard of review. The Court stated at paras 46 and 47:

> [46] What does this revised reasonableness standard mean? Reasonableness is one of the most widely used and yet most complex legal concepts. In any area of the law we turn our attention to, we find ourselves dealing with the reasonable, reasonableness or rationality. But what is a reasonable decision? How are reviewing courts to identify an unreasonable decision in the context of administrative law and, especially, of judicial review?
>
> [47] Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[14] Section 18.1 of the *Federal Courts Act* should not be forgotten. One of the grounds for judicial review is that the decision was based on an erroneous finding of fact that was made in a perverse or capricious manner or without regard for the material before it. Such a decision would be unreasonable.

III. Analysis

[15] There is nothing in the record to suggest that the couple was incompatible because she was a divorcee and he was a bachelor.

[16] The finding that Ms. Dhudwal first marriage was a marriage of convenience was highly speculative, given that the authorities investigated and did not pursue the matter.

[17] The member played matchmaker twice over. She considered that Baljinder Singh Dhillon should have been considered a suitable match. Yet the fact remains that he married Ms. Dhudwal's sister.

[18] The member also thought that Ms. Dhudwal and her current husband should have been considered a suitable or potential match at the time of her first marriage in 2007. Yet the evidence is that the matchmaking process only began in January 2013. It was the applicant's maternal aunt, Hardeep Kaur, who was looking for a suitable match together with the applicant's parents.

[19] Are we to infer that if they had been matched up in 2007, when both were in India, they would not be in Canada now? Are we to infer that she should have married Baljinder Singh Dhillon, who was already in Canada, so that she would be unable to sponsor another Indian national?

[20] This decision is rife with innuendo and speculation. There is nothing in the record to infer that these conclusions are justified. If anything, the record shows that the marriage was genuine. While the marriage must be both genuine and not primarily entered into to gain an immigration advantage, a finding that the marriage was genuine would have been of considerable assistance in the analysis of the primary purpose of the marriage. After all, husbands and wives should live together. A finding that the marriage is genuine lends considerable weight to the proposition that the marriage was not entered into primarily for the purpose of gaining status in Canada. *Sharma v Canada (Citizenship and Immigration)*, 2009 FC 1131.

[21] During the hearing I said I would be referring to *Canada (Minister of Employment and Immigration) v Satiacum*, 99 NR 171, 1989 FCJ 505 (QL). In that case, Mr. Justice MacGuigan stated:

> [34] The common law has long recognized the difference between reasonable inference and pure conjecture. Lord Macmillan put the distinction this way in *Jones v Great Western Railway Co.* (1930), 47 TLR. 39, at 45, 144 LT 194, at 202 (HL):
>
> > "The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof.

> The attribution of an occurrence to a cause is, I take it, always a matter of inference."
>
> [35] In *R. v Fuller* (1971), 1 NR 112, at 114, Hall, J.A., held for the Manitoba Court of Appeal that "[t]he tribunal of fact cannot resort to speculative and conjectural conclusions". Subsequently a unanimous Supreme Court of Canada expressed itself as in complete agreement with his reasons: [1975] 2 SCR 121 at 123; 1 NR 110, at 112.

[22] Consequently, in light of the above reasons, the application for judicial review will be granted.

JUDGMENT

THE JUDGMENT OF THIS COURT IS THAT:

a. The application for judicial review is granted.

b. The decision of Immigration Appeal Decision is set aside.

c. The matter is referred to another member of the Immigration Appeal Division for re-determination.

d. No serious question of general importance is certified.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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