

Federal Court



Cour fédérale

Date: 20170224

Docket: IMM-3554-16

Citation: 2017 FC 232

Toronto, Ontario, February 24, 2017

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

PARMJEET KAUR DHINDSA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Parmjeet Kaur Dhindsa seeks judicial review of the decision of the Immigration Appeal Division of the Immigration and Refugee Board dismissing her appeal of the refusal of her husband's application for permanent residence. Ms. Dhindsa had sponsored her husband, Tanjeet Singh Sangha, under the Family Class category. The IAD concluded that Ms. Dhindsa's marriage was not genuine, and had been entered into primarily for immigration purposes.

[2] The IAD's decision was primarily based on its assessment of the credibility of Ms. Dhindsa and Mr. Sangha as it related to the circumstances surrounding their arranged marriage in India. As will be explained below, I have not been persuaded that the IAD's decision was unreasonable. Consequently, Ms. Dhindsa's application for judicial review will be dismissed.

I. Background

[3] Ms. Dhindsa is a naturalized Canadian citizen who was 32 years old at the time of her marriage to Mr. Sangha on January 22, 2012. Mr. Sangha was 28 years old and living with his parents in the Punjab region of India when he married Ms. Dhindsa. It was a first marriage for both parties.

[4] Mr. Sangha and Ms. Dhindsa state that the marriage was arranged with the assistance of Ms. Dhindsa's cousin, Gurpreet. Gurpreet is a Bhangra dancer and coach, and according to Mr. Sangha, he had met Gurpreet at dance performances at Lovely University, a school that was close to Mr. Sangha's village. Mr. Sangha testified that he had known Gurpreet for approximately a year and a half when Gurpreet told him that he had an unmarried cousin who he thought would make a suitable wife for Mr. Sangha.

[5] After Ms. Dhindsa's father met with Mr. Sangha's family, Ms. Dhindsa came to India, and, along with her mother and sister, she met Mr. Sangha for the first time on January 15, 2012. That same day, the couple became engaged and had their Shagan ceremony at Mr. Sangha's home. The wedding took place a week later.

[6] Ms. Dhindsa returned to Canada after the couple's honeymoon. At the time of her IAD hearing, she had visited Mr. Sangha in India on two occasions – once in 2014, and again in 2015.

II. The IAD's Decision

[7] The IAD had a number of concerns with respect to the genuineness of Ms. Dhindsa and Mr. Sangha's marriage. Noting that compatibility is a major consideration in arranged marriages, where there is no pre-existing relationship between the spouses, the IAD accepted that the couple was compatible in terms of their ethnicity, backgrounds, religion and culture. The IAD noted that Ms. Dhindsa was three years older than Mr. Sangha, but it did not appear to find that to be a matter of concern.

[8] What did concern the IAD was the difference in the educational level of Mr. Sangha and Ms. Dhindsa, Ms. Dhindsa is highly educated, holding two Master's degrees, while Mr. Sangha is a farmer whose education ceased after Grade 12. According to the IAD, the level of post-secondary education denotes not just income potential, but is also "a recognition of accomplishment, social standing and higher learning". The IAD further observed that the difference in education "would surely affect the subjects and level of communication, and shared interests between the partners", and that "it was hard to imagine how this would not be seen as a compatibility issue".

[9] The IAD was also not satisfied with the explanation provided for why Ms. Dhindsa's family believed that Mr. Sangha would be a good match for her. In the IAD's view, the explanation that Mr. Sangha was a suitable match because he did not abuse drugs and alcohol and came from a "normal family" was "broad and superficial".

[10] While noting that there was evidence of Ms. Dhindsa's regular communications with Mr. Sangha, her visits to see him in India, and her provision of financial support to Mr. Sangha and his family, the IAD had other concerns with the genuineness of the marriage. These included inconsistencies in the evidence regarding Ms. Dhindsa's cousin, Gurpreet, and the fact that Ms. Dhindsa's sister had not had arranged marriages.

[11] The IAD was also concerned about that Mr. Sangha had a "very superficial" knowledge of Ms. Dhindsa's life, and was unable to provide details regarding her work, salary and vacations when he was interviewed by a visa officer. While accepting that he was much better prepared to answer these sorts of questions at the IAD hearing, as far as the IAD was concerned, it did not make sense that he was not able to do so at the time of his interview.

[12] Finally, the IAD had regard to Mr. Sangha's immigration history, noting that he had two failed attempts to come to Canada prior to his marriage to Ms. Dhindsa. The IAD found this to be evidence of a pre-existing desire on the part of Mr. Sangha and his family to have him come to Canada. The IAD also noted Mr. Sangha's admission that he had lied about his travel history in the application that he made for a temporary residence visa. The IAD concluded that Mr. Sangha had deliberately misrepresented a material fact relating to a relevant matter that could have induced an error in the administration of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, contrary to paragraph 40(1)(a) of the Act, and that he was still not being forthright in his evidence before the IAD.

III. Standard of Review

[13] The overall issue in this case is whether the IAD erred in its determination that Mr. Sangha and Ms. Dhindsa's marriage was not genuine, and that it had been entered into

primarily for immigration purposes. I agree with the parties that the credibility findings of the IAD are reviewable on the standard of reasonableness, as the determination as to whether or not a marriage is genuine is a largely fact-based inquiry to which deference should apply: *Rosa v. Canada (Citizenship and Immigration)*, 2007 FCC 117, at para. 23, [2007] F.C.J. No. 152.

[14] Ms. Dhindsa submits, however, that in finding that Mr. Sangha had misrepresented his travel history, the IAD exceeded its jurisdiction or fettered its discretion. As I understand Ms. Dhindsa's argument, it is that it was not open to the IAD to make a finding of misrepresentation in the absence of a report having been prepared under section 44 of the *Immigration and Refugee Protection Act*. As a consequence, the correctness standard should apply to this aspect of the decision. I do not agree: the issue of Mr. Sangha's immigration history was clearly relevant to his motivation in entering into his marriage with Ms. Dhindsa. What the IAD did was to make findings of fact in relation to this issue. These factual findings are also reviewable on the reasonableness standard.

IV. Analysis

[15] I agree with Ms. Dhindsa that there appears to have been some confusion on the part of the IAD regarding Gurpreet, Mr. Sangha, and the issue of Bhangra dance. This was, however, a minor matter, and the IAD's finding that there was some inconsistency in the evidence on this point related to a peripheral matter and does not warrant the Court's intervention.

[16] The same may be said with respect to the confusion as to Gurpreet's surname. While he was referred to variously by Ms. Dhindsa and Mr. Sangha as Gurpreet Singh and Gurpreet Dhindsa, any error that may have been made by the IAD in this regard was inconsequential.

[17] What the IAD did find to be significant was the fact that no independent evidence had been provided to establish the existence of Gurpreet, his dance troupe or Lovely University. Ms. Dhindsa submits that it was open to the IAD to call Gurpreet as a witness, if it had any concern in this regard. That is not the role of the IAD, however. The onus is on an applicant to present her case and to adduce whatever evidence she wishes to have considered: *V.S. v. Canada (Citizenship and Immigration)*, 2017 FC 109, at para. 25, [2017] F.C.J. No. 86.

[18] The issue of the perceived incompatibility of Ms. Dhindsa and Mr. Sangha, based upon their very different levels of education, was central to the issue to be determined by the IAD. The Board reviewed the explanations that had been given with respect to this disparity, and it provided lucid reasons for finding that the significant difference in the couple's level of education raised serious questions as to the genuineness of the marriage. Ms. Dhindsa has not pointed to any error on the part of the IAD in this regard, but instead asks to have me re-weigh the evidence that was before the IAD on this issue and come to a different conclusion.

[19] I am also not persuaded that the IAD erred in noting the inconsistency in the evidence regarding Ms. Dhindsa's family's adherence to the practice of arranged marriages. Ms. Dhindsa testified that in her culture, parents always pick marital partners for their children. This was inconsistent with the evidence of Ms. Dhindsa's own sister, however, who testified that she had chosen her first husband herself, and, after that marriage ended in divorce, she chose her second husband as well.

[20] The IAD also found that the reasons provided for Ms. Dhindsa's family's conclusion that Mr. Sangha would be a good match for her were "broad", "superficial" and "minimal". This was a finding that was reasonably open to the IAD on the record before it.

[21] Insofar as Mr. Sangha's immigration history is concerned, Mr. Sangha had been adopted by an uncle when he was 11 years old, whereupon his uncle sponsored him for permanent residence in Canada. After interviewing Mr. Sangha, his father and the uncle, a visa officer concluded that Mr. Sangha was not living with his uncle, as had been alleged, and refused the sponsorship.

[22] Mr. Sangha was an adult when he applied for a temporary resident visa to allow him to attend his grandfather's funeral in Canada. This application was also refused, this time because the visa officer was not persuaded that Mr. Sangha would leave Canada at the end of the authorized period. The visa officer came to this conclusion based upon Mr. Sangha's weak travel history, his lack of funds, his status as a single man, his lack of dependents in India and other factors.

[23] While Mr. Sangha was just a child at the time of the putative adoption and failed sponsorship, it is nonetheless evidence of a familial desire to have Mr. Sangha immigrate to Canada. Mr. Sangha was an adult at the time he applied for a temporary resident visa, and it was not unreasonable for the IAD to have regard to both failed attempts to come to Canada in assessing whether Mr. Sangha's marriage to Ms. Dhindsa was genuine, or had been entered into for immigration purposes.

V. Conclusion

[24] I acknowledge that there was evidence before the IAD that could have led to a conclusion that Ms. Dhindsa and Mr. Sangha's marriage was genuine. My role is not, however, to decide for myself whether or not the marriage was genuine, or whether it had been entered into for immigration purposes: my role is to determine whether the IAD's finding as to the genuineness

of, and the motivation for the marriage was reasonable. In light of the findings discussed above, I am satisfied that the IAD's decision was indeed reasonable. Consequently, the application for judicial review is dismissed.

[25] I agree with the parties that this case is fact-specific, and does not raise a question that is suitable for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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