

Federal Court



Cour fédérale

**Date: 20170824**

**Docket: IMM-592-17**

**Citation: 2017 FC 781**

**Ottawa, Ontario, August 24, 2017**

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

**BETWEEN:**

**MANMINDER SINGH MATTU**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] The Applicant is a citizen of India who seeks judicial review of a decision of the Immigration Appeal Division (“IAD”), of the Immigration and Refugee Board, wherein the Member granted the Respondent’s appeal of a decision of the Immigration Division that was favourable to the Applicant. The IAD found the Applicant inadmissible to Canada for

misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA") and ordered his removal from Canada.

## II. Background

[2] The Applicant is a citizen of India. He married Gurbax Kaur Mattu on November 17, 2005, and they separated on January 2, 2008.

[3] Mr. Mattu was sponsored as a permanent resident as a member of the family class by Gurbax following his marriage. On his application form, Mr. Mattu failed to indicate that he had been previously married to Sarabjit Kaur Sandhu in 1998 in India, for the purposes of facilitating his immigration to Canada. Mr. Mattu believed that he did not have an obligation to disclose the previous sham marriage because the marriage allegedly was never validly carried out, either factually or by Sikh custom and the marriage was subsequently annulled.

[4] Mr. Mattu was landed in Canada and, after only two months of living with his wife Gurbax, he sought a divorce. Gurbax then advised Citizenship and Immigration Canada that Mr. Mattu had deceived her and only used her to gain status in Canada.

[5] The Canada Border Services Agency then conducted an investigation into Mr. Mattu's status and a Report under section 44(1) of the IRPA was written against Mr. Mattu as a result of that investigation. Mr. Mattu was found to have misrepresented a material fact on his application form, namely, that he had previously been in a sham marriage for immigration purposes.

[6] The Immigration Division found that there wasn't a valid marriage and therefore Mr. Mattu did not have an obligation to disclose the sham marriage and as such there was no misrepresentation.

[7] On appeal, the IAD found that Mr. Mattu had an obligation to disclose the sham marriage on his spousal application, his failure to do so closed off a line of questioning by the immigration officer, and in fact the sham or fake marriage was a valid marriage.

[8] The alleged fake ceremony took place at a Sikh temple a distance from the couple's village and was presided over by a person who appeared to be a Sikh priest. Since the wedding was supposed to be a sham, the couple allegedly did not participate in any proper ritual or ceremony before the wedding ceremony.

[9] Since the ceremony was a sham, the priest allegedly did not read all four lavans, nor did the couple circle the Sikh holy book four times, both of which are requirements for a valid Sikh marriage. The Sikh priest who performed the ceremony was apparently aware it was fake.

[10] On returning to their village, the Applicant's grandfather was upset to learn of the ceremony, because the village custom considers people from the same village to be siblings and thus prohibits marriage between them. Although the wedding was a sham, in order to allegedly appease the villagers and announce and formalize that they were not actually married, the Applicant and Sarabjit signed an annulment agreement, which was notarized the day after the ceremony, on April 8, 1998.

### III. Issues

[11] The issues are:

- A. Did the IAD err in ignoring expert evidence and finding that the 1998 wedding ceremony resulted in a legally valid marriage?
- B. Did the IAD err in finding that Mr. Mattu lacked credibility and was under a duty of candour to disclose the prior sham marriage in his spousal application?
- C. Did the IAD err in finding that there were insufficient humanitarian and compassionate grounds to warrant the granting of special relief?

### IV. Standard of Review

[12] The standard of review for the IAD's findings of fact and mixed law and fact is reasonableness.

### V. Analysis

[13] The issues before the Court are centered on the decision of the IAD finding that the 1998 "sham" marriage was in fact valid, and in doing so, the IAD ignored or misapprehended the expert evidence of a lawyer, Sumeet Lall, and unreasonably dismissed the evidence of both the Applicant and the witness P.S., the only attendee at the ceremony other than the Applicant, who also testified at the hearing.

[14] The Applicant argues that there are two reasons why the first sham marriage was never valid: 1) the ceremony was never completed according to Sikh law; 2) the Applicant and Ms. Sandhu were members of the same village, and village custom was such that the Applicant and Ms. Sandhu were to be treated as brother and sister and therefore the marriage was *void ab initio* or null and void.

[15] While reference is made to a DVD recording of the marriage, the parties agreed at the hearing that it should be given no weight, as the IAD member reasonably found that the DVD had been edited and could not be relied upon as credible evidence.

[16] Moreover, while brief representations were made concerning humanitarian and compassionate (“H&C”) considerations, it was also acknowledged by the Applicant’s counsel that the key, central issue for the Court rests on a determination of whether the first sham marriage was valid or not. Respondent’s counsel agreed. In any event, I agree with the Respondent that the IAD’s decision relating to the H&C considerations is reasonable.

[17] The Respondent’s position is that given that the factual basis for arguing that the sham marriage was invalid, was the DVD evidence, as relied upon by the Applicant, and that it is completely unreliable, the only other viable basis to find the sham marriage invalid is based on village custom.

[18] Yet the Applicant's expert, Mr. Lall, admitted that he didn't verify the custom of the Applicant's village, was not an expert in marriage and was not even practising law at the relevant time. It was acknowledged that village custom varies from village to village.

[19] In contrast, the Respondent points out that:

- i. The case is about misrepresentations – the Applicant paid over forty people to attend a fake marriage for purposes of immigration to Canada;
- ii. The priest's evidence supports the view that priests typically would not perform fake or sham marriages;
- iii. The fact that there was an annulment is evidence that a valid marriage preceded it, or there would be no reason for a divorce being necessary;
- iv. The witness P.S.'s testimony was reasonably given little weight since it was given 18 years after the sham marriage occurred;
- v. There was an inconsistency between P.S.'s testimony and the Applicant's testimony on how many times in the ceremony the Applicant circled the Sikh holy book (2 ½ versus 3 times);
- vi. The evidence of the Applicant and his first alleged wife was at times vague, unresponsive, and contained unresolved inconsistencies that diminished the credibility and reliability of their testimonies, by example:
  - a. Whether Gurbax was told of Mr. Mattu's previous marriage to Sarabjit at their first meeting;
  - b. Whether Gurbax told Mr. Mattu her correct age at their first meeting;
  - c. The reasons that prompted Mr. Mattu to leave the matrimonial home after two months;
  - d. Whether Gurbax pressured Mr. Mattu to sell his land in India, and if he even had any land at all in India;
  - e. If Gurbax had made any suicidal threats;
  - f. Mr. Mattu's reconciliation attempts with Gurbax;
  - g. If Gurbax restricted Mr. Mattu's movement and ability to visit his relatives in Canada;
  - h. If Gurbax refused to allow Mr. Mattu to work in Canada.

[20] Accordingly, the Respondent argues that the evidence before the IAD justifies the IAD's finding that the 1998 marriage ceremony resulted in a legally valid marriage and therefore the Applicant was obliged to disclose his previous marriage in his application for permanent residence. In failing to do so, he made a material misrepresentation.

[21] Notwithstanding the persuasive arguments of the Respondent, there are several key facts that contradict a reasonable finding that the first sham marriage was valid:

- a) The fact witness P.S., who was the only witness who testified and also was at the first wedding ceremony, confirmed that it was a sham wedding, that the guests were paid to be there and that an unidentified man performed the palla ritual, which is traditionally performed by the bride's father. The fact that he and the Applicant were inconsistent on whether the Sikh holy book was circle 2 1/2 or 3 times nevertheless results in an invalid performance. Simply because 18 years had passed is no reason, in-of-itself, to question the credibility of the witness;
- b) More importantly, while the Respondent challenges the evidence of Mr. Lall, Mr. Lall gave legal background and experience on foreign law and the legal status of both the sham wedding ceremony and subsequent Divorce Agreement. The Member appears to have completely ignored or disregarded his evidence, without reasons or apparent justification to do so.

[22] Foreign law is a question of fact to be established by expert evidence (*Xiao v Canada (Minister of Citizenship and Immigration)*, 2009 FC 195 at paras 24, 25, 28 and 29). While the Member may have questioned Mr. Lall's expertise, he failed to give any valid reasons for concerns relating to his expertise.

[23] As well, Mr. Lall stated that under Indian Law, if the custom in their village provides that the Applicant and Ms. Sandhu are to be treated as brother and sister, this "overrides any law and renders the marriage "null and void"". There is no mention of this evidence in the Member's decision. Moreover, confirmation of this being an issue in the Applicant's village is specifically set out in the Divorce Agreement which, in an excerpt, states:

...Where as marriage in between both the parties was solemnized today and when the parties reached the village, the entire brotherhood of the Village Khurshaidpur, Tehsil Nakodar, Distt Jalandhar took it very seriously and entire villagers were of the view that boy and girl of the same village cannot marry each other as the boy and girl of the same village are to be treated as brother and sister. That's why brotherhood of the village did not recognize this marriage.

[24] Based on this document alone, it appears unreasonable to find that either the custom of the Applicant's village did not preclude a valid marriage between the Applicant and Ms. Sandhu, or that the annulment should result in a presumption of a valid marriage in this case.

[25] While significant deference is owed to the IAD's credibility findings, especially where the Panel had the opportunity to hear and observe the Applicant's testimony, in this case the Member's failure to give reasons for the credibility finding in clear and unmistakable terms also amount to a reviewable error.

[26] The Federal Court of Appeal in *Hilo v Canada (Minister of Employment & Immigration)*, [1991] FCJ No 228, held that a tribunal has a duty to provide reasons for credibility findings. In that case, the Court found the tribunal's credibility assessment lacking because it failed to give concrete reasons for finding the appellant's testimony to be not credible:

In my view, **the Board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable terms. The Board's credibility assessment quoted supra is defective because it is couched in vague and general terms.** The Board concluded that the appellant's evidence lacked detail and was sometimes inconsistent. **Surely particulars of the lack of detail and of the inconsistencies should have been provided.** Likewise particulars of his inability to answer questions should have been made available.

[Emphasis added]

[27] I find that the Member's decision was unreasonable and should be remitted back to the Appeal Division for reconsideration.



**JUDGMENT in IMM-592-17**

**THIS COURT'S JUDGMENT is that:**

1. The application is allowed and the matter is remitted back for reconsideration;
2. No question for certification.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-592-17

**STYLE OF CAUSE:** MANMINDER SINGH MATTU v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** AUGUST 21, 2017

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** AUGUST 24, 2017

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