Federal Court  Cour fédérale

Date: 20170222

Docket: IMM-3637-16

Citation: 2017 FC 212

Ottawa, Ontario, February 22, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

DHARINIBEN NILE PATEL

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The applicant asks this Court to set aside the decision rendered on August 17, 2016, by the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada, to uphold the removal order previously issued against the applicant by the Immigration Division [ID], and to deny the applicant's claim for special relief.

[2] The applicant is a citizen of India who was married to Mr. Nileshbhai Patel [first husband], through an arranged marriage. On July 14, 2006, the couple celebrated a traditional wedding, but since the applicant was only 17 years old, it was not legally binding. However, the couple celebrated a second wedding through a civil ceremony on January 20, 2007. Her first husband then sponsored her application for permanent residence, which eventually led her to land in Canada on July 14, 2007. However, on July 28, 2007, the applicant left the marital home after only two weeks of common life. On August 3, 2007, the first husband informed the authorities that his relationship ended and that he felt that there had been misrepresentation and fraud on the part of the applicant.

[3] On October 13, 2007, the applicant returned to the house, escorted by police, to gather her personal belongings. The applicant later reported that she had been assaulted twice and threatened with death by her first husband. However, all those charges were eventually dismissed following a criminal trial. On October 1, 2009, an Immigration Officer interviewed the applicant and her first husband, after which a report identified the applicant as inadmissible for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]. The couple officially divorced on June 16, 2010. On June 9, 2011, the ID declared the applicant inadmissible for misrepresentation under paragraph 40(1)(a) of the Act and issued an exclusion order. On August 20, 2011, the applicant married her second husband, Mr. Miteskhumar Patel [second husband], after sponsoring his application for permanent residence to Canada. From this marriage, two girls were born in 2012 and 2015.

[4] On August 17, 2016, the IAD dismissed the applicant's appeal by concluding, on balance of probabilities, that the applicant chose to mislead immigration officials in order to immigrate to Canada, and confirmed that the removal order was valid in law. After considering the applicant's claim for special relief, the IAD also found that there were insufficient humanitarian and compassionate grounds under paragraph 67(1)(c) of the Act to warrant such relief.

[5] While the applicant is not challenging today the IAD's finding regarding the absence of sufficient humanitarian and compassionate grounds to grant special relief under subsection 67(1)(c) of the Act, she questions the legality and/or the reasonableness of the factual findings regarding the genuineness of her first marriage. Essentially, the applicant argues that there was a breach of natural justice and/or the IAD's assessment of the evidence was flawed. As a result, the applicant wishes that the matter redetermined by another panel of the IAD. This application for judicial review is opposed by the defendant. After reviewing each party's submissions and the oral representations made by counsel at the hearing, the Court finds that the IAD's decision is reasonable, as the removal order is legal and valid in law, while there has been no breach of natural justice. The Court basically endorses the reasoning of the respondent for dismissing the application.

[6] The applicant's arguments in support of the present application are unfounded in fact and law. The IAD is a specialized tribunal capable of assessing the facts, and its decision should not be disturbed by this Court unless it is unreasonable. Overall, the IAD found that the applicant had undermined the integrity and the fairness of the immigration system. Having read the reasons of the IAD in light of the evidence before the IAD and the applicable principles, I find

no basis for setting aside the impugned decision and returning the matter to another decision-maker.

[7] The applicant's general reproach that the IAD has not considered the genuineness of the first marriage in light of the circumstances and the evidence pre-dating the arrival of the applicant in Canada is unfounded. While the couple seemed objectively compatible (common origins, religion and language), the IAD also noted that the applicant first lied to the immigration authorities by failing to mention that the couple had previously celebrated a religious wedding in India while she was still a minor. The applicant did in fact provide pictures from the religious wedding but referred to them as to the civil celebration. More importantly, the IAD noted that the applicant's testimony was changing from her first statement made before the ID. Indeed, the applicant stated that her problems with her sponsor only began after she was landed, while she testified before the ID that the fights with her first husband started in India for the celebration of their civil marriage, going as far as saying that he regretted their wedding even before she was landed. From this statement, the IAD questioned why such husband and sponsor would then have continue the sponsorship process and risking being financially responsible for her in Canada for three years if the relationship was so complicated. The IAD also questioned the fact that none of the applicant's parents ever contacted her sponsor to find out what was the problem, or at least, to berate him after allegedly trying to strangle their daughter. After reviewing the evidence on the record, the IAD came to the conclusion that the applicant's contradictory versions were not making sense with the actual facts.

[8] The applicant concedes that the IAD has stated in its reasons few facts which support the concerns it may have had with respect to the true intentions of the applicant, but submits, nevertheless, that it has failed to link these particular facts with its general conclusion regarding the genuineness of the marriage. For instance, the IAD has underlined the short duration of her common life with her first husband, but provide no analysis of the said events as to how and why these events lead to their conclusion. Furthermore, despite all the small discrepancies between her two versions regarding her relationship with her first husband, the IAD has failed to make any clear inference as how the said contradiction supported its conclusion that she would have misled the immigration officials. Without such clear findings, the applicant should have been entitled to benefit from the presumption of truth for her evidence, or at the very least, the presumption of good faith regarding her testimony. Indeed, there was no real analysis or negative credibility finding about the applicant's testimony.

[9] I disagree with the applicant. It is clear that the testimonies of both ex-spouses were quite different on central elements of the relationship. While this Court does not have to decide which version is more probable, the reasoning process of the IAD is not flawed and is supported by the evidence. Although the IAD did not specifically state that it drew a negative inference, its reasoning clearly shows that there were reasons to find that the applicant did not intend to live with her sponsor, as husband and wife, when she came to Canada. Indeed, the IAD characterized as strange the silence of the applicant's relatives after the separation of their daughter and alleged assault from her husband. Also, by finding that the applicant intentionally misled the immigration officials, it was explicit that the IAD severely questioned the applicant's credibility and the genuineness of the first marriage.

[10] Incidentally, given that the applicant is essentially challenging the reasons of the IAD, I fail to see how the issue can be framed by the applicant as one of natural justice. Considering that this was a *de novo* hearing, the IAD was able to consider all evidence, including the statements made to the ID. As such, the IAD was not obliged to put all of its concerns regarding the credibility before the applicant, especially since its concerns emanated directly from her own statements and evidence. In any event, I am satisfied that the applicant was granted the opportunity to be lead evidence and to present her arguments, and that the hearing before the IAD was a fair one.

[11] The applicant also points out few other flaws or errors in the IAD's reasoning. For instance, the IAD questioned why the applicant's husband has pursued the sponsoring process despite all the tension in the couple, as alleged by the applicant in her statement. However, the IAD has ignored the statement of the first husband which directly addressed this concern:

> I returned to Canada on January 29, 2007 and applied to sponsor her as my wife. Although the relationship appeared strained while I was in India, on my return to Canada I noted that she appeared more outgoing and happy, I believed that our relationship was getting stronger,

[12] With regards to the strange behavior of her relative following her separation or her report to the police, the applicant argues that the evidence showed that her parents were upset from the failure of the arranged marriage. Furthermore, the IAD erred by analysing this situation without any consideration for the particular culture around arranged marriages. Moreover, the applicant alleges that the IAD has ignored the evidence pointing out that the first husband did in fact have a phone number to reach the applicant after their separation. The IAD also failed to underline the inconsistencies in the first husband's statement such as when exactly he learned that his wife

would never come back. As to the alleged contradiction on her wedding ceremony declaration to the immigration officials, the applicant explained that the religious wedding was illegal since she was not 18 years old at that time. Considering that the religious ceremony was not legally binding the couple, the applicant only mentioned the civil ceremony to the Immigration authorities. This plausible explanation should have worked in her favour. Furthermore, there were discrepancies between the two letters provided by the first husband, and thus, the applicant submits that such contradiction should have been considered by the IAD in order to draw a negative conclusion on his overall statement.

[13] I find the applicant's line of attack unconvincing.

[14] Overall, the applicant merely invites the Court to substitute itself to the decision-maker. However, this is not an appeal but a judicial review. Not all factual errors justify granting judicial review and the Court should not engage a microscopic examination of the tribunal's reasons. As mentioned by the Supreme Court of Canada in *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34, [2013] 2 SCR 458 at paragraph 54, the administrative tribunal's decision "should be approached as an organic whole, without a line-by-line treasure hunt for error" (referring to *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 14)

[15] It is sufficient to say that, in the case at bar, the IAD assessed the evidence on record and found serious misrepresentations committed by the applicant. Moreover, the objective evidence,

such as the police report and the bank statement, did show that the first husband's action did not correspond to the version reported by the applicant, without forgetting the contradiction in her statement before the ID and IDA regarding the actual start of her confrontation with her husband. As to the telephone issue, even if the IAD committed a factual error, this error alone does not change the outcome of the decision (*Sherwani v Canada (Minister of Citizenship and Immigration)*, 2005 FC 37, [2005] FCJ No 61 at para 17). The errors, if any, allegedly committed by the IAD are not determinative, whether considered separately or cumulatively.

[16] As indicated by the Court in *Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244, [2016] FCJ No 207 at paragraph 23, and reaffirmed in *Nguyen v Canada (Citizenship and Immigration)*, 2016 FC 1207, [2016] FCJ No 1216 at paragraph 21, "assessing the genuineness of a marriage is a challenging task at the best of times", in a context where people "who are intent on committing a form of deceit to gain the highly valuable status of Canadian permanent residence will conduct themselves to make the relationship look outwardly genuine, when it is not". Even though I may have had evaluated the relevant factors and evidence differently, this is not a reason today to disturb the conclusion of the IAD, given that the overall decision is justifiable, transparent and intelligible and falls within the confines of possible, acceptable outcomes.

[17] For all these reasons, this application for judicial review is dismissed. Counsel has not raised a question of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that the present application for judicial review be dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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