Federal Court  Cour fédérale

Date: 20180130

Docket: IMM-2846-17

Citation: 2018 FC 101

Ottawa, Ontario, January 30, 2018

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

TESSY IGIEWE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Tessy Igiewe, seeks judicial review, under s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision of the Immigration Appeal Division (IAD) dated May 25, 2017, wherein her appeal of a visa officer's decision was dismissed. The visa officer had found that the Applicant's marriage to Andre Palmer, a Jamaican citizen, was not a genuine marriage or was entered into primarily for the purposes of acquiring status or privilege in Canada.

[2] The Applicant and Mr. Palmer first met while the Applicant was visiting friends in Jamaica in 2008 and later cohabited for 4 months in 2009. The Applicant has been to Jamaica several times and has financially supported Mr. Palmer over the years.

[3] Mr. Palmer had married Samantha McFarlane, an American citizen, in January 2007. In 2010, Ms. McFarlane attempted to sponsor Mr. Palmer for entry to the United States of America (USA). The sponsorship was refused. The US immigration authorities concluded that Mr. Palmer and Ms. McFarlane had entered into marriage for him to obtain immigration status and had misled the authorities. During the proceedings before the IAD, Mr. Palmer said that he had used Ms. McFarlane in an effort to get closer to the Applicant via the US. Mr. Palmer and Ms. McFarlane divorced in 2011.

[4] The Applicant and Mr. Palmer were married in 2013 and an application for spousal sponsorship was filed in February 2015. A child was born to the Applicant in December 2016. No proof of paternity was offered but neither the visa officer nor the IAD questioned that Mr. Palmer was the father and he is named as such in the child's birth certificate.

[5] In a letter dated February 26, 2015, the visa officer refused the application on the basis that it was not a genuine marriage or was entered into primarily for the purposes of acquiring status or privilege under the IRPA pursuant to s 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR).

[6] The officer based the decision largely on the facts of the marriage with the American citizen. Once his sponsorship application for the USA was refused, the visa officer noted that Mr. Palmer resumed his relationship with the Applicant. The visa officer concluded that it appeared that Mr. Palmer was manipulating the Applicant in order to obtain admission to Canada via the family class route. At one point, she had withdrawn her application to sponsor him because of concerns about his fidelity and abuse of her financial support.

[7] The IAD found, on appeal, that the Applicant failed to establish on the balance of probabilities that Mr. Palmer did not enter into the marriage for the primary purpose of gaining status of privilege in Canada pursuant to s 4 of the IRPR. The IAD found that the couple lacked credibility. There were multiple areas in which their evidence was contradictory, made no sense or was rehearsed, in the IAD's view.

[8] The IAD noted contrary statements made by Mr. Palmer in his interview with the visa officer and his testimony on appeal before the IAD. In particular, the IAD considered that he changed his story on important aspects to benefit the appeal, such as his involvement in his first marriage of convenience and his remorse for his actions. He could not explain the inconsistencies. The IAD found that this weighted heavily against his credibility.

[9] Mr. Palmer had also initially lied on his application for entry to Canada. He indicated that he was not refused admission to any other country and when confronted about his prior application to the USA with his first wife, stated that he was "trying to forget about that" and that he "didn't know that the whole US thing would come up [and he didn't] know that US and

Canada are linked like that." The IAD noted that the object of the omission was to bolster his Canadian immigration application. The IAD held that Mr. Palmer had tried on several occasions and under false pretenses to gain entry to the USA or Canada. In the IAD's view, this was an indicator that his primary intent was to acquire status or privilege in Canada.

[10] There was also, in the IAD's view, an inconsistency with regards to Mr. Palmer's evidence about where he would live if he came to Canada; whether it would be with the Applicant and their child or with his aunt. The IAD also considered that he had made limited efforts to spend time with the Applicant when she was in Jamaica, despite the fact that he was being financially supported by her, and referred to events involving his American wife when asked about the relationship with the Applicant.

[11] There is no dispute between the parties and I agree that the standard of review is reasonableness: *Gill v Canada (MCI)*, 2012 FC 1522, at para 17; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paras 47-48.

[12] The only issue on this application is whether the IAD's decision is reasonable.

[13] The Applicant's argument is essentially that the IAD erred in assessing the credibility of the witnesses and in ignoring relevant evidence. The Respondent submits that the IAD reasonably assessed the evidence, including the witness's testimony.

[14] In my view, it was reasonable for the IAD conclude that the marriage was entered into for the primary purpose of immigration and that the marriage was not genuine – at least not from the perspective of Mr. Palmer. The IAD viewed the Applicant's testimony with sympathy but found that it also lacked credibility in some important respects.

[15] The finding of facts by the IAD is owed a high degree of judicial deference given the IAD's opportunity to hear and observe the testimony of the witnesses before it: *Thach v Canada (MCI)*, 2008 FC 658, at paras 15-19; *Valencia v Canada (MCI)*, 2011 FC 787 at para 25 [*Valencia*]. As discussed in *Grewal v Canada (MCI)*, 2003 FC 960, at para 9 [*Grewal*]:

> The Board is entitled to determine the plausibility and credibility of the testimony and other evidence before it. The weight to be assigned to that evidence is also a matter for the Board to determine. As long as the conclusions and inferences drawn by the Board are reasonably open to it on the record, there is no basis for interfering with its decision. Where an oral hearing has been held, more deference is accorded the credibility findings.

[16] The Applicant's disagreement with the IAD's findings does not make them unreasonable and it is not the role of this Court to reweigh the evidence.

[17] It was open to the IAD to reject Mr. Palmer's explanation that he had lied to immigration officials about his US application in order to be closer to the Applicant. And the inference that he had entered into marriages with two North American women at the same or overlapping times in order to gain entry into one country or the other was reasonable on the evidence.

[18] There may have been some confusion over Mr. Palmer's evidence about where he would live when he came to Canada. But this stemmed from Mr. Palmer's own spontaneous statement, as recorded in the transcript. He then clarified his meaning by saying he would ask his aunt if he could stay with her "until I sort out myself to get our own place for me and [the Applicant]."

[19] Even if the IAD misconstrued Mr. Palmer's initial reply to the question, the other contradicting, confusing and inaccurate statements made during his oral testimony sufficiently demonstrated a lack of credibility.

[20] The IAD was attentive to the testimony of Nichole Green, a friend of the Applicant. It noted the following:

> [40] […] I appreciate Nichole wants to support her friend however it became clear to me through her testimony that she does not have the full story. I do not doubt this witness' credibility and it did confirm that this marriage appears to be genuine from the appellant's perspective. This however does not alleviate my concerns with regards to the applicant and the fact that the appellant's best friend did not know they pursued the USA sponsorship, also reveals to me that the appellant does not tell her best friend everything. The third witness" testimony weighs negatively in my assessment on the genuineness of the marriage.

[21] In my view, the IAD's finding that Ms. Green's evidence weighed against the genuineness of the marriage is a finding of fact based on her oral testimony and is owed a high level of deference: *Grewal*, above, at para 9; *Valencia*, above, at para 25.

[22] Similarly, the finding that letters of support from Jamaican friends and the Applicant's sister and friends, while worthy of consideration, carried little weight was open to the IAD. It

was clear to the IAD that these friends and family members had little knowledge of the extent to which Mr. Palmer had gone to leave Jamaica for a better life in another country.

[23] The fact that the IAD mentioned some but not all of the letters in its reasons does not, in itself, constitute reversible error. The tribunal was not required to mention in detail all of the evidence submitted: *Tjavara v Canada (Citizenship and Immigration)*, 2010 FC 960, at para 8.

[24] As stated by the Supreme Court of Canada in *NLNU v Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708:

> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[25] With regard to the birth of the child, the IAD concluded that this in itself did not demonstrate that the marriage was genuine given the other contradictions and inconsistencies in the evidence. In the circumstances, it was reasonable for the IAD to find that the child's birth was not determinative. This was a case where the credibility issues "overshadowed the evidence concerning the child": *Lamichhane v Canada (Minister of Citizenship and Immigration)*, 2016 FC 957, at para 14.

[26] In the result, I am satisfied that the IAD's decision is reasonable as it is transparent, intelligible and justified and falls within the range of acceptable outcomes.

[27] No serious questions of general importance were proposed for certification.

JUDGMENT in IMM-2846-17

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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