

Federal Court



Cour fédérale

Date: 20190523

Docket: IMM-3104-18

Citation: 2019 FC 718

Ottawa, Ontario, May 23, 2019

PRESENT: Mr Justice James W. O'Reilly

BETWEEN:

THI THUY DA NGUYEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Thi Thuy Da Nguyen sought to sponsor her husband, Mr Minh Tuan Che, as a member of the family class under the *Immigration and Refugee Protection Act*, SC 2001, c 27 s 12(1) [IRPA]. An immigration officer refused Ms Nguyen's application because the marriage was entered into primarily to permit Mr Che's immigration to Canada and because the marriage

was not genuine (pursuant to the *Immigration and Refugee Protection Regulations* (SOR/2002-227), s 4(1)).

[2] Ms Nguyen appealed the officer's decision to the Immigration Appeal Division (IAD). The IAD found that Ms Nguyen had adequately addressed a number of the concerns that had led the officer to his conclusion. However, the IAD found that there remained some inconsistencies in the couple's testimony that cast doubt on their credibility and it dismissed Ms Nguyen's appeal.

[3] Ms Nguyen submits that the IAD's conclusion was unreasonable and that its reasons were inadequate. In particular, she maintains that the IAD focussed on minor discrepancies that should not have led to adverse credibility findings. Alternatively, she contends that the IAD failed to explain how those discrepancies led to a negative result. Ms Nguyen asks me to quash the IAD's decision and order another panel to reconsider her application.

[4] I can find no basis to overturn the IAD's decision. The IAD addressed the issues before it, fairly considered the evidence, and provided a clear explanation of its conclusion.

[5] There are two issues:

1. Was the IAD's decision unreasonable?
2. Did the IAD fail to provide adequate reasons?

II. The IAD's Decision

[6] The IAD found that a number of issues that had led the officer to a negative conclusion had been addressed by the couple's testimony – namely, evidence about their meeting, engagement, wedding, knowledge of each other's past, financial support, and responsibilities for their children.

[7] However, the IAD found that a number of inconsistencies remained, mainly in respect of spontaneous answers to questions the couple might not have anticipated. Ms Nguyen stated she met Mr Che in 2007 while attending a wedding in Vietnam. Mr Che said that she was on vacation. Mr Che was not aware that Ms Nguyen had closed her nail salon in 2008 and moved to British Columbia to study autism, even though they allegedly spoke at least twice a week by telephone. Mr Che stated that his sister was not married even though he had attended the wedding three days before his own. The IAD noted that the circumstances of Mr Che's sister's marriage were strikingly similar to that of Mr Che and Ms Nguyen.

III. First Issue – Was the IAD's decision unreasonable?

[8] Ms Nguyen submits that the IAD focussed on relatively trivial inconsistencies in the evidence, while overlooking the many positive factors in the couple's favour, including the length of their relationship, their wedding ceremony, the attendance of family members, and their ongoing contact.

[9] I disagree.

[10] The IAD's decision contains a balanced and thorough weighing of the evidence, including the positive factors supporting the sponsorship. However, there remained significant discrepancies, described above, that caused the IAD to doubt the couple's credibility. Its conclusion was not unreasonable.

IV. Second Issue – Did the IAD fail to provide adequate reasons?

[11] Ms Nguyen also contends that the IAD failed to explain how it arrived at a negative conclusion, that is, it failed to connect the “what” (the outcome) with the “why” (the reasoning) (See *R v REM*, 2008 SCC 51 at para 17). In particular, Ms Nguyen states the IAD neglected to explain how the evidence relating to Mr Che's sister's marriage was relevant to its conclusion.

[12] Again, I must disagree.

[13] The IAD found it unusual that Mr Che's marriage story so closely resembled that of his sister. It also questioned why Mr Che had been untruthful about his sister's wedding. In my view, the IAD adequately explained how this evidence influenced its assessment of the couple's credibility.

V. Conclusion and Disposition

[14] The Board's analysis of the evidence was not unreasonable and its reasons were adequate. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-3104-18

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

No question of general importance is stated.

"James W. O'Reilly"

Judge

ANNEX

Immigration and Refugee Protection Act, SC 2001, c 27 *Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27*

Selection of Permanent Residents**Sélection des résidents permanents****Family reunification****Regroupement familial**

12 (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

12 (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

Immigration and Refugee Protection Regulations (SOR/2002-227), s 4(1)

Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)

Family Relationships**Notion de famille****Bad Faith****Mauvaise foi**

4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership

4 (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

(b) is not genuine.

b) n'est pas authentique.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3104-18

STYLE OF CAUSE: THI THUY DA NGUYEN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 7, 2019

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