

Federal Court



Cour fédérale

**Date: 20190917**

**Docket: IMM-481-19**

**Citation: 2019 FC 1185**

**Ottawa, Ontario, September 17, 2019**

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

**BETWEEN:**

**RAMPERSAUD TONY BUDHRAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant seeks judicial review of a decision dated January 2, 2019 of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada [the Decision], dismissing the Applicant's appeal after a visa officer refused his wife's permanent resident application. The IAD found, for the Applicant's wife, their marriage is not genuine and

was entered into primarily for the purpose of acquiring status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] A explained in greater detail below, this application for judicial review is dismissed because, having considered the Applicant's arguments, I have found the Decision to be reasonable.

## II. **Background**

[3] The Applicant, Rampersaud Tony Budhram, is a Canadian citizen. In January 2013, Mr. Budhram ended a 17-year common-law relationship. On September 28, 2013, Mr. Budhram agreed to be introduced to a co-worker's niece, Backta Thiphthida, via Skype. Ms. Thiphthida is a citizen of Laos. She had not previously been married, but she has a daughter from a prior relationship, born April 25, 2010. Following their introduction and subsequent communications, Mr. Budhram travelled to Laos for a wedding and to see Ms. Thiphthida, arriving on November 2, 2013. The couple married the next day in a Buddhist rites ceremony. Mr. Budhram travelled to Laos on two other occasions in 2014, and one occasion in 2018. He and Ms. Thiphthida married in a civil ceremony in Laos on October 24, 2014.

[4] Mr. Budhram subsequently applied to sponsor Ms. Thiphthida for a permanent resident visa. She was interviewed by a visa officer [the Officer] at the visa post in Singapore in February 2017, but her application was refused. The Officer found the marriage is not genuine and was entered into primarily for the purpose of acquiring status or privilege under IRPA. Mr. Budhram

appealed that decision to the IAD, which dismissed his appeal in the Decision that is the subject of this application for judicial review.

[5] The IAD found Mr. Budhram to be credible and that, from his perspective, the marriage was genuine. However, it questioned Ms. Thipthida's motives. After identifying a number of concerns, the IAD concluded on a balance of probabilities that, for Ms. Thipthida, the marriage is of a transactional nature and its primary purpose is to facilitate her status in Canada. Like the Officer, the IAD found the marriage is not genuine and was entered into primarily for the purpose of acquiring status or privilege under IRPA.

### III. Issues and Standard of Review

[6] The Applicant raises the following two issues for the Court's consideration:

- A. Was the IAD's Decision unreasonable because it took irrelevant considerations into account and failed to take relevant considerations into account?
- B. Has the IAD misconstrued, misinterpreted or misapplied the law to the facts?

[7] The parties agree, and I concur, that these issues are to be reviewed on a standard of reasonableness.

### IV. Analysis

- A. *Was the IAD's Decision unreasonable because it took irrelevant considerations into account and failed to take relevant considerations into account?*

[8] The Applicant frames this issue as the IAD relying on irrelevant considerations and failing to take into account relevant considerations. However, having considered the Applicant's submissions, I regard them as principally presenting an argument that the IAD should have drawn different inferences or arrived at different conclusions based on the evidence before it. He submits there were different possible explanations or interpretations, more favourable to him, at which the IAD could have arrived. For instance, he submits that his wife could have pursued a Canadian husband through her aunt long ago, if she was really so motivated, as her aunt had been living in Canada since 1992. However, it is not the Court's role to interfere with the IAD's factual determinations, even if I were tempted to come to a different conclusion, as long as the IAD draws inferences that are reasonably open to it based on the evidence (see, e.g., *Valencia v Canada (Citizenship and Immigration)*, 2011 FC 787 at para 24).

[9] The Applicant has drawn the Court's attention to limited examples where he submits that the IAD ignored or misconstrued the evidence. However, as explained below, having reviewed the evidence to which the Applicant refers, I disagree with his characterization of the IAD's treatment of this evidence.

[10] At the hearing of this application, there was considerable focus upon the evidence surrounding the Applicant's provision to his wife of \$10,000.00 to purchase a truck, her sale of the truck for \$6000.00 a short time later, and her use of the proceeds of sale for her family and family business. The Applicant took issue with the IAD's conclusion that his wife did not consult him before selling the truck. He specifically pointed to his testimony that she informed him of the sale in advance.

[11] However, the IAD's finding was that, while his wife told the Applicant that she was going to sell the truck, there is no evidence that she consulted him with regard to the use of the proceeds, as one would expect the couple to do. While the Applicant's affidavit states that he explained during the IAD hearing that the decision to use the funds towards her family and family business was not unilateral, the portions of the hearing transcript relied upon by the Applicant do not support this assertion. I do not find any basis to conclude that the IAD ignored evidence on this subject.

[12] The Applicant also takes issue with the IAD's conclusion that his wife was unaware he was in a common-law relationship from December 1996 to January 2013. The Decision refers to his wife's testimony that "maybe" he had been in a relationship, but she had not asked him about it, and she didn't want to. In challenging the IAD's conclusion, the Applicant relies on the Officer's notes from the interview which led to the original rejection of the permanent resident visa application. Those notes record the Applicant's wife stating the Applicant was married in the past.

[13] I have difficulty seeing how this argument assists the Applicant. The IAD relies on the Applicant's wife's testimony at the *de novo* hearing that the Applicant had not previously been married, and that his wife did not know whether he had been in a previous relationship, or ever lived with anyone, because she did not ask about this. It may have been available to the IAD to approach this evidence in a manner even less favourable to the Applicant by drawing an adverse credibility inference from the inconsistencies between the interview evidence and that given in

the IAD hearing. However, it did not do so; and, in my view, the IAD certainly cannot be faulted for relying upon the Applicant's wife's testimony before it in arriving at its conclusions.

[14] The Applicant also takes issue with the IAD's observation that his wife obtained a passport for her daughter on October 10, 2013, two weeks after she first had contact with the Applicant, and obtained a passport for herself on January 14, 2014, before she applied for a permanent resident visa to Canada. The IAD noted there was no evidence the Applicant's wife was planning travel to any countries that would require a passport, from which it inferred that moving to Canada was at the forefront of her mind when she agreed to marry the Applicant. The Applicant submits that the IAD ignored evidence surrounding travel to Thailand. While the Applicant did not identify the particular evidence upon which he relies in support of this position, I read the transcript of the Applicant's testimony before the IAD as referring to travel to Thailand and Vietnam as not requiring a passport. This testimony is also not clear as to the timing of the travel to Thailand. Again, I find no basis to conclude that the IAD ignored evidence in arriving at its Decision.

[15] The Applicant also argues the IAD unreasonably arrived at inconsistent conclusions, as to the genuineness of the marriage for the Applicant and his wife, respectively, based on the same or similar evidence. The IAD was concerned about the lack of time between the couple's introduction and their marriage, as well as the lack of a common language, but concluded that the marriage is genuine for the Applicant but not for his wife. It was also concerned that the Applicant and his wife both demonstrated little knowledge of the other's relationship history. The Applicant has referred the Court to *Ferraro v Canada (Citizenship and Immigration)*, 2018

FC 22 [*Ferraro*], in which Justice McDonald set aside an IAD decision that found a marriage genuine from the perspective of the sponsor but reached the contrary conclusion with respect to the spouse.

[16] I agree with the Respondent's position that *Ferraro* is distinguishable from the case at hand. Justice McDonald's decision turned on the IAD's failure to explain why certain positive evidence of a genuine marriage, which it had relied on in relation to the sponsor, could not support the same conclusion for the spouse. In the present case, IAD did provide such an explanation, noting that Ms. Thiphida had a young daughter and finding it reasonable to expect that she would have wanted to know more about the Applicant, including his relationship history, before he assumed the important role of being a stepfather. I find no basis to conclude that this analysis is unreasonable.

[17] Observing that Ms. Thiphida was a single mother of a young daughter at the time they were introduced, the Applicant also claims the IAD failed to take into account the cultural and social setting in Laos. He submits the IAD improperly applied North American standards to the consideration of the evidence, without the required cultural sensitivity.

[18] First, in response to the IAD's concerns about the couple marrying less than six weeks after they were introduced, the Applicant argues that the Buddhist ceremony was necessary to allow them to stay together in compliance with Laotian law. I agree with the Respondent's position that this argument does not meaningfully address the IAD's concern that a mother of a young daughter would enter into this formal a relationship so quickly.

[19] Second, the Applicant relies on country condition documentation, presented through his Affidavit, that there is significant social stigma associated with being an unmarried woman, and particularly a mother of a child born outside marriage, in Laos. However, the Respondent notes that this country condition documentation is not found in the Certified Tribunal Record or in the National Documentation Package for Laos. The Respondent therefore argues that this documentation was not before the IAD when it made its decision. It further submits there is no evidence that Ms. Thiphida was encountering this sort of stigma in her particular circumstances in Laos. I agree with these submissions and find this argument by the Applicant raises no reviewable error by the IAD.

[20] In conclusion on this issue, I find no basis to determine that the IAD arrived at an unreasonable decision based on failure to consider relevant evidence or reliance on irrelevant evidence.

***B. Has the IAD misconstrued, misinterpreted, or misapplied the law to the facts?***

[21] The Applicant's principal argument under this issue is that the IAD erred by conflating its analysis of the genuineness of the marriage with its analysis of his wife's motives for entering into the marriage, and/or that the IAD failed to perform each of these analyses as of the required point in time. The IAD based its Decision on section 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which provides as follows:

***Immigration and Refugee  
Protection Regulations,  
SOR/2002-227***

***Règlement sur l'immigration  
et la protection des réfugiés,  
DORS/2002-227***



**Bad faith**

**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

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

**(b)** is not genuine.

**Mauvaise foi**

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

**b)** n'est pas authentique

[22] It is not disputed that this section is disjunctive, in that either a finding under s 4(1)(b), that a marriage is not a genuine, or a finding under s 4(1)(a), that the marriage was entered into primarily for the purpose of acquiring immigration status, precludes a spouse from obtaining a permanent resident visa (see, e.g., *Dosanjh v Canada (Citizenship and Immigration)*, 2015 FC 193 at para 19). It is also not disputed that the assessment whether the marriage is genuine considers evidence up to the time of the hearing, while the assessment whether the marriage was entered into for immigration status considers the parties' intentions at the time of the marriage (see, e.g., *Gill v Canada (Citizenship and Immigration)*, 2012 FC 1522 at para 33).

[23] The Applicant notes that the IAD states in its Decision that, in analysing the genuineness of the marriage, it is guided by the factors set out in *Chavez v Canada (Citizenship and Immigration)*, [2005] IADD No 353 (IADTA3-24409, Hoare, February 11, 2005) [*Chavez*].

These factors include the intent of the parties to the marriage; length of the relationship; amount

of time spent together; conduct at the time of meeting, engagement and/or the wedding; behaviour subsequent to the wedding; knowledge of each other's relationship histories; levels of continuing contact and communication; provision of financial support; knowledge of and sharing of responsibility for the care of children brought into the marriage; knowledge of and contact with extended families of the parties; and, knowledge about each other's daily lives.

[24] The Applicant argues that the Decision demonstrates the IAD applying these factors not only to the genuineness analysis under s 4(1)(b) but also to the assessment under s 4(1)(a) of the purpose for which the marriage was entered into. The Applicant argues that this represents a reviewable error, particularly given that the assessments under ss 4(1)(a) and (b) are to be performed as of different points in time. However, the Applicant has identified no authority for the position that it is a reviewable error for the IAD to be guided by the *Chavez* factors in conducting both assessments.

[25] In *Trieu v Canada (Citizenship and Immigration)*, 2017 FC 925 [*Trieu*], Justice Kane considered an applicant's argument that the IAD conflated the two analyses required under s 4(1) and that it failed to approach the analyses as a two-part test. The Court concluded that, reading the IAD's decision as a whole alongside the record, it was clear that the IAD properly understood and applied s 4(1). In arriving at that conclusion, Justice Kane noted that the IAD considered the same evidence with respect to both aspects of subsection 4(1), and made findings with respect to both parts of the test simultaneously, but that it did not err in doing so (at para 26). Relying on *Lawrence v Canada (Citizenship and Immigration)*, 2017 FC 369 [*Lawrence*], the Court held that evidence relevant to one element of the test can also be relevant to the

assessment of the other. Justice Kane specifically cited paragraphs 14 to 15 of *Lawrence*, to the effect that there may be overlapping evidence between primary purpose and genuineness, notwithstanding the differences in their temporal focus points, and that evidence which post-dates the time of marriage and speaks to the genuineness of the marriage can be relevant to the assessment of primary purpose (at paras 37-38).

[26] Turning to the present case, I agree with the Applicant that the IAD did not structure the Decision such that primary purpose and genuineness are analysed separately. However, as in *Trieu*, the Decision demonstrates the IAD understood and properly applied s 4(1). In listing several of the factors underlying its Decision, the IAD expressly stated that those factors caused it to question both the genuineness of the marriage from the wife's perspective and her motives for entering into it. This analysis demonstrates an understanding by the IAD that it was applying a two-part test. Similarly, the IAD's subsequent finding, for the Applicant's wife, was both that the marriage is not genuine and that it was entered into primarily for the purpose of immigrating to Canada.

[27] While the verb tenses employed in this finding are consistent with the different temporal focuses of the two parts of the test, one should perhaps not read too much into that language, as it may simply represent a recitation of the language of s 4(1). However, it is clear that the IAD reviewed evidence related to the present circumstances, such as the couple's present knowledge of each other, their progression in each other's language, and the Applicant's financial support of his wife, and assessed genuineness at the present time. Taking such evidence into account in also assessing primary purpose does not represent a reviewable error (see *Lawrence* at paras 14 to

15), provided the IAD assesses primary purpose as of the time of the marriage. The Decision further demonstrates that such assessment was performed as of that time. The IAD refers to Ms. Thipthida having a young child at the time of the wedding and being concerned that she did not want to know more about Mr. Budhram before he assumed the important role of stepfather, as well as Ms. Thipthida having a move to Canada in the forefront of her mind at the time she agreed to marry Mr. Budhram.

[28] Finally, while the Applicant did not pursue this point in oral argument, I note his written submission that the IAD was required to assess Ms. Thipthida's intention in entering into the marriage as of the time of the civil marriage in 2014, rather than as of the time of the Buddhist ceremony in 2013. While the IAD does not expressly draw a distinction between these two points of time in conducting its primary purpose analysis, the Applicant's submissions do not point to any material differences in the evidence over that point of time.

[29] I appreciate that the time that had passed, between the couple being introduced and the ceremony, is longer if one considers the civil ceremony as opposed to the Buddhist ceremony. However, given the IAD's conclusion that the marriage was not genuine from Ms. Thipthida's perspective as of the time of the Decision, several years later, there is no basis to conclude that the IAD's assessment of primary purpose would have been favourable to the Applicant as of the time of the civil ceremony.

[30] Having considered the Applicant's arguments, I find that the IAD did not misconstrue, misinterpret or misapply the law to the facts of this case, and that it is reasonable.

V. **Conclusion**

[31] Based on the above findings, the Decision is reasonable and this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-481-19**

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

No question is certified for appeal.

“Richard F. Southcott”

Judge

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

**DOCKET:** IMM-481-19

**STYLE OF CAUSE:** RAMPERSAUD TONY BUDHRAM V THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 4, 2019

**JUDGMENT AND REASONS** SOUTHCOTT, J.

**DATED:** SEPTEMBER 17, 2019

**APPEARANCES:**

Parineeta Chahal FOR THE APPLICANT

Nadine Silverman FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Barrister & Solicitor FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario