Federal Court Cour fédérale

Date: 20191218

Docket: IMM-2608-19

Citation: 2019 FC 1642

Toronto, Ontario, December 18, 2019

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

SAVANN CHIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Savann Chin, is challenging the reasonableness of a decision of the Immigration Appeal Division [IAD], dated March 28, 2019, upholding the visa officer's refusal for the sponsorship of his wife, Thi Hong Cuc Nguyen, for permanent residency. The IAD concluded that the applicant failed to establish on a balance of probability that their marriage was genuine and was not entered primarily for the purpose of acquiring a status or privilege provided under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] It is necessary to intervene in this case.

[3] The applicant is a Cambodian national who grew up in a refugee camp in Vietnam. Following a Family Sponsorship in 1993, he arrived in Canada where he became a citizen in 1997. After a three months courtship online with Mrs. Nguyen, the applicant visited Vietnam in December 2016 where he met her in person and proposed to her 10 days later. The couple married six months later in Vietnam on July 2, 2016.

[4] The applicant made an application for sponsorship of his wife for permanent residency on November 25, 2016. Following an interview with Mrs. Nguyen in September 2016, the visa officer denied the application because he concluded that the applicant failed to establish on a balance of probability that their marriage was genuine and was not entered primarily for the purpose of acquiring a status or privilege provided under the Act. In his reasoning, the visa officer highlighted four main concerns, being:

(1) The hasty development of the relationship and the events surrounding its genesis;

(2) The applicant's wife lack of knowledge of the place of residency of the applicant where she would live;

(3) The applicant's wife lack of knowledge of the applicant's past relationships, and;

(4) The applicant's wife lack of preparation for her to join the applicant in Canada.

[5] Following testimonies by both the applicant and Mrs. Nguyen in front of the IAD on February 7, 2019, the IAD maintained the visa officer's decision. The IAD concluded that there

were no clear, convincing and cogent evidence of the genuineness of the applicant's marriage, dismissing many elements of the applicant's story, specifically:

(1) The couples' testimonies came across as rehearsed and scripted.

(2) The applicant's wife was not able to provide a reasonable explanation as to why she did not know more about the applicant's town and the applicant's past relationships;

(3) The genesis and the haste in the development of the couple's relationship were not reasonably explained;

(4) The purpose of the applicant's first visit to Vietnam was unclear;

(5) No weight was given to the four visits to Vietnam since the marriage, because the applicant has other relatives in Vietnam and a history of travel to the country that pre-dates his relationship; and

(6) Given the previous conclusions, little weight is given to the recent supporting evidence of visits, money transfers and communication;

[6] Whether a marriage was entered into primarily for the purpose of immigration or is genuine is a highly factual inquiry and decision-makers are entitled to deference from reviewing courts. Hence, the standard of reasonableness applies to factual findings made by the IAD (*Idrizi v Canada (Citizenship and Immigration)*, 2019 FC 1187 at para 21). The Court shall not interfere with the IAD's decision if it falls within a range of possible, acceptable outcomes which are

defensible in respect of the facts and law, or if it is transparent and intelligible (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[7] The onus is on the applicant under section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, to establish that the marriage is both genuine and not for the primary purpose of acquiring status or privilege under the Act. While the IAD has discretion to decide the evidence put forward did not amount to decisive evidence, I find that the reasons do not support the outcome or otherwise contain errors that cast a serious doubt on the evaluation process. Moreover, the credibility analysis of the IAD was not transparent and intelligible. Accordingly, I find the IAD's decision unreasonable.

[8] The applicant adduced new evidence in front of the IAD. Additionally, both the applicant and his wife provided *viva voce* evidence. The IAD made negative inferences of the lack of explanations as to why Mrs. Nguyen had little knowledge of Newmarket or of the applicant's past relationships. In the context of a *de novo* appeal, an applicant cannot be faulted by the IAD for attempting to answer the concerns previously identified by a visa officer. Indeed, it is the purpose of such hearing to allow for the adduction of new evidence to answer the visa officer's concerns.

[9] At the risk of repeating myself, the IAD must take account of the explanations provided at the new hearing and determine whether they are reasonable. In *Glen v Canada (Minister of Citizenship and Immigration)*, 2012 CanLII 46082 (CA IRB), the IAD stated that the appeal process is meant to "answer the concerns of the visa officer", and the IAD must analyse the

genuineness of the marriage "in the present tense at the time of the hearing." I agree with this interpretation of the applicable law. Consequently, the IAD could not reasonably dismiss the corroborative evidence adduced in front of the IAD simply because it postdates the visa officer's decision. In passing, the IAD relies on *Bercasio v. Canada (Citizenship and Immigration),* 2016 FC 244 [*Bercasio*], but I wish to stress that *Bercasio* stands for the proposition that pre-marriage evidence might be less inclined to manipulation than post-marriage evidence, not that post-marriage evidence cannot be relied upon.

[10] In the case at bar, as such, three of the negative findings against the applicant were apparently made by the IAD because the evidence adduced postdates the visa officer's decision. Mrs. Nguyen and the applicant have clearly explained why she could not answer the visa officer's questions regarding the applicant's previous marriages. The applicant had not told her about his previous marriages because he thought that she might have left had she known about them. Moreover, the applicant travelled to Vietnam twice a year for roughly four weeks per year in 2016, 2017 and 2018. This important investment in money and time is evidence of the genuineness of the marriage, for which the IAD should have given proper weight in accordance with the applicant's testimony. Finally, the IAD should have given proper weight to the recent supporting evidence of money transfers and the numerous pages of communication. Cumulatively, these discrepancies between the evidence on record and the blank reasoning to exclude outright any explanation renders the IAD's decision unreasonable.

[11] Moreover, the IAD's conclusion regarding the credibility of the couple's testimonies is not transparent and intelligible. The couple's sworn testimonies are the "most probative evidence

regarding their primary purpose for entering into the marriage" (*Gill v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1522 at para 33), and are presumed to be true unless the IAD makes adverse findings of credibility. However, the IAD simply noted that the couple's testimonies appeared to be rehearsed and scripted. Beside this conclusion, the IAD did not provide an explicit negative credibility analysis nor detailed in which way it considered that the couple was unable to provide answers outside of a given script. This is not a sufficient and transparent reasoning for the IAD to dismiss the couple's testimonies. The IAD is required to make negative credibility findings in clear and unmistakeable term (*Hilo v Canada (Minister of Employment and Immigration (1991),* 130 NR 236, 15 Imm LR (2d) 199 (FCA) [*Hilo*]; *Zaytoun v Canada (Citizenship and Immigration),* 2014 FC 939 at para 6-8).

[12] Consequently, the IAD should have discussed in its analysis the weight to give to the testimonies of the applicant and Mrs. Nguyen as to the genuineness of their marriage. As such, both the genesis of the relationship and the haste of the relationship would have become clearer. Regarding the December 2015 trip to Vietnam, the applicant clearly stated that he intended to attend his cousin's wedding and that he decided to propose after spending time with Mrs. Nguyen. The applicant also explained their first contact on Facebook through both a mutual friend, a then co-worker of Mrs. Nguyen who is the sister of the applicant's sister-in-law, and an aunt of the applicant. Similarly, the applicant even testified that he considered the pace of their relationship to have been "normal". As such, the IAD's "haste" finding was speculative at best, or otherwise made without taking into account non-western values (see also *Padda v Canada (Citizenship and Immigration)*, 2018 FC 708 at para 13 [*Padda*]).

[13] For these reasons, the application is allowed. The impugned decision is set aside and the matter returned to ta different panel for redetermination. No question of general importance has been proposed by counsel and none is certified by the Court.

JUDGMENT in IMM-2608-19

THIS COURT'S JUDGMENT is that the judicial review application be allowed. The impugned decision is set aside and the matter returned to a different panel of the Immigration Appeal Division for redetermination. No question is certified.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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