Federal Court Cour fédérale

**Date: 20190407**

**Docket: IMM-1129-19**

**Citation: 2020 FC 496**

**Ottawa, Ontario, April 7, 2020**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**HASSAN A.M. ALRIYATI**

**Applicant**

**and**

**IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA**

**Respondent**

# JUDGMENT AND REASONS

[1] Hassan Alriyati, the Applicant, is challenging the decision of an Immigration, Refugees and Citizenship Canada officer (the Officer) dated January 30, 2019, refusing his application for permanent residence under the Spouse or Common-Law Partner in Canada class. The Applicant argues that the Officer's assessment of the facts and application of the legal tests were unreasonable.

[2] For the reasons that follow, I am dismissing this application.

## I. Context

[3] The Applicant is a citizen of Palestine, born in Saudi Arabia. He has five children, ranging in age from eight (8) to twenty (20) at the time of the judicial review application, who reside with the Applicant's ex-wife in Jordan. He has an authorization from his ex-wife to bring the children with him to Canada.

[4] In December 2015, the Applicant's sister, who lives in Canada, introduced the Applicant to her friend, Daoud Siyam (the Sponsor), a naturalized Canadian citizen. The Sponsor has six children, including two adopted nephews, aged 10 to 26 years old at the time of the application. Her two eldest children lived away from the home and were not financially dependent upon her.

[5] The couple began communicating on a regular basis and in May 2016, the Sponsor flew to Jordan to meet the Applicant. She spent a month there and met his children. The Applicant came to Canada in November 2016 to visit the Sponsor. During his stay, they decided to get married, and the ceremony occurred on January 4, 2017.

[6] The Sponsor stopped receiving social assistance and obtained a job as a janitor. In March 2017, the couple filed a spousal sponsorship application. The Applicant's five children were listed as accompanying dependents on that application. Several of the Sponsor's dependent children were also included. By May of 2017, the Applicant obtained a work permit and joined the work force.

[7] In March 2018, Immigration, Refugees and Citizenship Canada sent a letter to the Sponsor, indicating she was eligible as a sponsor, and reminding her that the undertaking she signed was an unconditional promise to provide financial support to the sponsored relative and their accompanying family members.

[8] The Officer interviewed the Sponsor and the Applicant separately on January 22, 2019, and refused the application on January 30th. During the interview, the Officer explored the personal history of both the Applicant and the Sponsor, as well as the evolution of their relationship and knowledge of each other. At the time of the interview, two of the Sponsor's children lived with them, while a third lived both with them and the Sponsor's mother. Three of the Sponsor's daughters lived in Edmonton.

[9] The Officer noted that the Applicant received social assistance from 1998 until February 2017. She also noted that the Applicant had been working as a bus driver, but had stopped for medical reasons, although the Applicant also indicated he intended to return to work when he was able to do so. The Officer also noted that the couple had tried to have a child together; although it is not specifically mentioned by the Officer in the reasons, the Applicant provided a doctor's letter indicating that she had two miscarriages.

[10] The Officer doubted the Sponsor's ability to financially support the Applicant as well as his dependent children, noting that she had received social assistance for 19 years and only stopped receiving it a few weeks before submitting the sponsorship application. The Officer found the Sponsor to be ineligible to sponsor the Applicant pursuant to paragraph 133(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-2007 [*Regulations*] because she

could not provide financial support for the basic needs of the Applicant and his dependent children.

[11] The Officer also doubted the genuineness of the marriage, noting that the couple's courtship had been short, and that it appeared that the Applicant's "main goal is to get his 5 children from Jordan to Canada." The Officer concluded that the marriage had been entered into primarily for the purpose of acquiring an immigration status, contrary to paragraph 4(1)(a) of the *Regulations*.

[12] Therefore, the Officer refused the sponsorship application pursuant to paragraphs 133(1)(b) and 4(1)(a) of the *Regulations*.

[13] The Applicant seeks judicial review of this decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

## II. Issues and Standard of Review

[14] There are two issues:

A. Was the Officer's decision unreasonable, because it is based on an incorrect interpretation of paragraph 133(1)(b) of *IRPA*?

B. Was the Officer's assessment of the validity of the marriage unreasonable?

[15] The Applicant raised certain questions about procedural fairness in his Application for Leave and for Judicial Review, but did not pursue them in the written or oral submissions, and it is not necessary to deal with them.

[16] The issues are to be reviewed on a standard of reasonableness. When this case was argued, the leading authority on reasonableness review was *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] and its progeny. Since then the Supreme Court of Canada has updated and clarified the framework for judicial review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], as applied in *Bell Canada v Canada (Attorney General)*, 2019 SCC 66 and *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*].

[17] In view of paragraph 144 of *Vavilov*, I see no reason on the facts of this case to request additional submissions from the parties on either the appropriate standard or the application of that standard. This case is similar to the situation in *Canada Post*, where the Supreme Court stated at paragraph 24 that it was not unfair to decide a case applying the *Vavilov* framework when it had been argued under the *Dunsmuir* approach, because the results would be the same under both frameworks. The same reasoning applies here.

[18] When reviewing for reasonableness, the Court asks "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov* at para 85).

[19] As such, a decision will be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision maker's reasoning on a critical point (*Vavilov* at para 103). The framework set by this decision "affirm[s] the need to develop and

strengthen a culture of justification in administrative decision-making” by endorsing an approach to judicial review that is both respectful and robust (*Vavilov* at paras 2, 12-13).

## III. Analysis

### A. *Was the Officer’s decision unreasonable, because it was based on an incorrect interpretation of paragraph 133(1)(b) of IPRA?*

#### (1) Legal Framework

[20] The Spouse or Common-law partner in Canada class is prescribed as a class of persons who may become permanent residents if they satisfy the requirements found in the *Regulations*. A foreign national who applies as a member of this class may only become a permanent resident if a sponsorship undertaking is in effect and the sponsor who gave that undertaking continues to meet the requirements of section 133 of the *Regulations*. The aspect which is relevant here is set out in paragraph 133(1)(b):

| **Requirements for sponsor** | **Exigences : répondant** |
| --- | --- |
| **133(1)** A sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor | **133(1)** L’agent n’accorde la demande de parrainage que sur preuve que, de la date du dépôt de la demande jusqu’à celle de la décision, le répondant, à la fois : |
| … | […] |
| **(b)** intends to fulfil the obligations in the sponsorship undertaking; | **b)** avait l’intention de remplir les obligations qu’il a prises dans son engagement; |
| … | […] |

[21] The sponsorship undertaking referred to in this provision includes a binding legal promise that the sponsor will "provide for the basic requirements of the sponsored person and his or her family members who accompany him or her to Canada, if they are not self-supporting," and an acknowledgement that "the money, goods or services provided by [the sponsor] must be sufficient for the sponsored person to live in Canada. [the sponsor] promise[s] that the sponsored person and his or her family will not need to apply for social assistance." In addition, the person to be sponsored promises "to make every reasonable effort to provide for [their] own basic requirements as well as those of [their] accompanying family members." The sponsorship undertaking makes clear that the sponsor is undertaking to provide financial support for the person being sponsored and any dependents, whether or not the relationship continues, and despite any changes in the circumstances of either person.

(2) Position of the Parties

[22] The Applicant submits that the Officer's interpretation of the provision was incorrect. At the time of submitting the application and at the interview, the Applicant and Sponsor complied with the requirement not to be in receipt of social assistance as set out in the *Regulations*. The Applicant argues that the Minimum Necessary Income requirements imposed for other types of applications do not apply to spousal sponsorships. Paragraph 133(1)(b) refers to intention, not ability, and the Officer misinterpreted the legal requirements by focusing on the Sponsor's ability to fulfil the sponsorship undertaking – typically assessed under the Minimum Necessary Income requirement – rather than on her intention to do so.

[23] Furthermore, the Officer did not consider the Sponsor's personal circumstances, in that she had been responsible for up to six children as a single mother and had received social assistance during this period. At the time of the application, her situation had changed because two of her children had moved away from home, and by the time of the interview, a third child was no longer dependent upon her. In addition, the Sponsor's financial situation had improved from the time of the application to the interview because the Applicant had obtained a work permit and found a job, which allowed him to contribute to the household expenses. The Officer did not ask any questions about the couple's actual income or expenses.

[24] The Officer expressed concern that the Sponsor was not employed at the time of the interview, but ignored her explanation that she had stopped working because she had a miscarriage, which was supported by a note from her doctor.

[25] In addition, the Officer made an erroneous finding of fact concerning the Sponsor's history of receiving social assistance. The Officer's statement that "I give a lot of weight to the fact that the sponsor was on social assistance for 19 years…" is wrong. During this period, the Sponsor had received social assistance on an intermittent basis but she had also worked, as the sponsorship application clearly showed.

[26] Rather than applying the objective criteria set out in the law, the Officer applied a subjective assessment of financial ability, which largely made assumptions based on the size of the Sponsor's family. The Officer did not explore the actual living circumstances or budget of the family, nor the Applicant's contribution to the household expenses as required by the

sponsorship undertaking. The Applicant contends that the Officer's analysis is based on a wrong interpretation of both the law and the facts, and is therefore unreasonable.

[27] The Respondent submits that the Officer's analysis of the Sponsor's financial circumstances and her history of intermittent employment interspersed with the receipt of social assistance is grounded in the evidence, and reflects the requirements of paragraph 133(1)(b) of the *Regulations*. The Officer was right to be concerned that the Sponsor was of very limited financial means, and had four dependent children as well as a history of reliance upon social assistance. The Sponsor stopped receiving social assistance only one month prior to submitting the sponsorship application, and she was no longer able to work at the time of the interview due to medical reasons. The Officer's concern about whether the Sponsor could meet the financial commitments in the sponsorship undertaking was supported in the evidence.

[28] The fact that the Sponsor had received a letter in March 2018 confirming that she met the eligibility requirements for sponsorship does not assist here, because the Officer was required to make a fresh assessment of the requirements under section 133 at the time of the interview, pursuant to section 127 of the *Regulations*. In this case, the Sponsor's ability to provide financial support had deteriorated because she was unable to work at the time of the interview. This is a relevant consideration.

[29] The Officer had a duty to assess whether the Sponsor intended to fulfil her obligations under the sponsorship undertaking. In this case, these included providing financial support to the Applicant and his five dependent children, in addition to her four dependent children. The

Officer’s analysis was based on a reasonable interpretation of the legal requirements, and the evidence in the record.

(3) Discussion

[30] The Applicant argues that the Officer’s reliance on the Sponsor’s ability to support the Applicant in light of her financial circumstances was unreasonable because that is not relevant to her intention to fulfil the sponsorship undertaking. Paragraph 133(1)(b) of the *Regulations* requires an assessment of intention, not ability. In addition, the Applicant submits that the Officer erred in failing to consider his ability to sustain himself and his dependents.

[31] I am not persuaded.

[32] I agree with the Applicant that it would be unreasonable to import a specific financial test into paragraph 133(1)(b). There are other financial considerations set out in section 133, including that the sponsor not be in receipt of social assistance, not be in default on certain debts, payments or undertakings, and that the sponsor not be an undischarged bankrupt. These specific financial provisions do not, however, exclude any consideration of financial circumstances pursuant to paragraph 133(1)(b), to the extent that they are pertinent to an assessment of the sponsor’s intention. Pursuant to section 127 of the *Regulations*, the Officer was required to undertake a fresh assessment of the Sponsor’s intention at the time of the interview, and so the prior indication that the Sponsor met the eligibility requirements is not binding or persuasive.

[33] There is no jurisprudence of this Court on the interpretation of intention under paragraph 133(1)(b). However, decisions interpreting other provisions in *IRPA* or the *Regulations* that

require an assessment of a person's intention provide guidance. In *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131, the case involved an assessment of where an applicant under the federal skilled workers program intended to reside in Canada. Justice Alan Diner found at paragraph 31 that "[t]he assessment of intention, since it is a highly subjective notion, may take into account all indicia, including past conduct, present circumstances, and future plans, as best as can be ascertained from the available evidence and context."

[34] Similarly, in *Wei v Canada (Citizenship and Immigration)*, 2019 FC 982, which involved a consideration of "ability" and "intent" in regard to the definition of a self-employed person under subsection 88(1) of the *Regulations*, Justice Peter Annis noted "[i]t is well-known that intention is a mental attribute, and therefore can only be found as a fact by the examination of past external conduct evidence broadly defined, which proves as a likelihood the end or purpose of the conduct" (at para 40; (see also *Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257).

[35] Applying this approach to this case, it was reasonable for the Officer to consider the Sponsor's prior conduct, including her long-term reliance on social assistance, as well as her circumstances at the time of the interview, including that she was not employed and had three or four dependent children (there is some discrepancy in the evidence regarding this). These were relevant factors in assessing her intention to abide by the sponsorship undertaking. While I agree with the Applicant that the Officer's reference to her being on social assistance for 19 years is not technically correct to the extent it conveys the impression that this was continuous, this is not a fatal error because it is clear that the Officer was aware of her sporadic employment during this period.

[36] The Officer did not, directly or impliedly, undertake a Minimum Necessary Income analysis, nor did she import a specific financial threshold into the review. Rather, the Officer examined the Sponsor's intention with reference to her prior conduct, her present circumstances, and future plans. It is worth recalling that the sponsorship undertaking was a promise by the Sponsor to provide financial support for the Applicant as well as his five dependent children, and to ensure that they did not apply for social assistance. The Sponsor had to be able to live up to this promise, whether or not the relationship continued or the Applicant continued to have employment income and to contribute to the household expenses.

[37] In essence, the Officer assessed the Sponsor's stated intention against an "air of reality" test that considered whether the Sponsor's intention was likely to be fulfilled given her actual circumstances, including her financial situation. That is what the Officer was required to do pursuant to paragraph 133(1)(b) of the *Regulations* and the analysis is logical, coherent, and grounded in the evidence. In accordance with the *Vavilov* framework, this aspect of the decision is reasonable.

B. *Was the Officer's assessment of the validity of the marriage unreasonable?*

(1) Legal Framework

[38] The Officer's second basis for refusing the application was based on paragraph 4(1)(a) of the *Regulations*:

| **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 | **4(1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de |

| | |
|---|---|
| or conjugal partner of a person if the marriage, common-law partnership or conjugal partnership | 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; |
| … | […] |

[39] It is well established that the test is disjunctive, and that the intention of the parties in entering into the marriage under paragraph 4(1)(a) is to be measured at the time of the marriage (*Wong v Canada (Citizenship and Immigration)*, 2019 FC 1017 at para 17; *Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 28; *Hua v Canada (Citizenship and Immigration)*, 2018 FC 1041 at para 14). While evidence of the genuineness of the marital relationship over time may be a relevant consideration in assessing the intention of the couple at the time they entered into the marriage, it is not determinative and the assessment of intention must again consider all relevant evidence.

(2) Position of the Parties

[40] The Applicant submits that the Officer erred in considering the length of the courtship as an indication of the intention at the time of the marriage, and in concluding that his main goal in getting married was to bring his children to Canada. The Applicant notes that in *Gill v Canada (Citizenship and Immigration)*, 2010 FC 122 at para 6 [*Gill*], Justice Robert Barnes affirmed that when a decision-maker "is required to examine the genuineness of a marriage [under *IRPA*] it must proceed with great care because the consequences of a mistake will be catastrophic for the family. That is particularly obvious where the family includes a child born of the relationship."

[41] On the length of the courtship, the Applicant argues that the Officer failed to consider his particular circumstances as well as his wife's at the time of the marriage. They were both mature adults with children, and when they found a partner who shared their experience, culture, and faith, and was open to a relationship with a partner who already had children, they did not need a lengthy period to determine that they wanted to get married. The Applicant says this is similar to the circumstances in *Padda v Canada (Citizenship and Immigration)*, 2018 FC 708, which cited with approval the decision in *Nadasapillai v Canada (Citizenship and Immigration)*, 2015 FC 72 [*Nadasapillai*], in which Diner J. said:

> [18] First, one can easily understand why Ms. Raman was ready for the companionship that she clearly explained she had longed for: older couples can be quick in deciding to get married (although haste is certainly not the exclusive domain of any particular age). Older people are often ready to move more quickly into a lifelong commitment, as they know what they want. As Ms. Raman stated in her testimony, "I am getting older. I am very old now and I don't know how long I'll be able to live. … I found him a good person. So I took two or three days… to think about it and then decide it" (Transcript, CTR, p 430).

[42] The Applicant submits that he and the Sponsor were in a similar situation, and that they explained this to the Officer. The Officer's failure to take this into account renders the decision unreasonable.

[43] Furthermore, the Applicant argues that the Officer gave undue weight to his statements about his desire to be with his children, and discounted the other evidence, which spoke to the couple's knowledge of each other and their respective families, the proof of their shared life together, and their plans for the future.

[44] Finally, the Applicant contends that the Officer's failure to consider that they attempted to have a child together is a fatal flaw. The birth of a child or an attempt to conceive a child should be accorded great weight by an officer in the assessment of the genuineness of a marriage (*Nijjar v Canada (Citizenship and Immigration)*, 2012 FC 903 at paras 30-31 [*Nijjar*]; *Gill* at para 8). The Officer did not mention this in the decision. Furthermore, there was no assessment of the best interests of the children affected by this decision – including the Sponsor's children in Canada and the Applicant's children in Jordan. This is contrary to the requirements set out in *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at paras 35-36, 41.

[45] The Respondent argues that the rapid genesis of a relationship is a relevant consideration to the intention at marriage, and here the Officer's conclusion that the couple had spent very little time together was based on the evidence. The evidence shows that the couple first met in December 2015; in May 2016, the Sponsor visited the Applicant in Jordan for one month, and they next spent time together when the Applicant arrived in Canada on November 18, 2017. They were married 47 days later.

[46] The Respondent contends that the interview notes demonstrate that the Officer explored all the relevant evidence regarding the couple's relationship, including their knowledge of each other and their respective families, their living and financial circumstances, their shared culture and religion, and their shared activities. However, the Officer also noted the Applicant's repeated references to his desire to bring his children to Canada. The Respondent argues that the Officer's determination was based on the facts, and that the Applicant is simply asking the Court to r-

weigh the evidence. That is not the role of a court on judicial review, and there is no basis to interfere with the Officer's decision.

(3) Discussion

[47] The starting point is that the Officer's decision is based on paragraph 4(1)(a) of the *Regulations*, which requires an assessment of the parties' intention at the time of entry into the marriage. This is an intensely factual analysis, and the Officer's decision merits considerable deference from a reviewing court (*Chin v Canada (Citizenship and Immigration)*, 2019 FC 1642 at para 6).

[48] The Officer's decision includes the interview notes and a short review and analysis section. These explore the history and evolution of the couple's relationship at some length. The notes also indicate several references by the Applicant to his desire to bring his children to Canada. While this is an entirely understandable desire on the part of a parent, it is also a relevant consideration for an Officer considering the Applicant's intention in entering into the marriage.

[49] In a similar manner, the relatively short period the couple spent together prior to the marriage may be explained by any number of things, including their personal circumstances and relative maturity. However, as discussed in *Nadasapillai*, this is a factual assessment based on the evidence before the Officer. It was open to the Officer to consider it as a factor showing an intent to marry for immigration purposes.

[50] There was evidence before the Officer that the Sponsor had two miscarriages after her marriage to the Applicant. The jurisprudence cited by the Applicant, including *Nijjar* and *Gill*, makes clear that the attempt to have a child or the actual birth of a child will be an important consideration in assessing the genuineness of a marriage pursuant to paragraph 4(1)(b) of the *Regulations*, which focuses on the situation at the time of the assessment. As noted previously, however, in this case the decision was based on paragraph 4(1)(a), which involves an assessment of the couple’s intention at the time of entering into the marriage.

[51] The Officer’s conclusion regarding the Applicant’s intention in entering into the marriage is based primarily on his statements that his main goal was to get his children to Canada. This is grounded in the interview notes, which reveal that this was mentioned by the Applicant on several occasions during the interview. The Officer has explained her reasoning, it reflects both the legal constraints set by paragraph 4(1)(a) of the *Regulations* and the factual matrix of the case. The analysis is short, but it reveals the chain of reasoning of the Officer and it is logical and coherent in the circumstances of the case. This is not unreasonable.

## IV. Conclusion

[52] For these reasons, the application for judicial review is dismissed. There is no question of general importance for certification.

[53] In this case, I agree with the Applicant that some aspects of the decision could have been worded differently, for example, the reference to the length of time the Sponsor received social assistance is not entirely precise. I also agree that this is a case in which the Officer reasonably

could have come to a different conclusion on the basis of the evidence presented. However, this does not make the decision unreasonable.

[54] The reasons in this case, which are comprised of the Officer’s interview notes and the analysis which follows, are logical and coherent, and explain the decision in light of the legal framework and the facts. These are the hallmarks of a reasonable decision, under both the *Dunsmuir* and *Vavilov* frameworks.

**JUDGMENT in IMM-1129-19**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1129-19 |
| **STYLE OF CAUSE:** | HASSAN A.M. ALRIYATI v IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA |
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| **DATED:** | APRIL 7, 2020 |

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