Federal Court  Cour fédérale

Date: 20200520

Docket: IMM-1498-19

Citation: 2020 FC 633

Ottawa, Ontario, May 20, 2020

PRESENT: Mr. Justice Norris

BETWEEN:

SISSY ZHOU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant, Sissy Zhou, is a Canadian citizen of Chinese descent. She married Shouqiang Zhang, a citizen of China, in February 2015. At the time, Ms. Zhou was 42 years old; Mr. Zhang was 44. The two had met online six months earlier. This was Ms. Zhou's third marriage and Mr. Zhang's second.

[2] Almost a year after they were married, Ms. Zhou applied to sponsor Mr. Zhang for permanent residence in Canada. The application was refused because Mr. Zhang was found not to qualify as a member of the family class. More particularly, the immigration officer who considered the application was not satisfied that Mr. Zhang's marriage to Ms. Zhou was not entered into primarily for an immigration purpose and that it was a genuine marriage: see *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], subsection 4(1).

[3] Ms. Zhou appealed the refusal of her sponsorship application to the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada. After a two-day hearing, the IAD dismissed the appeal. Like the immigration officer, the IAD member was not satisfied that the marriage was not entered into primarily for an immigration purpose and that it was genuine. As a result, Ms. Zhou's appeal was dismissed.

[4] Ms. Zhou now applies for judicial review of the IAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In her Memorandum of Fact and Law, Ms. Zhou contended that the decision should be set aside because it is unreasonable and because there is a reasonable apprehension of bias on the part of the IAD. The allegation of bias was not pressed at the hearing of this application but nor was it abandoned.

[5] For the reasons that follow, this application will be allowed. While I do not agree that the decision is vitiated by a reasonable apprehension of bias, I do agree that it is unreasonable in key respects. The matter must therefore be reconsidered by a different decision maker.

II. BACKGROUND

[6] Ms. Zhou was born in Fujian, China, in November 1972. She was landed in Canada in October 2001 after being sponsored by her second husband, whom she married in China in March 1999 and divorced in October 2003 (the two had separated in October 2002). She was previously married in China (from October 1992 until September 1998). She has a son (born in March 1993) from her first marriage who lives in Canada.

[7] Mr. Zhang was born in Dongping, China, in July 1970. He was previously married in China for fourteen years. He and his first wife divorced in November 2012. They have one child, a son who was born in April 2000.

[8] Ms. Zhou met Mr. Zhang in August 2014 on a Chinese dating website. At the time, Ms. Zhou was living in Orillia, Ontario and working at Casino Rama. Mr. Zhang was working as Vice General Manager with Nanping Musicflying Karaoke in Zhuhai City, Guangdong, China.

[9] According to both Ms. Zhou and Mr. Zhang, the two became "very close" quickly. They spoke every day and also continued to communicate with an internet-based chat platform. As reflected in their chats, soon after they connected online, Mr. Zhang had raised the subject of marriage and having children together. Ms. Zhou appeared less keen on the idea, at least initially.

[10] In October 2014, Ms. Zhou took a ten-day trip to China to meet Mr. Zhang. During this trip, they visited Ms. Zhou's home town. Ms. Zhou introduced Mr. Zhang to her mother and her sisters.

[11] In December 2014, Ms. Zhou visited China again. Mr. Zhang proposed marriage to her and the two became engaged.

[12] Ms. Zhou and Mr. Zhang were married on February 12, 2015, in a small ceremony in China. Fourteen guests attended, "including relatives from both sides," according to Mr. Zhang's application for permanent residence. Ms. Zhou also testified before the IAD that fourteen guests had attended. She explained that Mr. Zhang's two sisters could not attend because the wedding coincided with the regional Spring Festival celebrations and it would have been difficult for them to get to the ceremony in any event. (Mr. Zhang's parents were already deceased, as was Ms. Zhou's father.) Apart from this and the fact that her son attended, Ms. Zhou was not asked any other questions about who was at the wedding (and Mr. Zhang was not asked anything at all about who was there). Documentary evidence filed in support of the sponsorship application indicates that Mr. Zhang's son also attended.

[13] In May 2015, Ms. Zhou went to China again. She states that she intended to stay there because her husband and step-son did not want to come to Canada. She further states that she could not find employment there as she had lost her Chinese citizenship and required a sponsorship visa. She also states that she became pregnant and experienced pollution-related illness and adjustment issues, all of which forced her to return to Canada in July 2015.

[14] According to Ms. Zhou, she visited her husband in China five more times after May 2015.

[15] Shortly after she returned to Canada in July 2015, Ms. Zhou suffered a miscarriage. Subsequently, Mr. Zhang's application for a Canadian visitor's visa was rejected. However, he was able to travel to the United States and Ms. Zhou joined him in New Jersey for a week in November 2015. They met in the United States again in the fall of 2016 and then in the fall of 2017.

[16] On January 19, 2016, Ms. Zhou submitted an application to sponsor Mr. Zhang for permanent residence in Canada. Mr. Zhang's son (who was 15 years of age at the time) was also included on the application as a dependant.

[17] On May 15, 2016, an immigration officer with the Canadian Consulate in Hong Kong interviewed both Ms. Zhou and Mr. Zhang.

[18] In a decision communicated to Mr. Zhang and to Ms. Zhou by a letter dated July 28, 2016, the officer refused the application because Mr. Zhang was found not to qualify as a member of the family class. This was because the officer was not satisfied that Mr. Zhang's marriage to Ms. Zhou "is genuine or that it was not entered into primarily for purposes of acquiring permanent residence in Canada." The officer's Global Case Management System notes cited concerns surrounding the rapid progression of Mr. Zhang's relationship with Ms. Zhou; Ms. Zhou's lack of knowledge about Mr. Zhang's personal life and previous

marriage; insufficient evidence about the "stated genesis and development" of the relationship; and concerns about the genuineness of Ms. Zhou's second marriage (which had ended in divorce after Ms. Zhou was landed in Canada).

[19] Ms. Zhou appealed this decision to the IAD under subsection 63(1) of the *IRPA*.

III. STATUTORY PROVISIONS

[20] Subsection 12(1) of the *IRPA* states:

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.

[21] Thus, under paragraph 117(1)(a) of the *IRPR*, a foreign national is a member of the family class if, with respect to the sponsor, the foreign national is "the sponsor's spouse, common-law partner or conjugal partner."

[22] However, under subsection 4(1) of the *IRPR*, which has the heading "Bad Faith," for purposes of the 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.

IV. DECISION UNDER REVIEW

[23] The appeal was heard by the IAD on July 12, 2018, and January 25, 2019. It was dismissed for written reasons dated February 6, 2019.

[24] Both Ms. Zhou and Mr. Zhang testified in the proceeding before the IAD – Ms. Zhou in person, Mr. Zhang by telephone.

[25] Given that the test for disqualification is disjunctive, the burden was on Ms. Zhou to establish both that her marriage to Mr. Zhang was not entered into primarily for the purpose of acquiring any status or privilege under the Act and that it is genuine.

[26] The IAD member was not persuaded in either respect. He concluded that the marriage was entered into primarily for the purpose of securing permanent resident status for Mr. Zhang and that the marriage is not genuine. The member reached these conclusions primarily because he did not find Ms. Zhou's or Mr. Zhang's evidence credible.

[27] As explained in the reasons for the decision, this adverse credibility finding rested on several considerations, including the following:

- Mr. Zhang, who knew about Ms. Zhou's Canadian citizenship from her online profile, began discussing the prospect of marriage almost immediately after the two met;

- The marriage was entered into in "haste" when it would have been more prudent for Ms. Zhou to have proceeded more slowly if the relationship was a genuine one given her past experiences in marriage;

- The wedding was arranged "with no apparent interest in giving family members notice for the purpose of attending and celebrating the marriage," as demonstrated by the fact that none of Ms. Zhou's sisters, Mr. Zhang's sisters, or Ms. Zhou's mother attended;

- There was no need to proceed so quickly with the engagement and the wedding other than to facilitate Mr. Zhang's obtaining status in Canada;

- The couple lacked knowledge about each other's past marriages;

- Ms. Zhou lacked knowledge about Mr. Zhang's employment;

- Documentary evidence relating to Mr. Zhang's purchase of a home in Innisfil, Ontario, led the member to conclude that the home was for Mr. Zhang and his son alone;

- Ms. Zhou received financial benefits from Mr. Zhang, which the member inferred was compensation for facilitating the latter's obtaining permanent residence in Canada;

- Ms. Zhou's second marriage was most likely entered into in bad faith and for the purpose of securing status in Canada.

[28] The member noted that Ms. Zhou had been in China from May to August 2015 but rejected her claim that she had gone there with the intention of moving there and then changed her mind after being there for a few months. The member also noted that Ms. Zhou and Mr. Zhang had seen each other regularly in person in China and in the United States but concluded, on the whole of the evidence, that these trips were solely for the purpose of bolstering the claim that the marriage was genuine.

[29] Further, the member stated that "in many areas" counsel for Ms. Zhou (not Mr. Nazami) had adduced the evidence-in-chief of Ms. Zhou and Mr. Zhang by way of leading questions. Despite being cautioned about this, counsel persisted in this manner of examination. Consequently, the member stated that he "cannot give much weight to the evidence provided by both the appellant [i.e. Ms. Zhou] and applicant [i.e. Mr. Zhang]."

[30] On the basis of these specific findings, and having considered the whole of the evidence, the IAD concluded that the marriage between Ms. Zhou and Mr. Zhang is not genuine and was entered into primarily for the purpose of Mr. Zhang acquiring status or privilege in Canada. The IAD therefore dismissed the appeal.

V. STANDARD OF REVIEW

[31] The two broad grounds upon which Ms. Zhou challenges the IAD's decision attract different standards of review.

[32] First, Ms. Zhou contends that the IAD's decision should be set aside on the basis of a reasonable apprehension of bias on the part of the IAD. This issue is raised for the first time on this application. The IAD member was never asked to recuse himself; indeed, at no time during the hearing did counsel for Ms. Zhou raise any concerns about bias. As a result, it seems to make little sense to speak of applying a standard of "review" to a determination by the IAD. Nevertheless, since I must conduct my own analysis and provide what I judge to be the right answer to the question of whether the record supports a reasonable apprehension of bias on the part of the IAD, this is functionally the same as applying the correctness standard of review: see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 34 and 50; and *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 54. See also *Coombs v Canada (Attorney General)*, 2014 FCA 222 at para 12.

[33] Second, with respect to the substance of the decision, the parties agree, as do I, that the IAD's decision should be reviewed on a reasonableness standard: see *Gill v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1522 at para 17; *Kaur v Canada (Citizenship and Immigration)*, 2018 FC 657 at para 15; *Cao v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 364 at paras 13-14; *Idrizi v Canada (Citizenship and Immigration)*, 2019 FC 1187 at para 21. Whether a marriage is genuine or was entered into primarily for an immigration purpose are highly factual inquiries which often turn on credibility determinations. As a result, decision makers are entitled to deference from reviewing courts. This is particularly the case when the decision maker has had the opportunity to question the spouses.

[34] Following *Vavilov*, reasonableness is now the presumptive standard of review, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (at para 10). In my view, there is no basis for derogating from the presumption that reasonableness is the applicable standard of review here.

[35] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[36] An assessment of the reasonableness of a decision must be sensitive and respectful yet robust (*Vavilov* at paras 12-13). Reasonableness review focuses on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). "Close attention" must be paid to a decision maker's reasons; they "must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made" (*Vavilov* at para 97).

[37] The burden is on Ms. Zhou to demonstrate that the IAD's decision is unreasonable. She must establish that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100) or that the decision is "untenable in light of the relevant factual and legal constraints that bear on it" (*Vavilov* at para 101).

VI. ISSUES

[38] As noted, this application raises two issues:

a) Is the IAD's decision vitiated by a reasonable apprehension of bias?

b) Is the IAD's decision unreasonable?

VII. ANALYSIS

A. *Is the IAD's decision vitiated by a reasonable apprehension of bias?*

[39] The principles governing an allegation of reasonable apprehension of bias are well established. The burden of proof rests on the party alleging bias (whether actual or perceived). The test is whether a reasonable and informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it is more likely than not that the decision maker, whether consciously or unconsciously, would not decide the matter fairly. The objective of the test is to ensure not that adjudicative processes are fair but also that they appear to be so. The issue of bias is inextricably linked to the need for impartiality. The inquiry into whether a decision maker's conduct creates a reasonable apprehension of bias is inherently contextual and fact-specific, and must take into account the entirety of the proceeding. An allegation of bias (whether actual or perceived) is a serious matter that should not be raised lightly. In the absence of evidence to the contrary, members of administrative tribunals, like judges, are presumed to have acted fairly and impartially. The threshold for a finding of bias (whether actual or perceived) is therefore high. The party alleging it must establish a real likelihood or probability of bias; mere suspicion is insufficient. See *Yukon Francophone School*

Board, Education Area #23 v Yukon Territory (Attorney General), 2015 SCC 25 at paras 20-26, and the cases cited therein, and *Zündel v Citron*, [2000] 4 FC 225 (FCA) at paras 36-37.

[40] Ms. Zhou does not point to any aspects of the IAD's conduct of the appeal proceeding to support the allegation of bias. Rather, she relies only on the IAD's reasons for dismissing the appeal. She contends the reasons demonstrate that "no amount of evidence would have been sufficient for this panel to reach a different conclusion."

[41] There is no merit to this complaint. It amounts to nothing more than a disagreement with the outcome. That the IAD did not assess the evidence in the way Ms. Zhou would have preferred falls well short of demonstrating that the IAD approached the evidence with a closed mind or that the outcome was predetermined: see *Sandhu v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 889 at paras 61-62. Whether any of those findings are unreasonable is, of course, another question. I turn to it now.

B. *Is the IAD's decision unreasonable?*

[42] The IAD determined that Mr. Zhang is excluded from the family class because it found that he married Ms. Zhou primarily to obtain permanent resident status in Canada and because their relationship is not genuine. Either finding would have permitted the IAD to dismiss Ms. Zhou's appeal. Ms. Zhou contends that both are unreasonable. I agree.

[43] The current version of subsection 4(1) of the *IRPR* was enacted in September 2010. While the test retained the same elements as its predecessor, the new provision replaced what

had been a conjunctive test for disqualification with a disjunctive test. As I discussed recently in *Idrizi* at paras 25-30, the amended provision was intended to make the decision to disqualify spousal status more straightforward: see the Regulatory Impact Analysis Statement re SOR/2010-208 (September 30, 2010), *Canada Gazette Part II, Vol 144, No 21*, pp 1942-46 [Regulatory Impact Analysis]. At the same time, since either element of subsection 4(1) of the *IRPR* will now suffice to disqualify spousal status, it can be more difficult to establish that a spouse is not disqualified. This is because the party relying on the relationship must demonstrate both that the marriage, common-law relationship or conjugal relationship (as the case may be) was not entered into primarily for an immigration purpose and that the relationship is genuine whereas previously one or the other would have sufficed (*Ferraro v Canada (Citizenship and Immigration)*, 2018 FC 22 at para 12).

[44] Under both the previous and the current versions of subsection 4(1) of the *IRPR*, the primary purpose test and the genuineness test are determined with respect to different time-frames. The relevant time for the primary purpose test is in the past (i.e. the time of the marriage); the relevant time for the genuineness test is the present (i.e. the time of the decision) (*Singh v Canada (Citizenship and Immigration)*, 2014 FC 1077 at para 20; *Ferraro* at para 13; Regulatory Impact Analysis at 1944).

[45] It is noteworthy that when subsection 4(1) of the *IRPR* was amended, the expectation was that, in most cases, decision makers would focus on the primary purpose test (Regulatory Impact Analysis at 1944). Nevertheless, “evidence of a lack of genuineness of the relationship is also relevant in examining whether a relationship was entered into for status or a privilege under the

Act" (*ibid*). Thus, despite the fact that the amended provision separates the primary purpose and genuineness tests and treats each as sufficient in and of itself to warrant a finding that a person is not considered a spouse, there can still be a close connection between the two in a given case. Evidence that a marriage is not genuine can support the inference that it was entered into primarily for an immigration purpose. The converse is also true.

[46] As the Regulatory Impact Analysis also noted, these determinations can be exceedingly difficult. Decision makers must "proceed cautiously and carefully, ever aware of the need to facilitate family reunification, while at the same time safeguarding the integrity of the immigration process" (at 1944). There will rarely be direct evidence of an improper purpose. Instead, normally "intent must be inferred from the conduct of the parties and the particular circumstances of the case" (*ibid*). As a result, even though it is no longer sufficient for spouses simply to establish that they are in a genuine marriage (because the decision maker can disqualify the marriage solely because it was entered into primarily for an immigration purpose), evidence concerning the genuineness of the marriage can still have a bearing on whether an adverse conclusion about the parties' intentions when they got married should be drawn (*Lawrence v Canada (Citizenship and Immigration)*, 2017 FC 369 at paras 14-15; *Trieu v Canada (Citizenship and Immigration)*, 2017 FC 925 at paras 37-38). The failure to consider such evidence can be a reviewable error.

[47] In the present case, the principal factor the IAD relied on to conclude that the marriage was entered into for an immigration purpose was the speed with which the relationship developed. The member writes: "Like the immigration officer, the Panel is very concerned with

how this relationship progressed as quickly and hastily as it did from the first meeting online on August 2, 2014 to marriage on February 12, 2015."

[48] While the speed with which a relationship develops can be a relevant consideration, it must be approached with care. Affairs of the heart seldom unfold fully rationally. There is no objective benchmark by which to determine whether a given relationship developed at the appropriate speed or not. Rather, a decision maker must determine whether the development of the relationship makes sense in the context of the lives of the parties in question and in the absence of an ulterior motive. The latter point is important because the party contending that the marriage was not entered into in bad faith has the difficult task of proving a negative – namely, that the marriage was not entered into primarily for an immigration purpose. This can usually be done only indirectly, by showing that it is not necessary to posit an ulterior motive to explain why the parties acted as they did.

[49] In my view, the IAD's conclusion in this regard is undermined by unreasonable factual determinations.

[50] There is no dispute that Mr. Zhang raised the topics of marriage and children very shortly after meeting Ms. Zhou online. This is potentially probative of his intentions. However, the IAD also finds that the wedding was arranged "in haste with no apparent interest in giving family members notice for the purpose of attending and celebrating the marriage" and then infers from this as well that the marriage had an ulterior purpose. This characterization of the marriage rests on specific findings that none of Ms. Zhou's sisters, Mr. Zhang's sisters, or Ms. Zhou's mother

attended. While the evidence concerning who attended the wedding was not as clear as it might have been, as I read the record, there is no evidence to support the IAD's finding that Ms. Zhou's sisters and mother were not there. On the other hand, Mr. Zhang's and Ms. Zhou's respective sons did attend the wedding (the latter having travelled from Canada for this purpose). The IAD's finding that "[t]here was no need for the families to attend as this was a quick marriage, first raised by [Mr. Zhang], in the Panel's view, primarily for the purpose of him acquiring any status or privilege in Canada" lacks a reasonable basis in the evidence concerning who was at the wedding.

[51] To be clear, in making this determination I place no reliance on Ms. Zhou's affidavit, filed in support of her application for judicial review, in which she states that her mother and her sisters attended the wedding. This evidence impermissibly supplements the record before the IAD: see *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 17-20 and *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28. The point is that, contrary to the IAD's finding, there is no evidence in the record before the IAD that these individuals did not attend.

[52] Returning to the question of Mr. Zhang's motives, viewed in isolation, it was not unreasonable for the IAD to query whether his almost immediate interest in marrying Ms. Zhou suggested the presence of an ulterior motive on his part. That being said, evidence that the relationship is genuine could help to rebut this suggestion. The IAD's assessment of this evidence, however, is also undermined by unreasonable determinations.

[53] For example, the IAD did not believe Ms. Zhou's or Mr. Zhang's testimony that, if the appeal were allowed, they planned to live together in the house in Innisfil. Documentary evidence before the IAD indicated that the process of purchasing the home (which was a new build) had begun in September 2016. The anticipated closing date was May 7, 2020, at the earliest. Cheques for the deposits were drawn on Ms. Zhou's bank account with Mr. Zhang having provided the funds.

[54] The member concluded that, contrary to their testimony, Ms. Zhou and Mr. Zhang did not intend to live together in this home because Ms. Zhou's name was not on the Agreement of Purchase and Sale. While Ms. Zhou's name is missing from a Buyer Customer Service Agreement between Mr. Zhang and Caldwell Banker (the real estate broker), the Agreement of Purchase and Sale names both Mr. Zhang and Ms. Zhou as purchasers and both appear to have signed the document, contrary to the member's finding. An Addendum to the Agreement of Purchase and Sale setting out prospective closing dates was filled out with only Mr. Zhang's name but, again, both he and Ms. Zhou appear to have signed this document. Having regard to the whole of the documentary evidence relating to the purchase of the home, the IAD's adverse conclusion lacks justification, transparency, and intelligibility.

[55] Similarly, the IAD appears to have accepted that Ms. Zhou had a miscarriage after she returned from China in the summer of 2015. As well, the IAD did not question that Mr. Zhang was the father. While not determinative in and of itself, by any measure, the fact that Ms. Zhou and Mr. Zhang had conceived a child together is a significant consideration in assessing the genuineness of their marriage (*Nijjar v Canada (Citizenship and Immigration)*, 2012 FC 903 at

para 31). However, the IAD does not engage with this at all apart from observing in passing that "[i]t is true that a couple would be saddened when they lose a child particularly when they want to start a family." The member then focused solely on how early in the relationship Mr. Zhang had said he wanted to have a child with Ms. Zhou, and draws an adverse conclusion from this. The failure to engage in any meaningful way with the potentially highly probative evidence that Ms. Zhou and Mr. Zhang had conceived a child together leaves the decision lacking in justification, transparency, and intelligibility in this respect as well.

[56] Further, Ms. Zhou submits that the IAD's adverse conclusion concerning her second marriage was not only unreasonable, it was determinative of her appeal. While I would not go that far, I agree that it played a significant role in the member's analysis. I also agree that the IAD's assessment of the significance of this factor is unreasonable.

[57] As set out above, Ms. Zhou was landed in Canada in October 2001 after being sponsored by her second husband, whom she married in China in March 1999 and divorced in October 2003 after being separated for a year. She had explained to the immigration officer when she was interviewed in Hong Kong and again at her appeal that the relationship ended because her husband was experiencing sexual dysfunction. According to Ms. Zhou, this led her husband to want to end the marriage. Sixteen years after she married her second husband, and over thirteen years after they were divorced, Ms. Zhou married Mr. Zhang.

[58] The IAD member stated the following in his reasons (referring to Ms. Zhou as the appellant and Mr. Zhang as the applicant):

> The immigration officer was concerned and the Panel remains concerned that the appellant's second marriage resulting in her eventual successful immigration to Canada was a means to an end, as there were some aspects of a marital problem before immigrating to Canada and then separated from her husband at a time shortly after her arrival with little or no attempt to reconcile. This is a reasonable factor to consider in the overall assessment of this appeal.

[59] The member returned to this topic a few paragraphs later, stating his final conclusions on the appeal as follows:

> Unfortunately for the appellant and the applicant this *de novo* appeal hearing did not sufficiently assist the Panel regarding this marital relationship being genuine and one not entered into primarily to acquire any status or privilege in Canada. Thus, based on what has been previously stated in these reasons, the marriage between the appellant and the applicant, in the Panel's view, was entered into with a view of the applicant and his son obtaining status or privilege in Canada.
>
> The appellant and applicant remain married now for four years because it is a way into Canada for the applicant and his son. Should permanent residence been granted [*sic*], history dictates, for the appellant that is, that separation and then divorce would likely occur shortly after the applicant and his son were to immigrate. This is likely as they do not really know each other for the purpose of sustaining a marriage as it is not genuine. As a result, separation and divorce would be the logical next step if permanent residence was acquired.

[60] Mr. Zhang's and Ms. Zhou's respective marital and immigration histories may be relevant because they could shed light on their respective motivations for getting married (*Nguyen v Canada (Citizenship and Immigration)*, 2016 FC 1207 at para 29; *Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244 at para 37; *Kaur v Canada (Citizenship and Immigration)*, 2018 FC 657 at para 19). Thus, having previously entered into a bad faith marriage can be relevant to whether one has done so again but the connection between the two in

a given case must be explained for a decision to meet the requirements of justification, transparency, and intelligibility. It is not enough to say, as the IAD member did here, that this is "a reasonable factor to consider" because what makes this factor relevant can vary from case to case.

[61] For example, it could reasonably be open to a decision maker to use the disregard for Canadian immigration law demonstrated by entering a bad faith marriage when assessing that party's credibility: see, for example, *Thach v Canada (Citizenship and Immigration)*, 2008 FC 658 at para 26. But that is not how the IAD used it in this case. Instead, the IAD appears to have reasoned that since Ms. Zhou had previously entered into marriage with an ulterior motive, she would do so again, and therefore did so in this case. The IAD appears to think Ms. Zhou's second and third marriages form a pattern but, with respect, the logic of this inference escapes me. The member judges Ms. Zhou's second marriage to have been a means to an end for her but, on the member's own analysis, it and her marriage to Mr. Zhang had different ends, at least as far as Ms. Zhou is concerned. Without further explanation, I fail to see how it follows from the fact (as found by the IAD) that Ms. Zhou married her second husband to secure permanent residence for herself that she therefore married her third husband to secure permanent residence for him. Equally, without further explanation, Ms. Zhou's marital and immigration history sheds little if any light on Mr. Zhang's motivations in marrying her.

[62] Finally, I agree with Ms. Zhou, although for a slightly different reason than she advanced, that the IAD's determination that her evidence could not be given "much weight" because it was adduced in chief with leading questions is unreasonable. The examination-in-chief of Mr. Zhang

was not the most skillful and it did give rise to an objection that he was being asked leading questions and to a caution from the member that if this continued he "cannot" give the responses "much weight." However, Ms. Zhou had testified before this and no such objection was made during her examination-in-chief. The IAD's decision to give little weight to her testimony for this reason finds no reasonable support in the record.

[63] While it is not, strictly speaking, necessary to do so, I would also add that the IAD member's solution to the problem of the manner in which Mr. Zhang's evidence-in-chief was being adduced leaves much to be desired. The member stated that if Ms. Zhou's counsel continued to ask leading questions, he would not stop him and it was not necessary for Minister's counsel to object "to any possible leading future questions." Instead, he would simply not give the answers "much weight." The problem with this approach is that not all leading questions in examination-in-chief are objectionable. They can facilitate the presentation of evidence in uncontroversial areas. They should certainly be avoided in controversial areas but counsel may not have agreed in advance about what is controversial and what is not and it may not always be obvious what is in dispute. Further, since the member is not privy to either party's brief, he cannot be sure about what is controversial as between them and what is not unless someone tells him. This is why the usual practice of counsel opposite raising an objection when it appears to be warranted and the presiding member ruling on the objection is both necessary and salutary. If nothing else, it ensures that counsel do not unwittingly fall into the trap of adducing evidence which the decision maker will later judge to be of less value simply because of how it was adduced.

VIII. CONCLUSION

[64] For these reasons, the application for judicial review will be allowed, the decision of the IAD set aside, and the matter remitted for redetermination by a different decision maker.

[65] The parties have not suggested any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

[66] Finally, the original style of cause names the respondent as the Minister of Immigration, Refugees and Citizenship. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *IRPA*, s 4(1). Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-1498-19

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent.
2. The application for judicial review is allowed.
3. The decision of the Immigration Appeal Division dated February 6, 2019, is set aside and the matter is remitted for redetermination by a different decision maker.
4. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1498-19
STYLE OF CAUSE:	SISSY ZHOU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 5, 2020
JUDGMENT AND REASONS:	NORRIS J.
DATED:	MAY 20, 2020

APPEARANCES:

Hadayt Nazami	FOR THE APPLICANT
Prathima Prashad	FOR THE RESPONDENT

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