Federal Court  Cour fédérale

Date: 20210414

Docket: IMM-6602-19

Citation: 2021 FC 323

Ottawa, Ontario, April 14, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

VI BUU TA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Vi Buu Ta, seeks judicial review of a decision of the Immigration Appeal Division [IAD] dated October 4, 2019. The IAD dismissed his appeal of a decision by an immigration officer who refused to issue a permanent resident visa to his wife on the basis that the marriage was 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] The Applicant is a Canadian citizen of Vietnamese origin. He came to Canada in August 1979 as a government-sponsored refugee. He is sixty-four (64) years old. He has had three (3) prior marriages and has sponsored two (2) of his former wives to come to Canada. He wishes to sponsor his current wife, who is a 27-year-old citizen of Vietnam.

[3] The Applicant met his wife in the coffee shop where she worked during one of the Applicant's trips to Vietnam in June 2012. After multiple visits to the coffee shop and a few lunch dates, the Applicant returned to Canada in July 2012. Within ten (10) days of his return to Canada, the Applicant began sending his wife money transfers, the first being of $2,600 and totalled over $100,000. The Applicant returned to Vietnam in May 2014, at which time he met his wife's family. In October 2014, the Applicant proposed to his wife over the phone. The couple got married in Vietnam in January 2015. The Applicant has returned to Vietnam on a number of occasions since the wedding.

[4] The Applicant filed the spousal sponsorship application in June 2016. The application was refused on June 23, 2017. The visa officer was not satisfied that the marriage was genuine or that it was not entered into primarily for the purpose of acquiring permanent resident status in Canada. The Applicant subsequently appealed this refusal to the IAD.

[5] The IAD heard the appeal over two (2) sittings and dismissed the appeal on October 4, 2019. It found that the Applicant had not established on a balance of probabilities that his marriage was genuine and was not entered into primarily for acquiring status under the IRPA. In its decision, the IAD noted numerous inconsistencies and discrepancies between the Applicant

and his wife's testimonies and documentary evidence. The IAD found that the evidence surrounding the genesis and development of the relationship was not sufficiently clear, cogent or convincing to establish on a balance of probabilities how the Applicant and his wife first met and began their relationship. In addition, although the IAD noted positive evidence supporting genuineness of the marriage such as ongoing telephone communications, the Applicant's visits to Vietnam, the wife's pregnancy and the money transfers, it found that this evidence did not have sufficient probative value to overcome concerns with the wife's intentions in entering the marriage.

[6] The Applicant raises four (4) issues on this application for judicial review. First, he submits that the IAD erred by ignoring or unreasonably refusing to consider or give adequate weight to the positive evidence proving that the marriage is genuine and that it was not entered into for immigration purposes. Second, he contends that the IAD based its conclusions on speculation rather than the evidentiary record. Third, he alleges that the IAD erred by improperly distinguishing this Court's decision in *Canada (Citizenship and Immigration) v Jin*, 2008 FC 1172 [*Jin*] and by inappropriately applying the test set out in *Canada (Citizenship and Immigration) v Moise*, 2017 FC 1004 [*Moise*]. Finally, the Applicant is of the view that the IAD based its conclusions on findings of fact made in a perverse or capricious manner.

II. Analysis

[7] The determination of whether a marriage is genuine or entered into for immigration purposes is a question of mixed fact and law, reviewable on a standard of reasonableness (*Osman v Canada (Citizenship and Immigration)*, 2020 FC 869 at para 10; *Idrizi v Canada (Citizenship*

and Immigration), 2019 FC 1187 at para 21 [*Idrizi*]; *Chen v Canada (Citizenship and Immigration)*, 2018 FC 840 at para 8 [*Chen*]). Although the Applicant frames the first two (2) issues as breaches of procedural fairness, in my view, he is in reality challenging the reasonableness of the IAD's findings.

[8] For a decision to be found reasonable, it must be based on an internally coherent and rational chain of analysis, and it must be justified in relation to the facts and the law (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). It must also bear "the hallmarks of reasonableness – justification, transparency and intelligibility" (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[9] Subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] provides that 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 IRPA, or (b) is not genuine. As the tests under paragraphs 4(1)(*a*) and 4(1)(*b*) of the IRPR are disjunctive, the Applicant must demonstrate that the marriage is both genuine and that it was not entered into for the purpose of acquiring status in Canada. The onus lies on the Applicant to adduce sufficient evidence to demonstrate that his wife is not disqualified under either paragraph 4(1)(a) or 4(1)(b) of the IRPR (*Kusi v Canada (Citizenship and Immigration)*, 2021 FC 68 at paras 8-9; *Chen* at para 10; *Onwubolu v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 19 at paras 13, 15 [*Onwubolu*]).

[10] Contrary to the Applicant's argument, the IAD did not ignore or unreasonably refuse to consider the Applicant's positive evidence.

[11] It is well recognized that the decision maker is presumed to have considered all of the evidence on the record (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL); *Chen* at para 17). Moreover, the decision maker is not required to address all of the evidence received in its reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16; *Chen* at para 17).

[12] In its reasons, the IAD expressly states that it carefully considered all of the evidence and submissions of the parties. However, it found that the positive factors were mitigated by the numerous concerns and discrepancies identified in the evidence. While the Applicant may be dissatisfied with the IAD's weighing of the evidence and may have preferred the IAD focus exclusively on the evidence that supports his case, this is not a basis for judicial review (*Rahman v Canada (Citizenship and Immigration)*, 2013 FC 877 at para 17 [*Rahman*]). As for the testimony of the other witnesses at the hearing, the Applicant has failed to demonstrate how their evidence contradicts the findings of the IAD such that there was a requirement to specifically mention this evidence in the IAD's reasons (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17).

[13] Secondly, the IAD did not base its conclusions on speculation but on the record before it. It was reasonable for the IAD to give little weight to the money transfers. The IAD gave a detailed account of the many discrepancies in the testimonies of the Applicant and his wife

regarding these transfers, including the amounts sent, how the money was transferred, the purpose of the transfer, and how the money was spent. Based on these discrepancies, the IAD could reasonably find that the Applicant had not adequately explained why he would send such large sums of money to someone he had only just met on a few occasions, especially when the genesis of the relationship had not been clearly established. Contrary to the Applicant's argument, the IAD did not find that the funds from the money transfers were recycled or returned through family members. The IAD's finding was that the Applicant had failed to overcome the concerns of the visa officer on this issue given the unclear evidence on the record regarding the transfers. Moreover, the IAD gave positive weight to the wife's will in which she bequests her house in Vietnam to the Applicant. It found, however, that it was mitigated by the fact that the will was prepared in 2019 after the visa officer rejected the sponsorship application and at the request of a lawyer. Given the timing of the will, the lack of details in the will regarding the property bequeathed and the fact that the Applicant testified that he did not want the house, I am not persuaded that the IAD's finding is unreasonable.

[14] Thirdly, the IAD did not inappropriately apply the test under subsection 4(1) of the IRPR. It was right to distinguish this case from that of *Jin* since the wording of the section and consequently the test had changed since that decision had been issued. While there are similarities between the facts in *Jin* and the present case, it is well-established that determining the genuineness of a marriage or the motives for entering into the marriage is highly fact-driven and the criteria for genuineness are not exhaustive (*Rahman* at para 21). In addition, upon review of the IAD's reasons, I am satisfied that the IAD did not treat the requirements under paragraphs 4(1)(*a*) and 4(1)(*b*) of the IRPR as though they were the same and that it assessed both factors

separately in accordance with *Moise*. The IAD explicitly noted that the two paragraphs are different and that evidence that tends to establish a genuine marriage cannot, by itself, establish that the marriage was not entered into primarily for immigration purposes. This Court has nevertheless recognized that evidence relevant to one element of the test can also be relevant to the other part of the test (*Onwubolu* at para 14, *Idrizi* at para 26; *Keo v Canada (Citizenship and Immigration)*, 2011 FC 1456 at para 11).

[15] Finally, the IAD did not base its decision on minor inconsistencies as the Applicant suggests. The IAD considered all of the evidence before it and found multiple important discrepancies concerning the development of the relationship, such as the date the couple first met, the frequency of their meetings during the Applicant's visit to Vietnam in 2012, and the status of their relationship when the Applicant returned to Canada after this first meeting. The IAD also found discrepancies regarding the reason why the Applicant's wife left her work to return to her family, the amount of money the Applicant sent to his wife, how the money was used, whether the first money transfer was sent to the wife's mother, the date of the Applicant's next visit to Vietnam, the date of the marriage proposal, and the reason why the Applicant did not visit his wife in 2018. While the Applicant may view these inconsistencies as minor, the IAD could reasonably find that these inconsistencies were inadequately addressed by the Applicant and draw negative inferences from them.

[16] Likewise, the IAD cannot be faulted for failing to give consideration to the Applicant's reasons for the discrepancies. The Applicant did not adduce any evidence on, or even identify, how cultural unfamiliarity, the passage of time and lack of education could explain the

discrepancies in the evidence. As to language difficulty, a Vietnamese-English interpreter was present at both sittings of the appeal to assist with the testimony.

[17] Contrary to the Applicant's argument, the IAD did not base its decision upon the age difference between the Applicant and his wife. On the contrary, the IAD specifically noted that the age difference did not foreclose a genuine relationship from developing. However, it found that the Applicant and his wife could not reasonably explain, beyond generalities, how they were compatible.

[18] To conclude, the Applicant has failed to persuade me that the IAD committed a reviewable error in concluding that the Applicant had not met his onus to demonstrate that the marriage was genuine and was not entered into for the primary purpose of obtaining status under the IRPA. I am satisfied that, when read holistically and contextually, the IAD's decision meets the reasonableness standard set out in *Vavilov*.

[19] No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-6602-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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