

Federal Court



Cour fédérale

Date: 20220624

Docket: IMM-7395-19

Citation: 2022 FC 958

Ottawa, Ontario, June 24, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

ABELARDO SUAREZ CABRERA

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Abelardo Suarez Cabrera, seeks judicial review of a decision of the Immigration Appeal Division (IAD) of the Immigration and Refugee Board of Canada that allowed the respondent's appeal from a decision of the Immigration Division (ID), and determined he is inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Suarez Cabrera is a Cuban citizen who landed in Canada as a permanent resident in January 2009. His application for permanent residence was sponsored by his wife at the time, Ms. Bertin, who he met while she was vacationing in Cuba in March 2007. The couple married in April 2008, separated in June 2009, and Ms. Bertin filed for divorce in August 2009. The divorce was effective in September 2010.

[3] The IAD found that Mr. Suarez Cabrera had entered into a “marriage of convenience” with Ms. Bertin, for the purpose of acquiring permanent resident status in Canada. The IAD considered whether humanitarian and compassionate (H&C) considerations warrant special relief from the requirements of the *IRPA*, and found they did not. Mr. Suarez Cabrera does not challenge the IAD’s H&C determination.

[4] Mr. Suarez Cabrera states that his marriage to Ms. Bertin was genuine. He alleges that the IAD misapprehended the evidence and concluded that the marriage was not genuine based on multiple unreasonable findings. He asks that the IAD’s decision be set aside.

[5] For the reasons below, Mr. Suarez Cabrera has not established that the IAD’s decision is unreasonable, and accordingly this application for judicial review is dismissed.

II. **Standard of Review**

[6] The sole issue on this application is whether the IAD reasonably determined that Mr. Suarez Cabrera’s marriage was not genuine, and one that he entered into primarily for an immigration purpose.

[7] The Supreme Court of Canada set out the guiding principles for reasonableness review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85.

In applying the reasonableness standard, the Court must ask whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para

99. A reasonable decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para

85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. Analysis

[8] Subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 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.

[9] Mr. Suarez Cabrera submits that four unreasonable findings, based on a misapprehension of the evidence, undermine the IAD's conclusion that his marriage to Ms. Bertin was not genuine. First, the IAD stated there was a rapid breakdown of the marriage, when in fact he and Ms. Bertin had been in a loving relationship for two years and married for 14 months before they separated, and the IAD failed to adequately consider the evidence of the reasons for the breakdown. Mr. Suarez Cabrera notes that the IAD refers to an incorrect separation date of June

2008 in its reasons, when he and Ms. Bertin actually separated in June of 2009. Second, the IAD stated that Mr. Suarez Cabrera's previous relationship with another Canadian woman he had met in Cuba "raised questions about a pattern of pursuing relationships with women in Canada and whether there is an immigration motive at play". However, the fact that he could have married this other woman, but did not because he did not love her, suggests the exact opposite. Third, the IAD's findings that there was a lack of substantive communication and weak evidence concerning the genesis and development of his relationship with Ms. Bertin were untenable findings in view of the fact that Ms. Bertin visited him regularly in Cuba—more than 20 times—and both he and Ms. Bertin testified before the ID that they were in love. Fourth, the criticism that Mr. Suarez Cabrera failed to ask his brother or his current wife to testify before the IAD was unreasonable, as the respondent had the burden of proof and the respondent could have called Ms. Bertin as a witness at the IAD hearing, but did not. Mr. Suarez Cabrera contends that these alleged errors render the IAD's decision unreasonable, and warrant this Court's intervention to set the decision aside.

[10] As further evidence of the unreasonableness of the IAD's findings, Mr. Suarez Cabrera points to a number of contradictory findings by the ID. For example, he states the ID found his account of events to be more plausible and credible than Ms. Bertin's account of events, and that he and Ms. Bertin married for genuine reasons, and both were in love.

[11] I am not persuaded that the IAD's decision is unreasonable. The findings that Mr. Suarez Cabrera challenges on review are findings that were open to the IAD in the context of the record.

Mr. Suarez Cabrera has not established that the IAD committed a reviewable error in respect of these findings.

[12] It was not inaccurate for the IAD to characterize the breakdown of the relationship as rapid or sudden. I disagree that such a characterization suggests that the IAD misapprehended the length of the couple's relationship, or that it believed the breakdown of the relationship had occurred shortly after the couple's marriage. The IAD made a typographical error when it referred to the date of separation as June 2008. The IAD correctly noted that Mr. Suarez Cabrera landed in Canada in January 2009, but later stated, "Within months of the respondent's arrival in Canada, the couple separated on June 5, 2008." I agree with the respondent that the IAD's point remains valid—the couple did separate within months of Mr. Suarez Cabrera's arrival in Canada. Later in its reasons the IAD again notes that after arriving in Canada, "there was little time before the whole thing broke down", and refers to "the rapid breakdown of the relationship after arrival in Canada".

[13] The IAD also considered Mr. Suarez Cabrera's testimony about the reasons the relationship broke down, causing him to leave the marital home within five months of landing in Canada. Mr. Suarez Cabrera remained in Canada after the marriage breakdown and stated that he did so because he was hoping to reconcile with Ms. Bertin. However, the IAD did not accept this explanation because (i) Mr. Suarez Cabrera did not reasonably explain why he wanted to reconcile, in view of the reasons he gave for leaving Ms. Bertin, (ii) he testified that he tried to call Ms. Bertin a few times, without returning to her home or attempting to meet to work out their differences, and there was evidence that Ms. Bertin was trying to track him down "using

any and all means available to her”, and (iii) his goodbye letter to Ms. Bertin stated that Canada was not for him and he was returning to Cuba.

[14] The IAD found that remaining in Canada was consistent with a primary purpose of obtaining status in Canada through marriage:

After the sudden breakdown of the relationship, despite his having no family in Canada and encountering difficulties adjusting to life in the country, and in contrast to his statements in his goodbye letter to his sponsor suggesting that he was done with Canada and was going back to Cuba, he remained living in Canada over the years, even after marrying another woman in Cuba. This is all consistent with the primary purpose of obtaining status in Canada through marriage.

[15] Mr. Suarez Cabrera’s prior relationship with another Canadian woman was not determinative of the appeal. However, the IAD noted that he was previously engaged to another Canadian woman, and that he had not told Ms. Bertin about that relationship. The IAD considered knowledge of relationship histories to be a relevant factor in assessing the genuineness of a relationship.

[16] I am not persuaded of any error in the IAD’s assessment of the genesis and development of the relationship between Mr. Suarez Cabrera and Ms. Bertin. The IAD was aware that Ms. Bertin made a number of visits to Cuba to spend time with Mr. Suarez Cabrera. However, Mr. Suarez Cabrera testified to having little ability to communicate with Ms. Bertin due to language limitations. The IAD found that this, together with his lack of knowledge about Ms. Bertin and the haste of the marriage proposal, raised questions about the couple’s ability to develop a genuine relationship, and Mr. Suarez Cabrera’s motivation for proposing marriage.

[17] With respect to the IAD's statements about testimony from Mr. Suarez Cabrera's brother or his current wife, the IAD noted, reasonably in my view, that their testimony would have been helpful to clarify certain points:

- a) Ms. Bertin contacted the Canadian embassy in Cuba in an attempt to reach Mr. Suarez Cabrera. The embassy's notes indicate that they reached Mr. Suarez Cabrera's brother who stated he would have Mr. Suarez Cabrera contact the embassy. Mr. Suarez Cabrera testified that his brother never told him about the embassy's calls. The brother was identified as a witness, both before the ID and the IAD, but was not called to give testimony at either hearing.
- b) There was evidence that Ms. Bertin wrote to Canadian immigration officials in September 2009 to inform them she had learned that Mr. Suarez Cabrera had another wife in Cuba, and he wanted to bring her and her children to Canada. Mr. Suarez Cabrera stated that met his current wife in December 2010 and they were married in April 2012. He applied to sponsor her for permanent residence in February 2014. There was evidence that undermined the December 2010 date, and the IAD found the evidence was more consistent with a relationship that started earlier.

[18] With respect to the ID's findings, the respondent correctly points out that the IAD appeal is a *de novo* review, and the ID's findings are not binding on the IAD: *Khan v (Minister of Citizenship and Immigration)*, 2019 FC 105 at para 14, citing *Fang v (Minister of Citizenship and Immigration)*, 2014 FC 733 at para 26.

[19] The IAD's conclusion that Mr. Suarez Cabrera had entered into a marriage of convenience was supported by numerous findings, including findings that he has not challenged in this application for judicial review. In my view, while Mr. Suarez Cabrera disagrees with how the IAD weighed the evidence, he has not established that the IAD committed a reviewable error that would render the decision unreasonable according to the principles in *Vavilov*.

IV. **Conclusion**

[20] Mr. Suarez Cabrera has not established that the IAD's decision is unreasonable. Accordingly, this application for judicial review is dismissed.

[21] Neither party proposed a question of general importance for certification. In my view, there is no question to certify.

JUDGMENT in IMM-7395-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7395-19

STYLE OF CAUSE: ABELARDO SUAREZ CABRERA v MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: HELD BY WAY OF VIDEO CONFERENCE

DATE OF HEARING: DECEMBER 6, 2021

JUDGMENT AND REASONS: PALLOTTA J.

DATED: JUNE 24, 2022

APPEARANCES:

Elena Mazinani FOR THE APPLICANT

Christopher Ezrin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mazinani & Associates FOR THE APPLICANT
Barrister & Solicitor P.C.
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario