Federal Court  Cour fédérale

**Date: 20230403**

**Docket: IMM-727-21**

**Citation: 2023 FC 466**

**Ottawa, Ontario, April 3, 2023**

**PRESENT: Mr. Justice Norris**

**BETWEEN:**

**AVDULLAH SEJDIU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The applicant is a naturalized Canadian citizen. In 1999, when he was 19 years of age, he and his parents came to Canada as refugees from Kosovo. The applicant became a permanent resident of Canada in March 2001 and a Canadian citizen in March 2004.

[2] In February 2018, the applicant returned to Kosovo hoping to meet a woman he could marry. He had been married before (in 2007) and had successfully sponsored his first wife for

permanent residence in Canada. However, the marriage eventually broke down because the applicant concluded that his then wife had married him simply to acquire status in Canada. The two were divorced in June 2016.

[3] During his visit to Kosovo, on February 10th, the applicant was introduced to Hikmete Abazi, a 40-year-old citizen of Albania who lives in Kosovo. The two share Albanian ethnicity and they were introduced in accordance with the customs of their community. The applicant proposed marriage to Ms. Abazi on February 16th. She accepted the next day. After celebrating the engagement with family and friends on March 13th, the two were married on March 22nd. The applicant returned to Canada on March 26, 2018.

[4] In June 2018, the applicant applied to sponsor Ms. Abazi for permanent residence in Canada. A Migration Officer with Immigration, Refugees and Citizenship Canada refused the application in a decision dated September 27, 2019. The officer concluded that, under paragraph 133(1)(g)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, ("*IRPR*"), the applicant was ineligible to sponsor Ms. Abazi because he was in default of the financial undertaking he had given in relation to his sponsorship of his first wife. (The pertinent statutory provisions are set out in the Annex to these reasons.)

[5] The undertaking in question made the applicant responsible for any social assistance benefits paid to his first wife during her first three years in Canada. The day she arrived in Canada, the applicant's first wife applied for Ontario Disability Support Program ("ODSP") benefits. She subsequently collected $17,468.20 in social assistance benefits for which the

applicant is responsible. Since the applicant himself receives ODSP benefits (he has significant mobility issues as a result of a 2003 workplace accident, has not worked since then, and he is legally blind), he has not been able to discharge this debt to the Province of Ontario.

[6] The applicant appealed the refusal of his sponsorship application to the Immigration Appeal Division ("IAD") of the Immigration and Refugee Board of Canada. Once the matter was before the IAD, the Minister was permitted to raise two additional issues: (1) that Ms. Abazi is inadmissible to Canada for financial reasons under section 39 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"); and (2) that under subsection 4(1) of the *IRPR*, Ms. Abazi is not a spouse for purposes of sponsorship either because her marriage to the applicant was entered into primarily for the purpose of acquiring status in Canada or because the marriage is not genuine.

[7] In his appeal, the applicant did not contest the validity of the officer's determination under paragraph 133(1)(g)(i) of the *IRPR*. He did contest the Minister's allegation that Ms. Abazi is inadmissible for financial reasons under section 39 of the *IRPA*, arguing that she is capable of being financially self-sufficient in Canada. In the alternative, the applicant maintained that there were sufficient humanitarian and compassionate ("H&C") considerations for the appeal to be allowed under paragraph 67(1)(c) of the *IRPA* and for special relief from the requirements of both section 39 of the *IRPA* and paragraph 133(1)(g)(i) of the *IRPR* to be granted. However, under section 65 of the *IRPA*, the IAD could consider these H&C grounds only if it determined that Ms. Abazi is a member of the family class. Thus, as a prerequisite to being able to advance H&C arguments in support of his appeal, the applicant had to establish

that his marriage to Ms. Abazi had not been entered into primarily for an immigration purpose and that it was genuine. This was the principal focus of the applicant's appeal.

[8] The hearing before the IAD took place on November 3, 2020, and January 8, 2021. Both the applicant and Ms. Abazi testified.

[9] The IAD dismissed the appeal in a written decision dated January 18, 2021. The member noted that the applicant did not contest the ineligibility finding under paragraph 133(1)(g)(i) of the *IRPR*. With respect to the contested issues, the member was not satisfied that Ms. Abazi is not inadmissible for financial reasons under section 39 of the *IRPA* given her lack of English language skills, her limited employment experience, the absence of any savings or assets, and the applicant's inability to support her financially. Turning to subsection 4(1) of the *IRPR*, the member was not satisfied that the applicant's marriage to Ms. Abazi had not been entered into primarily for the purpose of obtaining status for her in Canada and that it is genuine. This meant that Ms. Abazi could not be considered a spouse for purposes of sponsorship. It also meant that, since Ms. Abazi did not qualify as a member of the family class, the IAD could not consider the applicant's H&C arguments for relief from either his ineligibility to sponsor her or Ms. Abazi's inadmissibility on financial grounds.

[10] The applicant now applies for judicial review of the IAD's decision under subsection 72(1) of the *IRPA*. He does not take issue with either the ineligibility finding under paragraph 133(1)(g)(i) of the *IRPR* or the inadmissibility finding under section 39 of the *IRPA*. The sole focus of this application is the reasonableness of the IAD's determination under

subsection 4(1) of the *IRPR* that the applicant had not established that his marriage to Ms. Abazi was not entered into primarily for the purpose of obtaining status for her in Canada and that the marriage is genuine.

[11] The applicant submits that the IAD fell into reviewable error in this regard by assessing unreasonably his compatibility with Ms. Abazi, the haste with which the two married, and their conduct following their marriage.

[12] The parties agree, as do I, that the IAD's decision should be reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances: see *Vavilov* at para 125. As well, determinations under subsection 4(1) of the *IRPR* are often highly factual and, as such, merit considerable deference from a reviewing court (*Alriyati v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 496 at para 47). At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review: see *Vavilov* at para 13.

[13] The onus is on the applicant to demonstrate that the IAD's decision is unreasonable. To set aside the decision on this basis, I must be satisfied 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).

[14] In my view, none of the grounds advanced by the applicant warrant the Court's intervention.

[15] Looking first at the issue of the applicant's compatibility with Ms. Abazi given his personal circumstances, the member found that, in different ways, this was relevant to the motivations of both parties in entering the marriage.

[16] With regard to Ms. Abazi, the member noted that she had turned down several other marriage proposals because the suitors were too old, were uneducated, or she did not like their families. On the other hand, she professed to have few concerns about marrying the applicant and readily accepted his proposal – this despite knowing that he is receiving social assistance, that he had not worked for 18 years, and that he is legally blind. The member found that it would have been reasonable for her to have some "serious reservations and concerns" about marrying the applicant. Finding that neither Ms. Abazi nor her family would consider marrying the applicant to be a "good situation", the member inferred that "there are other motives in play" – in particular, acquiring status in Canada – and that the marriage is not genuine. In short, Ms. Abazi "accepted the marriage proposal as a means to an end and that is immigration to Canada."

[17] In my view, this is a reasonable assessment of a relevant factor. I do not agree with the applicant that the member assessed Ms. Abazi's testimony unreasonably, drew an unreasonable

inference from her evidence, or gave undue weight to this factor. Nor do I agree that the member was "working from a presumption that people living with disabilities do not make suitable partners." It should go without saying that it would have been unreasonable for the member to reason in this way. However, I can discern no such reasoning in the member's decision.

[18] With regard to the applicant, the member noted that evidence he himself had filed spoke of his need for daily care. For example, a letter from the applicant's physician stated that the applicant "has multiple medical conditions and requires caregiving on a daily basis." (At the time, this caregiving was being provided by the applicant's parents.) In the physician's opinion, the applicant "would benefit from the help and companionship of his wife." Evidence to the same effect was also provided by the applicant's landlord. In weighing this evidence, the member recognized that "spouses in genuine relationships can and do provide the appropriate love and support, especially in precarious situations or in time of need." However, the member concluded that in the applicant's case, "the need appears to be more on the position of that of a caregiver as opposed to that of a genuine spousal relationship that would assist in offering caregiving duties." The member also found that, given the applicant's experience with his first wife, one would reasonably expect him to be cautious about being duped again – unless, of course, this was not a concern for the applicant this time.

[19] Once again, in my view, this was a reasonable assessment of a relevant factor. There is no question that the applicant needs significant daily support and assistance given his physical limitations. It was for the IAD member to determine whether the applicant entered into a genuine marriage or, instead, another type of relationship driven primarily by his need for

caregiving with the *quid pro quo* being status for Ms. Abazi in Canada. It is not my role to reweigh the evidence and draw a different conclusion. The applicant has not established any basis to interfere with the IAD's determination in this regard.

[20] Next, the applicant submits that the IAD member drew unreasonable inferences from how hastily he and Ms. Abazi proceeded to get married. He submits that the member erred in failing to assess their conduct in the context of their particular circumstances, including their shared cultural background, their ages (they wanted to have children), and the fact that the applicant had had to return to Canada no later than he did to avoid losing his social assistance benefits.

[21] I do not agree that the member's assessment of this factor is unreasonable. Contrary to the applicant's submissions, the member did not view the genesis of the relationship through "a Western lens." The member was duly sensitive to the particular circumstances of both the applicant and Ms. Abazi in assessing their conduct. The speed with which the parties entered into the marriage is a relevant consideration (*Alriyati* at paras 48-49). By any measure, the applicant and Ms. Abazi moved very quickly. They were engaged within a week of first meeting and married just over a month after that. Even taking their particular circumstances and the explanations they offered into account, the member inferred that the speed with which they moved suggested that theirs was not a genuine marriage but, rather, was motivated by other considerations. It was open to the member to draw this inference. I am not persuaded that the member misapprehended the evidence, failed to take into account relevant evidence, or weighed this factor unreasonably.

[22] Finally, the applicant submits that the IAD member erred in assessing the significance of the limited contact between himself and Ms. Abazi following the marriage. As with the previous factor, he contends that the member assessed this factor without taking his and Ms. Abazi's particular circumstances into account, including their shared cultural background.

[23] I do not agree. The member was sensitive to the cultural context of the relationship. For example, the member did not draw an adverse inference from the fact that the applicant and Ms. Abazi had not consummated their marriage or otherwise been intimate after they were married because, according to them, doing so would bring shame to her and her family should it turn out that the applicant was unable to sponsor her to come to Canada to live with him.

[24] The member appreciated that, while the spouses had not met in person in the nearly three years since they were married, this was no doubt due, at least in part, to travel restrictions during the COVID-19 pandemic and the challenges the applicant faces in travelling as a result of his disabilities. Nevertheless, the member still found it surprising that the two had not met again since they were married, especially given that they claimed to want to have children together. It was open to the member to draw the inference that their failure to meet again suggested that the marriage was not genuine and to factor this into the overall assessment of the relationship and the spouses' motivations for entering into it.

[25] The member also recognized that, given the applicant's visual impairment, he and Ms. Abazi were unable to communicate in written form (e.g. by text or email) and were limited to oral communications. The difficulty for the applicant, however, was that there was little

independent evidence to establish that he and Ms. Abazi had been in any sort of regular contact since he returned to Canada in March 2018. While they claimed to have been in frequent communication, the records provided by the applicant only established phone calls between January and October 2020. Notably, there were no such records for the period after the applicant returned to Canada in March 2018 until December 2019.

[26] The IAD also found that, in any event, "the phone calls are just that, phone calls, which do not assist in determining the genuineness of a relationship." Taken in isolation, I would not necessarily consider this a reasonable determination. While phone records may not disclose what was being discussed, how frequently two spouses are in contact with one another can be relevant to the genuineness of their relationship. Nevertheless, this does not undermine the reasonableness of the IAD's assessment of this evidence or the overall reasonableness of the decision. The critical point, which the member also relied on, was that the infrequency of contact between the applicant and Ms. Abazi (especially in the period immediately after they were married) suggests that the marriage is not genuine. In my view, this is a reasonable determination in the particular circumstances of this case.

[27] I would also note that an additional factor the IAD relied on in this regard is the fact that the applicant and Ms. Abazi have not discussed what they will do as a couple if the appeal is not successful. The member found that, if they were in a genuine marriage, they would at least have discussed this. The fact that they had not done so suggested that theirs was not a genuine marriage. The applicant has not challenged this particular finding on judicial review.

[28] In summary, I agree with the respondent that the IAD member conducted a holistic assessment of the relationship with due regard to the particular circumstances of both the applicant and Ms. Abazi. In a justified, transparent and intelligible fashion, the member identified relevant considerations and explained how and why they were weighed as they were. The applicant has failed to demonstrate any grounds on which to interfere with the IAD's decision. This application for judicial review must, therefore, be dismissed.

[29] Neither party suggested any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

**JUDGMENT IN IMM-727-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

## ANNEX

***Immigration and Refugee Protection Act*, SC 2001, c 27**

| | |
|---|---|
| **Financial reasons** | **Motifs financiers** |
| **39** A foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support themself or any other person who is dependent on them, and have not satisfied an officer that adequate arrangements for care and support, other than those that involve social assistance, have been made. | **39** Emporte interdiction de territoire pour motifs financiers l'incapacité de l'étranger ou son absence de volonté de subvenir, tant actuellement que pour l'avenir, à ses propres besoins et à ceux des personnes à sa charge, ainsi que son défaut de convaincre l'agent que les dispositions nécessaires — autres que le recours à l'aide sociale — ont été prises pour couvrir leurs besoins et les siens. |
| […] | […] |
| **Humanitarian and compassionate considerations** | **Motifs d'ordre humanitaires** |
| **65** In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations. | **65** Dans le cas de l'appel visé aux paragraphes 63(1) ou (2) d'une décision portant sur une demande au titre du regroupement familial, les motifs d'ordre humanitaire ne peuvent être pris en considération que s'il a été statué que l'étranger fait bien partie de cette catégorie et que le répondant a bien la qualité réglementaire. |
| […] | […] |
| **Appeal allowed** | **Fondement de l'appel** |
| **67 (1)** To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, | **67 (1)** Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé : |
| **(a)** the decision appealed is wrong in law or fact or mixed law and fact; | **a)** la décision attaquée est erronée en droit, en fait ou en droit et en fait; |
| **(b)** a principle of natural justice has not been observed; or | **b)** il y a eu manquement à un principe de justice naturelle; |
| **(c)** other than in the case of an appeal by the Minister, taking into account the best | **c)** sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur |

interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

***Immigration and Refugee Protection Regulations,* SOR/2002-227**

**Bad Faith**

**4 (1)** For the purposes of these 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.

[…]

**Requirements for sponsor**

**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

[…]

**(g)** subject to paragraph 137(c), is not in default of

**(i)** any sponsorship undertaking, or

**Mauvaise foi**

**4 (1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de 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)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

**b)** n'est pas authentique.

[…]

**Exigences : répondant**

**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 :

[…]

**g)** sous réserve de l'alinéa 137c), n'a pas manqué :

**(i)** soit à un engagement de parrainage,

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-727-21 |
| **STYLE OF CAUSE:** | AVDULLAH SEJDIU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | SEPTEMBER 20, 2022 |
| **JUDGMENT AND REASONS:** | NORRIS J. |
| **DATED:** | APRIL 3, 2023 |

**APPEARANCES:**

| | |
|---|---|
| David Cote | FOR THE APPLICANT |
| Nadine Silverman | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| David Cote<br>Barrister and Solicitor<br>Windsor, Ontario | FOR THE APPLICANT |
| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |