

Federal Court



Cour fédérale

Date: 20240306

Docket: IMM-1057-23

Citation: 2024 FC 375

Vancouver, British Columbia, March 6, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

ROKSHANA SUMI DEWAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Rokshana Sumi Dewan, seeks judicial review of a decision by the Immigration Appeal Division [IAD] dated December 23, 2022, confirming the refusal of her spousal sponsorship application [Decision]. The IAD found that Ms. Dewan's marriage to her third husband, Mr. Md Lutfor Rahman Khan, is not genuine and was entered into primarily for the purpose of acquiring a status or privilege in Canada, contrary to subsection 4(1) of the

Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR]. As a result, Mr. Khan does not qualify as a member of the family class.

[2] In its Decision, the IAD made several negative credibility findings based on inconsistencies in the testimony and evidence of Ms. Dewan and Mr. Khan regarding their relationship history. Despite the important fact that they have a child together, the IAD found that it did not override the negative credibility findings. Ms. Dewan claims that the Decision is unreasonable.

[3] For the reasons that follow, Ms. Dewan's application for judicial review will be dismissed. I am satisfied that the IAD assessed Ms. Dewan's evidence and allegations, and reasonably came to its conclusion. Ms. Dewan has failed to demonstrate any error justifying the intervention of the Court.

II. Background

A. *The factual context*

[4] Ms. Dewan is forty years old and came to Canada from Bangladesh. She obtained her Canadian citizenship in 1995. She married twice before and presented sponsorship applications to Canada for her first two husbands. She has one daughter from her second marriage and one daughter with Mr. Khan, who was born in Canada in September 2018.

[5] Mr. Khan is thirty-nine years old from Bangladesh. He married once before, had no children, and divorced around the date he proposed to Ms. Dewan, though the date of divorce is unclear. The divorce certificate on file shows the date of divorce to be December 30, 2016 and

that talaq—the oral pronouncement of divorce—was on September 17, 2016. Mr. Khan, however, testified that he first pronounced talaq in 2015, while Ms. Dewan testified that he informed her he was divorced in June 2016.

[6] The couple met online in 2016. Ms. Dewan testified that she received a random Facebook friend request from Mr. Khan with first contact on March 16, 2016. Mr. Khan explained that he thought Ms. Dewan’s profile picture (i.e., a photo of a baby) was cute, prompting him to want to know more about her.

[7] Ms. Dewan and Mr. Khan both state they began corresponding regularly, and eventually daily, on a calling and instant messaging application.

[8] Mr. Khan proposed marriage in August 2016. Ms. Dewan’s father met Mr. Khan on September 8, 2016 in Bangladesh to discuss the potential union. The couple met in person for the first time at the airport in Dhaka on September 8, 2017. On September 29, 2017, they married at a ceremony at Ms. Dewan’s family home in Bangladesh, attended by around 25 guests. Ms. Dewan and her first daughter remained in Bangladesh for six months after the wedding, after which they returned to Canada. The birth of Ms. Dewan and Mr. Khan’s daughter followed in September 2018.

[9] Ms. Dewan filed the sponsorship application on July 24, 2018. She declared on the Relationship Application Form that their marriage was arranged by their respective uncles, and Mr. Khan also told the visa officer during the interview that it was an arranged marriage, though he later qualified the marriage as a “love marriage” at the hearing before the IAD.

[10] On February 7, 2019, the reviewing officer at the Canadian High Commission in Singapore required an interview after noting concerns regarding the genuineness of the couple's marriage. Mr. Khan was interviewed on November 5, 2019 in Dhaka with the assistance of a Bengali interpreter. The interviewing officer raised their concerns to Mr. Khan over the course of the interview and provided him with opportunities to respond to them.

[11] Ms. Dewan's sponsorship application was refused on January 7, 2020, as the immigration officer was not satisfied that the marriage is genuine. As a result, Mr. Khan was not considered a member of the family class. On the same day, an immigration officer of the Canadian High Commission in Singapore informed Ms. Dewan that Mr. Khan's application for an immigration visa was refused.

[12] Ms. Dewan appealed the decision to the IAD, pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

B. *The IAD Decision*

[13] The IAD held three hearings between May and October 2022, where Ms. Dewan, Mr. Khan, and certain members of their family testified in Bengali, aided by a translator.

[14] The IAD member noted that she was guided by the criteria set out in *Chavez v Canada (Citizenship and Immigration)* (IAD TA3-24409), Hoare, January 17, 2005 at paragraph 3, and listed some of these factors. The IAD also noted that the onus is on Ms. Dewan to demonstrate, on a balance of probabilities, both prongs of the disjunctive test under subsection 4(1) of the IRPR.

[15] The IAD was not persuaded in either respect. The IAD member concluded that the marriage was entered into primarily for immigration purposes and that the marriage is not genuine. The IAD member reached these conclusions because she did not find the testimony and evidence credible.

[16] The adverse credibility finding rested on the following considerations:

- Lack of details in the sponsorship application form;
- Contradictions in Ms. Dewan's testimony as to when she advised Mr. Khan that she did not reside in Bangladesh and when they began corresponding by phone/video;
- Discrepancies between the information provided in the sponsorship application form and during examination as to whether the marriage was arranged by their respective uncles;
- Contradictions in the documentation provided and in Mr. Khan's, his brother's, and Ms. Dewan's testimonies with respect to Mr. Khan's separation and divorce from his first wife;
- Contradictions and discrepancies between the documentation provided and Mr. Khan's testimony with respect to his place(s) of residence over the past ten years;
- Lack of proof of regular communications prior to the marriage and no reasonable explanation for the gap in the evidence;

- Relatedly, during his interview with the visa officer, Mr. Khan stated their first contacts online began in early 2017, whereas Ms. Dewan testified their relationship started online in March 2016 and evolved into a marriage proposal in August 2016;
- Contradictions in the sponsorship application form and the testimony of Mr. Khan and Ms. Dewan as to who was present at the marriage ceremony; and
- The fact that, until informed during the interview with the visa officer, more than two years after their marriage, Mr. Khan was only aware of one of Ms. Dewan's past two marriages.

[17] The IAD also assessed the following factors supporting the genuineness of the marriage to various degrees:

- Ms. Dewan and Mr. Khan's compatibility in terms of similar age, cultural background, common language, and both being divorced;
- Two visits to Bangladesh, namely, Ms. Dewan remaining in Bangladesh for six months after the wedding in September 2017 with her first daughter, and the July 2022 return of Ms. Dewan for a second one-month visit with both daughters;
- Some evidence of ongoing communication after the marriage, though the IAD noted the phone records show calls of mostly very short durations and explanations provided by Ms. Dewan during the hearing did not help to establish the frequency of their alleged regular communications; and

- Some evidence of financial support from one another, though the IAD expressed concerns about the lack of financial interdependence, shared assets, or other shared finances.

[18] Finally, the IAD identified the birth of Ms. Dewan and Mr. Khan's child in September 2018 as an "important factor to consider" and that this fact should receive considerable weight.

[19] In the Decision, the IAD member turned her attention to credibility issues. First, the IAD pointed to Ms. Dewan's second marriage and spousal sponsorship, from which one child was born. The IAD observed that Ms. Dewan became pregnant three months after the wedding and that the sponsorship application was not successful because of concerns that the marriage was not genuine. Next, the IAD described the absence of evidence supporting the existence of a strong father-daughter relationship or Mr. Khan's desire to develop a strong relationship with his daughter. In the IAD's view, the important fact that they have a child together did not override the severe credibility findings.

C. *The standard of review*

[20] Both parties submit the standard of review is reasonableness. I agree (*Sidhu v Canada (Citizenship and Immigration)*, 2022 FC 56 at para 39). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[21] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[22] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention,” seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13), without “reweighing and reassessing the evidence” before it (*Vavilov* at para 125).

[23] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

III. Analysis

A. *Relevant legal principles*

[24] A foreign national is not considered a spouse and is excluded as a member of the family class by subsection 4(1) of the IRPR if the marriage: (a) was entered into primarily for the purpose of acquiring any status or privilege under the IRPA; or (b) is not genuine. The test under subsection 4(1) of the IRPR is disjunctive. Applicants must meet both the primary purpose test and the genuineness test. Failing either test is sufficient to exclude a spouse. The relevant time for the primary purpose test is the past (i.e., at the time of the marriage) whereas the relevant time for the genuineness test is the present (i.e., at the time of the decision) (*Zhou v Canada (Citizenship and Immigration)*, 2020 FC 633 at para 44).

[25] The burden of demonstrating the Decision is unreasonable rests with Ms. Dewan: she had to demonstrate that her husband is not excluded pursuant to subsection 4(1) of the IRPR (*Abebe v Canada (Citizenship and Immigration)*, 2022 FC 1273 at paras 21–23). Furthermore, the Court should accord a high degree of deference to the IAD when the IAD has held a full hearing, as is the case in the present matter (*Pabla v Canada (Citizenship and Immigration)*, 2018 FC 1141 at para 13, citing *Igieve v Canada (Citizenship and Immigration)*, 2018 FC 101 at para 15).

[26] Moreover, the birth of a child in the context of a marriage must be attributed significant weight, and the jurisprudence of this Court suggests it creates a presumption of genuineness (*Gill v Canada (Citizenship and Immigration)*, 2010 FC 122 at para 8). However, other decisions state that it is not necessarily determinative where the lack of credible evidence is so striking that credibility issues overshadow the evidence concerning the child (*Wang v Canada (Citizenship*

and Immigration), 2019 FC 978 at para 33, citing *Lamichhane v Canada (Citizenship and Immigration)*, 2016 FC 957 at para 14). Ultimately, all relevant factors must be considered in context (*Kaur v Canada (Citizenship and Immigration)*, 2018 FC 657 at para 18).

B. *The IAD Decision is reasonable*

[27] Ms. Dewan challenges most of the IAD's adverse credibility findings and either dismisses or provides explanations for the various concerns identified by the IAD member in the Decision. She also submits that the concerns raised by the IAD were not material to the substantive issue of the genuineness of the marriage. She further argues that mistakes relating to the timeline of their relationship are reasonable and bound to happen over a six-year period.

[28] In addition, Ms. Dewan claims that the contents of the communications between her and Mr. Khan are "not as relevant as the fact that there were regular exchanges between them." Ms. Dewan acknowledges that there are discrepancies concerning Mr. Khan's divorce, his place(s) of residence, and employment over the past years. However, she considers it unreasonable for the IAD to assign significant weight to factors peripheral to the genuineness of the marriage. Despite the uncertainty as to the date of divorce, Ms. Dewan submits that Mr. Khan was not residing with his ex-wife at the time and that she was nevertheless aware that Mr. Khan was divorced.

[29] According to Ms. Dewan, the IAD also unreasonably made an adverse credibility finding based on the error on their marriage certificate, as this error was not made by her, but by the registrar's office in Bangladesh. With respect to the findings that Mr. Khan is disinterested in establishing a strong relationship with his child, Ms. Dewan submits the IAD failed to take into

consideration the ongoing communication evidence, which demonstrates Mr. Khan's interest in his daughter.

[30] Finally, Ms. Dewan maintains that the IAD erred by not giving weight to the fact that she previously withdrew her sponsorship application when she believed her spouse was using the relationship to obtain status in Canada, despite them having a child together. She also posits that the IAD member should have weighed the best interests of the children and her other competing priorities (i.e., between her children in Canada and her husband in Bangladesh).

[31] I am not convinced by Ms. Dewan's arguments. In my view, the IAD's adverse credibility findings are reasonable and justified based on the evidence. On both the primary purpose and intention test and the genuineness test, the IAD based its Decision on multiple factual elements and issues with respect to Ms. Dewan and Mr. Khan's testimonies. The reasons for the Decision establish clearly that the IAD member took a "balanced approach" in her assessment of the appeal, as she assessed both negative and positive factors in support of the genuineness of the marriage.

[32] Ms. Dewan's submissions essentially question the weight the IAD member chose to assign to the evidence and do not identify errors that warrant the Court's intervention.

(1) *The primary purpose and intention*

[33] On the primary purpose of the marriage, the IAD member relied on numerous factual findings to determine that, on a balance of probabilities, the marriage was entered into primarily for the purpose of acquiring status or privilege under the IRPA, and that Ms. Dewan and Mr. Khan had not demonstrated an intention to enter into a true union. As pointed out by counsel for

the Minister at the hearing before the Court, the IAD notably raised concerns with the following factors: the confusion regarding the actual starting date of the relationship; the absence of communications between the spouses before the marriage; Mr. Khan's lack of knowledge of Ms. Dewan's past marriages and personal history; the absence of evidence on alleged cultural issues; the repeated statements made by both spouses regarding the "arranged" nature of their marriage; and the errors on the marriage certificate.

[34] Ms. Dewan claims that mistakes relating to the timeline of their relationship are reasonable because the events took place six years prior. I do not agree. While Ms. Dewan considers the discrepancies to be minor and justified given the passage of time, the IAD member intelligibly lays out the extensive discrepancies, changing stories, and contradictions relating to the timeline of important milestones in the relationship between Ms. Dewan and Mr. Khan. It was therefore open for the IAD to conclude that these contradictions undermined Ms. Dewan and Mr. Khan's credibility and the genesis and evolution of their relationship.

[35] Ms. Dewan further argues that, despite the discrepancies with respect to Mr. Khan's separation and divorce from his first wife and where he was living, it is insufficient to negate his credibility in terms of the genuineness of their relationship. Again, I disagree. The IAD's findings are reasonable and justified, and Ms. Dewan is simply seeking a reweighing of the evidence without pointing to a reviewable error. Indeed, the uncertainty surrounding Mr. Khan's separation and divorce from his first wife and where he was living is central to the primary purpose test set out in the IRPR. In the Decision, the IAD explained that Mr. Khan met with Ms. Dewan's father on September 8, 2016 and pronounced talaq less than two weeks later on September 17, 2016, as stated on the divorce certificate. Furthermore, Mr. Khan's brother

testified that Mr. Khan separated from his wife in September 2016. The IAD found that Mr. Khan was likely not divorced orally, nor officially, when he informed Ms. Dewan that he was divorced, which “raises serious concerns as to his primary intention when he married Ms. Dewan and as to the genuineness of the marriage.” I underline that these identified discrepancies and contradictions concerning the early months of the relationship, when coupled with limited proof of regular communications prior to the marriage, are certainly relevant to assess the primary purpose of the marriage.

[36] The IAD could perhaps have explained its reasoning more fully. However, as an expert tribunal, it was nevertheless open to the IAD member to make these findings, which are all supported by the evidence, and to attribute the weight she deemed appropriate in the circumstances.

[37] Regarding the phone records, the IAD member noted that Mr. Khan did not demonstrate, during his interview with the visa officer, that he had significant knowledge of Ms. Dewan after two years of marriage. Neither of their testimonies during the hearings provided probative evidence that they both have knowledge of each other’s lives that would support the genuineness of the marriage. While the IAD does not explicitly connect this evidence, I find that, reading the section of the Decision holistically, the chain of analysis is logical and the low weight assigned to the evidence is justified and intelligible (*Vavilov* at para 85).

(2) *The genuineness of the marriage*

[38] Turning to the genuineness of the marriage, I am not persuaded that the IAD’s concerns and inconsistencies can be qualified as peripheral to the issue.

[39] Again, the IAD member based her Decision on several factors, such as the lack of communications between the spouses after the marriage, the limited financial interdependence, Mr. Khan's limited knowledge of his wife, and Mr. Khan's distant interest in their daughter. On this last point, the IAD observed that Mr. Kahn only saw their daughter in July 2022 (some four years after she was born), refused a visit from her, and had difficulty to even communicate with her in a common language.

[40] Again, none of the alleged errors raised by Ms. Dewan constitutes an overriding error sufficiently central or significant to render the Decision unreasonable (*Vavilov* at para 100).

[41] In the Decision, the IAD member took a balanced approach, as the member considered positive factors supporting the genuineness of the marriage and intelligibly explained why she assigned lower weight to some of these factors. For example, the IAD member assigned limited weight to the evidence of communications since the marriage, as the phone records did not show Mr. Khan's number often, the calls were mostly of a short duration, and Ms. Dewan's explanations did not help to establish the frequency of their communications. I am not convinced that the frequency of the couple's communications are more important than their substance. In *Rosa v Canada (Citizenship and Immigration)*, 2007 FC 117 at paragraph 23, the Court recognized that the IAD is well suited to examining and weighing a variety of relevant factors when determining the genuineness of a marriage, including the frequency and substance of a couple's communications. Ms. Dewan's argument contradicts the explicit legislative requirement that the marriage is genuine, which requires the member to conduct a qualitative evaluation of the relationship and relevant factors (*Kwan v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 971 at para 47). Such an evaluation should include their communications.

[42] The IAD member conducted a rigorous assessment of the couple's financial interdependence and only assigned limited weight to this positive factor, because of limited evidence provided. On the other hand, the IAD found that the couple's compatibility and Ms. Dewan's two extended stays in Bangladesh supported the genuineness of the marriage.

[43] Finally, I do not find that the IAD's assessment of the evidence relating to the child is unfair or unreasonable, or that the member did not take into consideration the corroborative documentary evidence provided. Ms. Dewan does not point to which proof of ongoing communication "clearly demonstrates Mr. Khan's interest in his daughter and the relationship he is trying to build with her despite their physical distance." The IAD's concerns were not related to Mr. Khan inquiring about the children. Rather, the IAD member took issue with his refusal to meet his daughter and the limited evidence of Mr. Khan's involvement in her upbringing, notably the absence of evidence that he tried or insisted to teach his daughter Bengali. Conversely, the evidence does not demonstrate any attempt on his part to learn English to facilitate meaningful interactions with her. The IAD further mentioned that there was limited evidence of a strong father-daughter relationship in reference to the July 2022 visit.

[44] Ms. Dewan's submissions did not convincingly address those two main areas of concern for the IAD member with respect to the father-daughter relationship: Mr. Khan's lack of eagerness to meet his daughter and his failure to communicate with her.

[45] Viewing the Decision as a whole, it is clear that the IAD identified important credibility issues central to the genesis, evolution, and milestones of the relationship that Ms. Dewan and Mr. Khan did not overcome. In addition to the contradictions in the couple's testimonies and application form, the IAD pointed to incomplete evidence of ongoing and meaningful

communication with each other and their child, and a lack of knowledge about each other that would support the primary purpose and genuineness of the marriage.

[46] In my view, the IAD did engage with all relevant evidence, both supporting and not supporting the genuineness of the marriage. Ms. Dewan's submissions boil down to a request to reweigh the evidence, something the Court cannot do on an application for judicial review (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 39, citing *Kanhasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 99).

IV. Conclusion

[47] For these reasons, this application for judicial review is dismissed.

[48] There are no questions of general importance to be certified.

JUDGMENT in IMM-1057-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.
2. There is no question of general importance to be certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1057-23

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