Federal Court  Cour fédérale

Date: 20250129

Docket: IMM-2360-24

Citation: 2025 FC 183

Toronto, Ontario, January 29, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

NAJM RAYAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Najm Rayan [Applicant] is a permanent resident in Canada who married her husband Seyed Amir Molaei [Husband] in Toronto in March 2019. In July 2019, the Applicant sponsored her Husband's application for permanent residence [the Sponsorship Application].

[2] The Sponsorship Application was denied by an officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] based on IRCC's finding that the Husband had misrepresented his marital status, as he was not divorced from his first wife, which made him ineligible for family class sponsorship. The Immigration Appeal Division [IAD] upheld the refusal in a decision dated February 5, 2024 [the IAD Decision].

[3] The Applicant seeks judicial review of the IAD Decision on the basis that it is unreasonable. The Applicant argues that the IAD erred in its assessment of evidence that supports the fact that her Husband obtained a valid divorce in Iran. She also submits that the IAD Decision was unreasonable for not having considered other evidence that supported the genuineness of their marriage.

[4] For the reasons that follow, I find that the Applicant has not met her burden of showing that the IAD Decision is unreasonable. I appreciate that the consequences of the IAD Decision, combined with the finding of misrepresentation by her Husband, leads to a harsh result, but this does not detract from this Court's finding that the IAD's findings were open to it on the record and its analysis is intelligible and transparent. It is not for this Court to substitute its own decision for that of the IAD.

[5] Accordingly, this application for judicial review is dismissed.

II. Facts

A. *Problems with the Sponsorship Application*

[6] In processing the Sponsorship Application, the Officer noted that the Husband indicated that he had never been married before, but in a previous temporary resident visa application [TRV Application], the Husband listed Zahra Ghaediesfanjani [Former Spouse] as having been his spouse since 2010.

[7] As the Officer had concerns about the Husband having misrepresented his marriage history, the Officer issued a procedural fairness letter, which informed the Husband of IRCC's concerns and offered him a chance to respond.

[8] In response to the procedural fairness letter, the Husband stated that his failure to disclose his previous marriage was inadvertent and he provided a Farsi divorce document and translation [the Divorce Document], which he says shows that he was divorced in January 2019 in Tehran, Iran, where he and his Former Spouse were residing.

[9] The Global Case Management System notes that accompany the IAD Decision show that in considering the Husband's response to the procedural fairness letter, the Officer had concerns regarding the authenticity of the Divorce Document and inconsistencies in the Husband's documentation in respect of his first marriage and country of residence.

B. *The IRCC Decision*

[10] The IRCC decision dated June 22, 2022, found the Husband inadmissible for misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] based on contradictory information provided by the Husband in the TRV Application, the Sponsorship Application and his response to the procedural fairness letter. The Officer was not satisfied that the Husband's divorce or his marriage to the Applicant are valid, citing irregularities in the translation and identification of the Divorce Document.

[11] The Officer therefore refused the Sponsorship Application in accordance with subsection 11(1) of the *IRPA* on the basis that the Officer was not satisfied that the Husband is not inadmissible and meets the requirements of the *IRPA*.

C. *The IAD Decision*

[12] The IAD dismissed the Applicant's appeal on what it described as the "threshold determinative issue" of the invalidity of the Husband's divorce.

[13] The IAD found that the Husband's foreign divorce should not be recognized as valid in Canada under subsections 22(1) or 22(3) of the *Divorce Act*, RSC 1985, c 3 (2nd Supp) [*Divorce Act*], as the Husband and Former Spouse did not have a meaningful connection to Iran when the divorce was sought in January 2019. There was no evidence that either the Husband or his Former Spouse was "habitually resident" in Iran.

[14] The IAD also found that the Husband's divorce should not be recognized in Canada, as the divorce proceedings breached the principles of natural justice, considering that the Former Spouse "likely" did not receive notice or have a lawyer.

[15] Given that the Husband's divorce was not recognized as valid for the purposes of sponsorship, it followed that the Husband could not claim membership in the family class as a spouse, as subparagraph 117(9)(c)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] provides that a foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if the foreign national was, at the time of their marriage, the spouse of another person.

[16] The IAD stated that it did not need to address the remaining issues of bad faith marriage and misrepresentation given its determination of the threshold determinative issue of the validity of the Applicant's marriage. At the same time, the IAD stated it would be "remiss" if it did not comment on the errors and inconsistencies in the Husband's documentation that led to the finding of misrepresentation. The IAD considered these inconsistencies were not "minor" and the Husband's explanations were neither compelling nor reasonable.

III. Legislative Framework

[17] Section 22(1) of the *Divorce Act* provides for the recognition of foreign divorces in Canada. It reads as follows:

Recognition of foreign divorce	**Reconnaissance des divorces étrangers**

22 (1) A divorce granted, on or after the coming into force of this Act, by a competent authority shall be recognized for the purpose of determining the marital status in Canada of any person, if either former spouse was habitually resident in the country or subdivision of the competent authority for at least one year immediately preceding the commencement of proceedings for the divorce.	**22 (1)** Un divorce prononcé à compter de l'entrée en vigueur de la présente loi par une autorité compétente est reconnu pour déterminer l'état matrimonial au Canada d'une personne donnée, à condition que l'un des ex-époux ait résidé habituellement dans le pays ou la subdivision de l'autorité compétente pendant au moins l'année précédant l'introduction de l'instance.

[18] Subsection 22(3) of the *Divorce Act* provides common law bases for recognizing a foreign divorce in Canada. The Federal Court requires that it is not enough to show a valid foreign divorce, the applicant must show a real and substantial connection to the place of divorce and that the proceedings were fair and involved due process (*Amin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 168 at para 25).

IV. Issues and Standard of Review

[19] The Applicant raises the following issues arising out of the IAD Decision:

A. Did the IAD err in concluding that the Husband's divorce was not valid?

B. Was it unreasonable for the IAD not to consider whether the Applicant's marriage is genuine?

[20] I agree with the parties that the applicable standard of review of the merits of a decision is that of reasonableness as articulated by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraphs 16-17 and 23-25.

[21] In determining whether a decision is reasonable, the court must consider whether it is justified, transparent and intelligible to those who are subject to it (*Vavilov* at paras 86, 95). Both the rationale and the outcome must be justified in relation to the relevant factual and legal constraints that bear on the decision maker (*Vavilov* at para 99).

[22] The Court must engage in a robust review while showing deference to the expertise of the administrative tribunal below and must refrain from re-weighing or re-assessing the evidence (*Vavilov* at paras 94, 125).

V. Analysis

A. *The IAD did not err in finding that the Husband's divorce is not valid*

[23] The Applicant submits that the IAD erred in three aspects of its decision not to recognize the Husband's divorce as valid, each of which I address in turn.

(1) The IAD's treatment of the Legal Opinion

[24] The Applicant submits that the IAD erred in concluding that the Applicant did not meet her burden of demonstrating that the Husband's divorce is valid in Canada. She relies on a letter from a family law lawyer who provided an opinion that the couple were free to marry in Canada as the Husband was legally divorced [the Legal Opinion]. The Legal Opinion provides an opinion that: (i) to obtain an Ontario marriage licence, the Applicant would have had to satisfy the Registrar General that the Husband's divorce was valid; and (ii) based on the Divorce Document and the facts as presented by the Husband, which included confirmation of a one-year

separation, the Husband's Iranian divorce "can be recognized for all purposes of determining [the Husband's] marital status in Canada" and the Husband was "legally free to remarry."

[25] The IAD rejected the Legal Opinion, finding it "unreliable and unhelpful" in deciding whether the Husband's divorce should be recognized in Canada for three reasons: (i) the Legal Opinion did not consider whether the Husband and his Former Spouse had a substantial connection to Iran; (ii) the Legal Opinion fails to address whether the Husband's Iranian divorce was fair; and (iii) the facts upon which the Legal Opinion were based that included the suggestion that both parties were involved in the divorce proceedings are inconsistent with the Husband's testimony before the IAD.

[26] I find that the IAD's reasons for rejecting the Legal Opinion are rational, logical and justified on the record and do not undermine the reasonableness of the IAD Decision.

(2) The IAD's assessment of the Husband's connection to Iran

[27] The Applicant submits that based on the totality of the evidence on record, it was unreasonable for the IAD to find that the Husband has no meaningful connection to Iran. The Applicant points to the Husband's testimony that he is a citizen of Iran, has property in Iran and travels frequently to Iran. The Applicant submits that this constitutes sufficient evidence of the Husband's meaningful connection to Iran, which supports the recognition of his Iranian divorce.

[28] The IAD did not ignore this evidence; rather, it addressed it head on and found that it was not indicative of a real and substantial connection to Iran. With respect to the Husband's

property in Iran, the IAD noted that there was no evidence about the property aside from the Husband's testimony that included the Husband's acknowledgment that the property is vacant. As for the Applicant's travels to Iran, the IAD noted that aside from the Husband's testimony that he travels to Iran twice a year and his admission that there is "nothing significant" about his travel, the Husband provided no other evidence. The IAD also took note of the fact that the Husband's brothers reside in Iran. It is not for this Court to come to its own conclusion regarding the weight that should be attributed to the Husband's connections to Iran (*Vavilov* at para 125) in circumstances where it was open to the IAD to find that they were not substantial or meaningful and where the Applicant did not point to evidence which the IAD failed to account for.

(3) The IAD's finding that the Husband's divorce was not fair

[29] The Applicant alleges that the IAD erred in finding that the Former Spouse did not receive notice of the divorce proceedings. She points to the fact that her Husband ultimately testified that his Former Spouse was "likely" notified and the Applicant argues that it was speculative on the part of the IAD to find in the face of this evidence that no notice was given and that the Former Spouse was treated unfairly.

[30] The Applicant relies on a select portion of her Husband's testimony, which does not give the full picture of whether he was able to confirm that his Former Spouse received notice of the proceedings. The IAD noted that the Husband admitted that he did not know where the Former Spouse resided throughout the proceedings and found his evidence on the issue of notice to have inexplicably evolved over the course of the two-day hearing. When asked whether the Former

Spouse received notice of the divorce on day one of the hearing, the Husband answered, “I don’t know” and “it is unlikely,” and on day two, his answer changed to “both parties are usually notified” and she was “likely notified.” It was not unreasonable for the IAD to consider that the latter evidence was “unfounded and incredible.” Moreover, the IAD’s conclusion that the Former Spouse likely did not have a lawyer was reasonably based on the petition for the divorce, which lists the address of the Husband’s lawyer for both parties.

[31] Factual findings like these are at the heart of an administrative tribunal’s function and expertise and are, therefore, deserving of deference (*Kgaodi v Canada (Citizenship and Immigration)*, 2011 FC 957 at para 20). I find that the Applicant has not met the heavy onus to refute the IAD’s findings by showing them to be perverse, capricious or manifestly unreasonable.

B. *Was it unreasonable for the IAD not to consider whether the Applicant’s marriage is genuine?*

[32] The IAD considered the issue of the validity of the Husband’s divorce to be the determinative issue, and therefore declined to address the remaining issues of bad faith marriage and misrepresentation.

[33] The Applicant argues that irrespective of the IAD’s finding regarding the Husband’s divorce, the IAD should have considered whether the Applicant’s marriage is *bona fide*, which she asserts was made out based on the evidence on record that the IAD ignored. That evidence included wedding, photos and proof she had been mainly living with her Husband since they

were married over 5 years ago, as well as the testimony of family members who confirmed that they were in a genuine relationship.

[34] I agree with the IAD that the validity of the Husband's divorce was determinative of the Sponsorship Application. A finding that the Applicant's marriage is *bona fide* would not assist her in light of subparagraph 117(9)(c)(i) of the *IRPR*, which bars membership in the family class where the sponsor or the foreign national was, at the time of their marriage, the spouse of another person. The IAD's decision not to consider the issue of the genuineness of the Applicant's marriage was therefore not unreasonable.

[35] At the hearing of this application, counsel for the Applicant expanded the argument made in the Applicant's Memorandum of Fact and Law to include a failure on the part of the IAD to address the issue of misrepresentation. Contrary to the submission of Applicant's counsel that this was part and parcel of the genuineness of marriage issue, this issue was simply not raised and cannot be argued for the first time at the hearing as a matter of fairness (*Coomaraswamy v Canada (Minister of Citizenship and Immigration) (CA)*, 2002 FCA 153 at para 39).

VI. Conclusion

[36] As the Applicant has not discharged her burden of showing the IAD to be unreasonable, this application for judicial review is dismissed.

JUDGMENT in IMM-2360-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. There is no question of general importance for certification.

"Allyson Whyte Nowak"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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