Federal Court  Cour fédérale

Date: 20250129

Docket: IMM-16050-23

Citation: 2025 FC 188

Toronto, Ontario, January 29, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

YVONNE MAUD GIBBS

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS
(Delivered orally from the Bench on January 29, 2025. Edited for syntax and grammar.)

I. Introduction

[1] The Applicant, Yvonne Maud Gibbs, seeks judicial review of an Immigration Appeal Division ("IAD") decision, which dismissed her sponsorship appeal as *res judicata*.

[2] For the reasons that follow, this application is dismissed.

II. Background

[3] Ms. Gibbs is a Canadian citizen. On September 27, 2013, she married Arnett Donavan Lyn, who currently resides in Jamacia. On November 3, 2014, Ms. Gibbs applied to sponsor Mr. Lyn. The application was processed and refused by an immigration officer at the Canadian High Commission in Kingston, Jamaica, citing that the marriage was not genuine and was entered into primarily for immigration purposes. That refusal gave rise to an appeal to the IAD, which was dismissed in 2018 ("2018 Decision"). No judicial review of the 2018 Decision was sought.

[4] In 2020, Ms. Gibbs reapplied to sponsor Mr. Lyn, relying on evidence of their continued relationship. That application, like the original sponsorship application in 2014, was refused. Ms. Gibbs appealed to the IAD, and her appeal was dismissed on December 1, 2023 ("Decision").

III. Analysis

[5] The key issue in this application is if the IAD Decision, and the reasons provided in support, were reasonable.

[6] The parties do not dispute that the appropriate standard of review is reasonableness: (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 23, 25).

A. *Res judicata*

[7] The doctrine of *res judicata* is well established in the case law. The doctrine prevents parties from relitigating matters that have been decided (*Vo v Canada (Citizenship and Immigration)*, 2018 FC 230 [*Vo*] at para 8; *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 [*Danyluk*] at para 21; and *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 [*CUPE*] at para 23.

[8] Issue estoppel is a branch of *res judicata* that precludes the relitigation of issues already determined by a court, and has three preconditions that must be established to apply: i) the same issue must have been decided in a prior proceeding; ii) the prior decision must be final; and iii) the prior decision must have been in respect of the same parties (*Vo* at para 8; *Danyluk* at para 25; *CUPE* at para 23).

[9] The application of the doctrine of *res judicata* involves a two-step analysis: first, the party relying on the doctrine must establish that the three preconditions of issue estoppel have been met; and second, a court must still consider, as a matter of discretion, if it ought to be applied (*Danyluk* at para 33).

[10] The jurisprudence has established special circumstances that may justify an exception to the application of the doctrine, including: i) when the first proceeding is tainted by fraud or dishonesty; ii) when fresh, new evidence, previously unavailable, conclusively impeaches the original results; or iii) when fairness dictates that the original result should not be binding in the new context (*CUPE* at para 52; *Nyarkoh v Canada (Citizenship and Immigration)*, 2024 FC 1897 [*Nyarkoh*] at para 24).

[11] This Court has clarified that to justify non-application of the doctrine, the new evidence must be "practically conclusive of the matter" (*Ping v Canada (Citizenship and Immigration)*, 2013 FC 1121 [*Ping*] at para 23).

[12] In this application, the Applicant has conceded that the elements of issue estoppel have been met. Accordingly, the focus is on the second step of the analysis: did the IAD reasonably exercise its discretion in its application of the doctrine of *res judicata*?

[13] In considering if the administrative decision-maker ought to have exercised its discretion, the central consideration is if an application of issue estoppel in the circumstances of the particular case would work an injustice (*Vo* at para 9; *Danyluk* at para 80).

[14] The Applicant asserted that the "special circumstances" the IAD ought to have considered to justify non-application of the doctrine of *res judicata* in this case is new evidence since the 2018 Decision that demonstrates the enduring nature of their marriage. This included photographs, airline tickets of visits to Jamaica, transcripts of WhatsApp chats, cards and messages, and letters of support from friends and family.

B. *Genuineness and purpose of the marriage*

[15] Subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] states:

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	**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) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) is not genuine.	**b)** n'est pas authentique.

[16] The subsection is disjunctive; in other words, for spousal sponsorship applications, both elements must be established. As such, the Applicant must establish that the marriage is genuine

and that it was not entered into for the primary purpose of obtaining immigration status (*Nyarkoh* at para 27; *Vo* at para 43).

[17] The IAD reasonably concluded that the Applicant's fresh or new evidence were not special circumstances sufficient to overcome the application of the doctrine of *res judicata*. This is because the IAD in the 2018 Decision found that the marriage was entered into for the primary purpose of acquiring status in Canada.

[18] In dismissing the Applicant's appeal, the IAD noted at paragraphs 15 and 16 of its Decision:

> … The decisive issue at hand as described by Member Dickeson in the 2018 decision was not only genuineness, or how the relationship progressed after marriage, but rather the Applicant's primary purpose at the time of the marriage, which took place in 2013. Primary purpose is to be evaluated at the time of the marriage, not 10 years after. The new evidence submitted by the Appellant showing an ongoing relationship past 2019 does not reasonably address the Applicant's primary purpose in entering the marriage.
>
> The Federal Court "has recognized that a finding of genuineness weighs in favour of a finding that the marriage was not entered into for immigration purposes, but, given the disjunctive nature of [the bad faith marriage provision], genuineness is not determinative of purpose." In the circumstances of this case, the new evidence the Appellant seeks to put forward sheds no light on primary purpose and does not address the shortcomings on that issue leading to dismissal in the 2018 decision.

[19] In other words, while this new evidence may have illustrated the couple's commitment and that the relationship has endured, this evidence cannot undo the earlier findings that the marriage was primarily for immigration purposes.

[20] I agree with the Respondent that the *Sami v Canada (Citizenship and Immigration)*, 2012 FC 539 [*Sami*] decision relied on by the Applicant is distinguishable from the present application. As observed by Justice Catherine Kane in *Ping*, "it is not the nature of the evidence that is determinative but how that evidence addresses or overcomes the earlier findings" (at para 24; see also *Vo* at para 40). Therefore, the Applicant's new evidence must address the concerns that the marriage was entered into for the purposes of immigration, as raised in the 2018 Decision.

[21] This Court has recognized that a finding of genuineness weighs in favour of a finding that the marriage was not entered into for immigration purposes but as noted earlier, subsection 4(1) of the *IRPR* is disjunctive; therefore, genuineness is not determinative of purpose (*Vo* at para 43). Further, the most probative evidence concerning the primary purpose of a marriage is contemporaneous evidence of what the parties were thinking at the time of the marriage (*Vo* at para 44).

[22] Further, the present application can be distinguished from *Sami*, as only genuineness of the marriage was at issue in that application, not the primary purpose.

[23] The IAD's Decision is reasonable, despite fresh evidence of a continued relationship, where the new evidence does not address the IAD's initial concerns regarding the purpose of the marriage (*Vo* at para 46; *Ping* at para 35; *Nyarkoh* at paras 38–39). Accordingly, I am of the view that it was reasonable for the IAD to conclude that, despite compelling new evidence supporting the genuineness of the marriage, the evidence did not remedy the prior credibility concerns regarding the purpose of the marriage to warrant the non-imposition of the doctrine of *res judicata*.

IV. Conclusion

[24] The Decision that the application is *res judicata* and that the new evidence submitted by the Applicant does not constitute special circumstances to override the doctrine of *res judicata* is reasonable.

[25] I am sympathetic and I understand that this decision may cause hardship for the Applicant and her spouse. Nonetheless, I am of the view that the IAD considered the Applicant's submissions and reasonably found that the new evidence did not address the concerns raised in the 2018 Decision regarding the purpose of the marriage. In my opinion, the Decision falls within the range of acceptable outcomes and is justified on the facts and the law.

JUDGMENT in IMM-16050-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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