Federal Court Cour fédérale

Date: 20250820

Docket: IMM-2757-24

Citation: 2025 FC 1391

Ottawa, Ontario, August 20, 2025

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

KEBREAB TESFU OGBIT STIFANOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated January 29, 2024 [Decision], of the Immigration Appeal Division [IAD] dismissing the appeal of an application to sponsor the Applicant's spouse as a member of the family class under subsection 12(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. According to the reasons of the decision under review, the marriage is not valid for sponsorship purposes. That confirms the view taken by the Immigration officer.

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

I. Facts

[3] The Applicant, Kebreab Tesfu Ogbit STIFANOS, is a 50-year-old Canadian citizen. He applied to sponsor his spouse, Awsaena Eyob Nashih, as a member of the family class under subsection 12(1) of the *IRPA.* Awsaena Eyob Nashih is a 40-year-old woman and a citizen of Eritrea residing in Germany.

[4] The Applicant and Awsaena Eyob Nashih commenced their relationship, through a conversation over Facebook Messenger on June 7, 2020.

[5] In August 2021, the Applicant travelled to Germany for a few weeks. He met Mr. Eyob Nashih in person for the first time and they subsequently married in the Roman Catholic Church in Ulm, Germany, on August 21, 2021.

[6] On January 3, 2022, the Applicant applied to sponsor Mr. Eyob Nashih to come to Canada as his spouse (as a member of the family class). There was however an issue as to the validity of the marriage for sponsorship purposes.

[7] The Applicant received a letter from the Respondent on February 21, 2023, requesting additional information to assuage the Officer’s concerns regarding the validity of the marriage.

[8] On April 20, 2023, the Officer refused the Applicant's sponsorship application by letter because the marriage certificate was not valid for Canadian immigration purposes. Under rule 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], a marriage taking place outside of Canada must be valid both under the law of the jurisdiction where it took place and under Canadian Law. The Officer stated that only marriages contracted with civil authorities in Germany are considered valid in that country. The Applicant only submitted a certificate from the Roman Catholic Church. Thus, there is no valid marriage for sponsorship purposes.

[9] We read about what followed from the IAD decision of October 23, 2023, which was responding to the Applicant's request to schedule a hearing for his appeal. This constitutes a chronology of events following the appeal from the Immigration Officer decision of April 20th.

- on May 10, 2023, the Applicant appealed the Officer's refusal to the IAD which was based on the marriage performed in Germany not being valid in that country;
- on May 23, 2023, the IAD sent a letter asking the Applicant to provide documents in support of his appeal, "in order to determine the way to proceed forward in this appeal";
- the day after, on May 24, 2023, the Applicant asked for and was granted an extension of time to respond to the letter; the extension was for a period of 21 days after receipt of the Appeal Record in order to respond;
- the Applicant received the Appeal Record on July 17, 2023, and on July 19, 2023, the IAD sent a reminder to the Applicant regarding his extended deadline to submit documentation in support of his appeal (concerning a marriage without

being contracted before civil authorities in Germany not being valid in that country);

- on August 7, 2023, the Applicant requested that the IAD schedule a hearing to allow him the time to produce and file a new marriage certificate;
- on August 10, 2023, the IAD refused the request for a hearing and "reminded the Applicant that the IAD was not in a position to determine if a hearing would be required in this file". While not specifically requested, the IAD granted an additional month for the Applicant to respond to the IAD letter.

[10] On September 8, 2023, the Applicant's counsel explained further that the Applicant and his spouse were unable to obtain an Eritrean passport in order to perform a legal marriage in Germany and requested that the appeal be scheduled for hearing, and that the Applicant be allowed to base his appeal on his spouse being a "conjugal partner" instead of a spouse. Counsel contended that the foreign national is a member of the "family class" if the person is the sponsor's spouse, common-law partner or conjugal partner (r. 117(1)(a) of the IRPR). Given that the three designate equal members of the class, claimed the Applicant, the appeal should be turned into a *de novo* hearing on whether a conjugal relationship existed. Counsel reproduced the definition of "conjugal relationship" which requires that the relationship must have been "for a period of at least one year". However, no evidence of an alleged conjugal relationship was offered.

[11] On October 23, 2023, as the Applicant failed to provide any additional documents or submissions, more than 60 days since the Appeal Record had been received by the Applicant, the

IAD refused to schedule the file for a hearing and assigned the file to a member for an in-chamber decision. In its decision, the IAD notes the following:

> In reviewing the application, I note that counsel did not justify or explain why a Tabesh conversion would be appropriate in this case (Tabesh v. Canada (Citizenship and Immigration), 2004 CanLII 76104 (CA IRB). Counsel simply said that the applicant and the appellant satisfy the definition of "conjugal partner" without providing any evidence to substantiate it. Appellant is represented by an experienced counsel. Applications need to be justified.
>
> The IAD notes that in order to qualify as a conjugal partner, one has to establish they have been in a conjugal relationship for at least 1 year prior to the date of the application (R2 and R121 of the Immigration and Refugee Protection Regulations).
>
> While appeals at the IAD are De Novo, it is recognized that the IAD has the discretion to decide to make a Tabesh conversion or not (see Nanji, 2022 FC 1306, par. 44) Furthermore it is up to the appellant to make sure to "provide sufficient credible evidence in support of his request" (Oladipo v Canada (Minister of Citizenship and Immigration), 2008 FC 366 at para 24).
>
> In addition, not only did the appellant failed to respond to the specific IAD letter within the extended time limit, there has otherwise been no disclosure whatsoever nor written statement per section 24(2) of the Immigration Appeal Division Rules, 2022 (IAD Rules). As per section 30 of the IAD Rules, the failure by the appellant to disclose evidence within 60 days of receiving the Appeal Record allows the IAD to proceed on the basis of the materials provided.
>
> With the lack of evidence provided, I refuse to proceed with a Tabesh conversion. This file will be assigned to a member for an In-chamber decision as per the IAD letter sent on May 23, 2023, and as per section 30(b) of the IAD Rules and with the documents on file.
>
> (my emphasis)
> (transcribed as in original)

[12] Three months later, on January 29, 2024, the IAD rejected the Applicant's appeal of an Immigration Officer's decision, who determined that his marriage to Awsaena Eyob Nashih was not valid for sponsorship purposes. This is the decision under review.

II. Decision Under Review

[13] The decision under review came on January 29, 2024. It dealt with the appeal from the Immigration Officer's decision to consider the marriage performed in Germany not being valid for sponsorship purpose. It runs for barely 3 ½ pages. The IAD concluded that the applicant did not establish that he is a member of the family class as he conceded that the marriage was not valid for the purpose of immigration. In addition, the IAD again refused the request to convert the analysis to one of a conjugal partner. The member found that it is not in the interests of justice to convert an appeal into *de novo* proceedings. The IAD is an appellate forum involved in reviewing decisions from immigration officers. In this case, the is no involvement of an officer who would have assessed the existence of a conjugal relationship. There is no evidence on this record. Moreover, the IAD does not have jurisdiction to take into account humanitarian and compassionate considerations. Indeed an adverse decision on the merits might create a precedent, resulting in *res judicata* and a negative impact on chances of a future successful sponsorship. The IAD stated that at this stage, it would be better for the Applicant to submit a new sponsorship application to an immigration officer. This new application should include all the evidence required to demonstrate Ms. Nashih's membership in the family class as a conjugal partner one year prior to the filing of this new application.

[14] In effect, the IAD noted that the request to convert the analysis from marriage to conjugal partnership is discretionary, and the IAD considered that it is not in the interests of justice in this case.

[15] As an aside (*in obiter*), the IAD expressed concerns about considering the conjugal relationship issue on the limited evidence available. For a conjugal relationship to be demonstrated, an applicant would show the existence of such relationship one year prior to the sponsorship application. In this case, the application came in April 2022. Here, the marriage took place in August 2021 “and it is not clear that the relationship had already reached the level of conjugal partnership by April 2021” (IAD decision, para 10). One of the criteria being time spent cohabitating, it appears that there was none as of April 2021. Without being essential, that criterion carries certain value. As for the other indicia, it was doubtful on this record there was sufficient evidence to support a conclusion that existed a conjugal relationship one year prior to the application for sponsorship.

[16] Overall, the IAD concluded that the ground for the sponsorship refusal by the Officer was valid and it therefore dismissed the appeal.

III. Legal framework

[17] To qualify as a conjugal partner, one has to establish that the partners have been in a conjugal relationship for at least one (1) year prior to the date of the application, and that they continue to be in that relationship at the time of the decision. The definitions of "conjugal partner" and "marriage" outlined in section 2 of the IRPR apply:

2. The definitions in this section apply to these Regulations	2. Les définitions qui suivent s'appliquent au présent règlement
Conjugal partner means, in relation to a sponsor, a foreign national residing outside Canada who is in a conjugal relationship with the sponsor and has been in that relationship for a period of at least one year. (*partenaire conjugal*)	**Partenaire conjugal** À l'égard du répondant, l'étranger résidant à l'extérieur du Canada qui entretient une relation conjugale avec lui depuis au moins un an. (*conjugal partner*)
…	…
marriage, in respect of a marriage that took place outside Canada, means a marriage that is valid under both the laws of the jurisdiction where it took place and under Canadian law. (*marriage*)	**marriage** S'agissant d'un mariage contracté à l'extérieur du Canada, mariage valide à la fois en vertu des lois du lieu ou il a été contracté et des lois canadiennes. (*marriage*)

[18] The Applicant applied to sponsor his spouse as a member of the family class. Section 121 of IRPR provides as follows:

121 Subject to subsection 25.1(1), a person who is a member of the family class or a family member of a member of the family class who makes	**121** Sous réserve du paragraphe 25.1(1), la personne appartenant à la catégorie du regroupement familial ou les membres de sa

an application under Division 6 of Part 5 must be a family member of the applicant or of the sponsor both at the time the application is made and at the time of the determination of the application.	famille qui présentent une demande au titre de la section 6 de la partie 5 doivent être des membres de la famille du demandeur ou du répondant au moment où est faite la demande et au moment où il est statué sur celle-ci.

The "family class" includes the spouse and the conjugal partner:

Member	**Regroupement familial**
117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is	**117 (1)** Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :
(a) the sponsor's spouse common-law partner or conjugal partner;	**a)** son époux, conjoint de fait ou partenaire conjugal;

[19] The Applicant referred to the "Tabesh conversion". The idea of a "conversion" stems from a decision from an IAD panel from British-Columbia (*Tabesh v Minister of Citizenship and Immigration*, 2024 CanLII 76104). The circumstances were unusual. In that case as in this one, the marriage was not recognized in Canada. However, the reasons for that conclusion differed considerably. In *Tabesh* the ceremony had taken place in North Vancouver and not abroad; but the groom was not present in Canada: there was no valid marriage in Canada under the laws of British Columbia. But the difficulty in *Tabesh* was that it seems that reliance was placed on the definition of "marriage", which is reproduced in paragraph 17 herein. On its face, that definition applies only when the marriage took place outside Canada, which was not the case in that particular case. In other words, reliance on the definition of "marriage" in s. 2 of the IRPR was

useless and in error. The issue was not that the marriage had to have been valid in two jurisdictions. It was rather that it was not valid in Canada.

[20] In the peculiar circumstances of the case, the panel in *Tabesh* considered whether it would be possible to rely on either the "common-law partner" or "conjugal partner" of paragraph 117 (1) (a) of the IRPR. The Minister's counsel argued that the IAD's jurisdiction is limited to an appeal of the decision of the Immigration Officer which dealt with whether the partner was a spouse. In the *Tabesh* case, it was a decision relating to the spouse that was made. No decision was made relating to whether the relationship could qualify as a common-law or conjugal relationship.

[21] The panel disagreed. The panel declares at paragraph 25 that "I am of the opinion that it is incumbent on the visa officer to consider as well whether the person could be either a conjugal or common-law partner". Hence, when the appeal concerns the officer's decision to deny sponsorship because the marriage is not valid, the appeal "against a decision not to issue the foreign national a permanent resident visa" (s. 63 of IRPA) would include a broader obligation on the officer. No authority in support of that proposition was cited. The IAD panel considered the obligation not unduly heavy because "the facts of the relationship which are readily available to the visa officer also go to determination of whether the couple may be conjugal or common-law partners" (para 27). Presumably with the ceremony having taken place in Canada, the evidence might be seen as more readily available. Ironically, the IAD panel in *Tabesh* found that the evidence submitted did not support findings of the existence of a common-law or conjugal partner relationship.

IV. Issue

[22] The question on judicial review is framed as follows by the Applicant:

> Is there a reviewable error on the part of the IAD in refusing a "Tabesh conversion" without a hearing?

[23] The Applicant submits that the standard of review is correctness as the issue is one of procedural fairness. However, that is not accurate. The decision to deny consideration of a "Tabesh conversion" without a hearing is not the panel's decision, in the case before the Court on judicial review. That preliminary decision was made by a different IAD panel, on October 23, 2023. The decision under review came on January 29, 2024, as the case was referred to it in October in the following fashion: "With the lack of evidence provided, I refuse to proceed with a Tabesh conversion. The file will be assigned to a member for an in-chamber decision as per the IAD letter sent on May 23, 2023…" That letter of May 23 was for the purpose of asking for the documentation showing that the marriage celebrated in Germany was legally valid. The IAD panel of October 2023 is the one that declined to have the hearing sought by the Applicant in the September letter of his counsel.

[24] I note that the October 23, 2023 decision which refused to consider the conversion without a hearing was made the subject of an application for judicial review (IMM-13551-23). The leave application was dismissed on August 19, 2024. Accordingly, our Court concluded that there was not even an arguable case.

[25] The only issue left on this judicial review of the January 2024 decision is arguably whether it was unreasonable for the IAD to deny the Applicant's request to have his application converted from a spousal to a conjugal partner application, which is a question to be reviewed on a reasonableness standard. That issue was probably also addressed in the decision of October 23, 2023. However, out of abundance of caution, I will address the reasonableness of the decision to refuse to consider any further the *Tabesh* conversion. Therefore, I agree with the Respondent and the standard of review must be reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at paras 10, 25 [*Vavilov*]; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]).

[26] A reasonable decision 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" (*Vavilov*, at para 85; *Mason*, at para 8); (*Pepa v Canada (Minister of Citizenship and Immigration)*, 2025 SCC 21, para 46 to 51) and that is justified, transparent and intelligible (*Vavilov*, at para 99; *Mason*, at para 59). The reasonableness review focuses on both the outcome and the reasons (*Vavilov*, at para 15). A decision may be unreasonable, among other things, if the decision maker has fundamentally misunderstood or disregarded the evidence before him or her (*Vavilov*, at paras 125-26; *Mason*, at para 73). Importantly, it is up to the Applicant to demonstrate that an administrative decision is unreasonable (*Vavilov*, at para 100).

V. Parties' Submissions

A. *Applicant's Submissions*

[27] The Applicant argues that the IAD committed an error by refusing a *Tabesh* conversation stating that the IAD failed to exercise its jurisdiction to ensure a full and proper hearing (*IRPA*, s. 165).

[28] It is suggested that the Officer did not realize that he or she had the authority to consider the said permanent resident application on the basis of a conjugal partner, based on the *Tabesh* decision. Evidence in the record established that the Applicant and his spouse/conjugal partner started their relationship on June 7, 2020 (and got married on August 21, 2021). In fact, the Applicant alleges that there existed evidence of a relationship, starting in June 2020 which established the "real possibility" of a conjugal relationship as of April 2021. The Applicant does not explain how a Facebook connection in June 2020 has become a conjugal relationship. He claims that "the IAD acknowledged the very real possibility of a valid conjugal relationship" (memorandum of fact and law, para 18). The paragraph from the decision under review cited in support of that argument (para 6) does not provide any support for that bold proposition.

[29] The Applicant submits that the IAD failed to provide any jurisprudential support to justify its dismissal of the Applicant's sponsorship appeal based on its refusal to apply the *Tabesh* conversion. The only jurisprudence cited by the IAD was the *Tabesh* case, which allowed an Applicant the opportunity to be heard after a hearing with witnesses about a change in the basis of a sponsorship appeal from spouse to conjugal partner.

[30] In the Applicant's Reply Memorandum, the Applicant submits that his case differs from the Respondent's assessment of *Tang v Canada (Citizenship and Immigration*), 2015 FC 973

[*Tang*], stating that in *Tang*, the Court determined that there was little to indicate that the partners were in a conjugal relationship (at para 20). That explains why it refused the appeal based on the evidence in the record, which, contends the Applicant, is contrary to this instance. The Applicant goes on to assert that the Immigration Officer's mention of a *bona* fide relationship in the present instance was a critically important finding which the IAD failed to consider in its analysis of the evidence in the record. While the Applicant concedes that the Respondent is correct to state that a *Tabesh* conversion is discretionary, the Respondent failed to establish that the IAD's refusal to exercise its discretion was reasonable and fair.

[31] Finally, the Applicant requests that the Court join and consolidate the case of *Stifanos v MCI*, file number IMM-13551-23, to the present application for leave and judicial review, based on the commonality of the legal and factual issues, common parties, parallel evidence, the likelihood that the outcome of one case will resolve the other, and in order to avoid possible conflicting judgments (*Federal Courts Rules*, SOR/98-106, r 105). As already noticed, the leave application in IMM-13551-23 had been dismissed since August 2024, well before this case was heard on July 23, 2025.

B. *Respondent's Submissions*

[32] The Respondent submits that there was no error in declining to apply the *Tabesh* conversion. Given the absence of examination by the Officer and the absence of evidence provided in the appeal, the Respondent argues that it was reasonable for the IAD to deny the Applicant's request to have his application converted from a spousal to a conjugal partner application.

[33] In *Tabesh*, the IAD found that if a person applies to be sponsored as a member of the family class and is refused based on the formal validity of the marriage, it is incumbent to consider whether the person could alternatively be sponsored either as a conjugal or common-law partner. But that is far from being a proposition universally accepted. The Respondent brings the Court's attention to *Tang*, at paras 32–33, which states that the authority to make such a conversion is not clear and if it exists, the decision to permit such a conversion is discretionary and in the absence of any evidence to support such a request, the IAD is not required to exercise its discretion. Therefore, the Respondent submits that the IAD's Decision is reasonable as the Applicant failed to produce any evidence or submissions within the time limits set in the *IAD Rules* as to the possibility to be considered a conjugal partner.

[34] The Respondent submits that contrary to the Applicant's allegation concerning the other decision, the IAD did not need on October 23, 2023 to hold a hearing to decide the Applicant's request for a *Tabesh* conversion. The *IAD Rules* govern procedural matters before the IAD. Rule 26 of the *IAD Rules* states that the parties have 60 days to submit documents or indicate their intention not to submit documents. The Applicant, assisted by counsel, was given a sufficient opportunity to provide submissions and documents; they failed to do so. Therefore, based on rule 30(b) of the *IAD Rules*, the IAD proceeded with the documents on file (*Sound v. Fitness Industry Council of Canada*, 2014 FCA 48 at para 37; *VIA Rail Canada Inc v. Canadian Transportation Agency*, 2007 SCC 15 at para 231).

[35] Contrary to the Applicant's submissions, the Respondent submits that the burden is on the Applicant to present arguments and evidence to show that he is in a conjugal relationship and

was for a period of one year before April 2022. It is not the role of the IAD to scroll through the documents that were in front of the Immigration Officer in search of elements supporting the possibility that his spouse/conjugal partner were in a conjugal relationship as of April 2021. The Respondent submits that the evidence of a conjugal relationship prior to April 2021 is limited; as it appears from the Applicant's declarations in the IMM 5632 form, the Applicant started a Facebook Messenger conversation with the Applicant on June 7, 2020, and married her in August 2021.The Respondent submits that there is no indication in the record as to when the relationship became a conjugal relationship.

[36] According to the Respondent, the appeal in front of the IAD being *de novo*, the Applicant had to provide evidence of the genuineness of the relationship and establish on a balance of probabilities that he was in a conjugal relationship. The fact that the Applicant and Ms. Nashih started communicating with each other on Facebook Messenger on June 7, 2020, and met in-person for the first time in August 2021, is insufficient to establish that they are conjugal partners. The Respondent submits that it was incumbent upon the Applicant to provide sufficient evidence to demonstrate that the requirements of the conjugal partnership were satisfied.

[37] Overall, the Respondent submits that the refusal to exercise its discretion to convert the spousal application to a conjugal application was explained and justified by the IAD, which even considers the impact on the Applicant of a possible negative decision.

VI. Analysis

[38] In spite of this case being presented in a convoluted fashion it is relatively simple.

[39] There is only one case before the Court on this judicial review application. It is the decision of the Immigration Appeal Board of January29, 2024, dismissing the appeal of an immigration officer's decision who determined that the Applicant's marriage with an Eritrean woman in Germany was not valid for sponsorship purposes in Canada.

[40] It is not a matter of dispute that a legal requirement for a marriage in Germany is that it must be a civil marriage. In the case at hand, the Applicant's marriage was celebrated in the Catholic faith only. We learn from a letter from Counsel to the IRB of September 8, 2023 (Applicant's Record, p. 17) that it was not possible to obtain a valid Eritrean passport in order to perform a legal marriage in Germany. That, in and of itself, is why extensions of time granted to the Applicant by the IAD never produced any evidence of a valid marriage in Germany.

[41] The decision appealed to the IAD from the Immigration Officer (April 20, 2023) found that the *Immigration and Refugee Protection Regulations* define "marriage" as a marriage that must be valid under the laws of the jurisdiction where it was performed as well as those of Canada. In fact, the Immigration Officer sent the Applicant what is usefully referred to as a "fairness letter", thus offering an opportunity to submit additional information to establish the legal validity of the marriage in Germany. Adequate additional information was never submitted to the Officer or the IAD. As a result, the foreign national was ruled not to have met the basic requirements of the *IRPA;* according to ss 11(1), it must be shown that, before being allowed to enter Canada, a foreign national is not inadmissible. The sponsorship of the Applicant's spouse was not possible and the spouse was inadmissible.

[42] The Applicant appealed to the IAD, as he is entitled to. The grounds for the appeal are provided for at s. 67 of the IRPA:

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 or 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 interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of tall the circumstances of the case.	**c)** sauf dans le cas de l'appel du ministre, il y a – compte tenu de l'intérêt supérieur de l'enfant directement touché – des motifs d'ordre humanitaire justifiant, vu les autres circonstance de l'affaire, la prise de mesures spéciales.

[43] On its way to the decision under review before this Court, another decision from a different panel of the IAD intervened. On October 23, 2023, a ruling was rendered on whether a hearing, requested by the Applicant on September 8, 2023, should take place in order for the application to become one for sponsorship of a "conjugal partner" as opposed to the one final application to sponsor the "spouse" (Applicant's Record p. 20-21). This stems from ss 117(1) of the *Immigration and Refugee Protection Regulations* which recognizes that a member of the

family class is the foreign national who is “the sponsor’s spouse, common-law partner or conjugal partner”.

[44] The IAD notes in its ruling of October 23, 2023, about whether a hearing should take place, which was challenged and left undisturbed, that it has sought from the appellant documentation in support of the appeal. Extensions of time were granted. The IAD found that “counsel did not justify or explain why a Tabesh conversion would be appropriate in this case...” “Counsel simply said that the applicant and the appellant satisfy the definition of “conjugal partner” without providing any evidence to substantiate it”. I add that the situation has remained the same all the way through. The ability that the IAD could have to turn on appeal a deficient spousal sponsorship into a conjugal partner sponsorship application was not denied. But the decision of October 2023 found that there was no evidence to substantiate a conversion.

[45] What was lacking in October 2023 continued to be lacking in January 2024. The sole relevant consideration is that the IAD concluded that the “appellant” did neither justify nor explain why the conversion of one to the other would be appropriate. Just relying on the definition of “conjugal partner”, without evidence, does not suffice. Indeed, the IRPR provide that there must have been a conjugal relationship for at least one year prior to the sponsorship application (s. 2 and 121). At a minimum, some evidence should have been presented and an articulation supplied to justify a conjugal relationship starting in April 2021. Not only did the Applicant not define what constitutes a “conjugal relationship”, but he did not either specify what evidence, if any, there is of such relationship. That constitutes a glaring gap, one which should dispose of the judicial review application. The onus was on the Applicant to supply

sufficient evidence in support of the request. The discretion to convert, if any, is not exercised given the lack of evidence.

[46] Hence, the IAD refused to proceed with the (*Tabesh*) conversion. Without a hearing on October 23, 2023, the matter is referred to a different panel for a decision on the merits of the application. That decision, of January 29, 2024, is the only one before this Court.

[47] The decision under review is a simple one. The role to be played by the IAD is that of an appellate body. Usually, the basic analysis is conducted by an immigration officer following an interview; none took place concerning the existence of a conjugal relationship in this case simply because that was never alleged before the Immigration Officer. Indeed, even on appeal before the IAD, nothing was forthcoming. Furthermore there is little evidence to support the exercise of any discretion in the matter. It is less than clear that a conjugal relationship was existent in the one year preceding the sponsorship application (April 2022), with the religious marriage in August 2001).

[48] In an attempt to be useful to the Applicant, the IAD suggests that it would be better for the appellant to submit a new sponsorship application to an immigration officer as a conjugal partner, with evidence sufficient to establish the membership in the family class. As explained by the IAD, if the conversion were accepted, it may be counterproductive since the IAD does not have jurisdiction to hear considerations of a humanitarian and compassionate nature. With the paucity of evidence of the appropriate conjugal partnership, a negative decision on the merits would set a precedent, with a negative impact (*res judicata*) on the appellant's chance for a

successful sponsorship application. In other words, the preferable course of action would be to start anew. But that was offered *in obiter* (decision of January 29, 2024, para 6).

[49] On the issue before the IAD in January 2024, the refusal by the immigration officer was well founded: the marriage in Germany could not support a spousal sponsorship. The IAD was careful not to decide on the merits whether or not the conjugal partnership was in existence, leaving the issue to another day if the appellant chose to make a new application.

[50] The Applicant seems to make the argument that on judicial review there was a violation of the duty of procedural fairness in that he did not have an opportunity to present his case. As I have tried to explain, the refusal of the so-called “Tabesh conversion” came in October 2023, without a hearing. The decision of January 2024 commenting on the conversion was merely complementing the finding of October 2023. It could not have been otherwise in view of the lack of evidence about the newly alleged conjugal relationship not supported by evidence.

[51] In effect, I understand the Applicant to contend at its highest that he has not been allowed to present his case that there existed a conjugal partnership. With respect, that is plainly not what the record shows. The Immigration Officer put the Applicant on notice that he did not satisfy the requirement for the marriage in Germany because only marriages contracted before civil authorities are recognized. The Applicant was allowed 60 days to supply further information. I note that the letter specified that a foreign national may be the sponsor’s spouse, a common-law partner or a conjugal partner. The Immigration Officer duly observed in the decision letter of

April 20, 2023, that although the opportunity to submit additional information had been offered, there was no new information to disturb the conclusion that the Applicant could not be a sponsor.

[52] The request made to schedule a hearing before the IAD was also met with a negative response. The Applicant had already signaled he wanted to appeal the Immigration Officer's decision under the allegation that the couple constituted conjugal partners. The IAD decision of October 23, 2023, lists the various opportunities afforded the Applicant to supply documentation in support of the appeal. From May to September 2023, no documentation was forthcoming. The IAD found that there was no justification why converting the appeal into an application based on the existence of a conjugal partnership would be appropriate. As remarked by the IAD, simply stating that the Applicant is a conjugal partner without any evidence will not do. Accordingly, the IAD would not proceed with a conversion due to a lack of evidence. The IAD very specifically on October 23, 2023 said that:

> In addition, not only did the appellant failed [sic] to respond to the specific IAD letter within the extended time limit, there has otherwise been no disclosure whatsoever nor written statement per section 24(2) of the Immigration Appeal Division Rules, 2023 (*IAD Rules*). As per section 30 of the *IAD Rules*, the failure by the appellant to disclose evidence within 60 days of receiving the Appeal Record allows the IAD to proceed on the basis of materials provided.

Thus, it is on that basis that the matter was referred in October 2023 to another IAD panel for a decision on the merits based on the record as constituted by the Applicant.

[53] I fail to find any foundation to the contention that procedural fairness principles were violated in January 2024. On the contrary, numerous opportunities to present the case were

afforded to the Applicant as part of the appellate process. He knew even before the Immigration Officer that his application was defective. Before the IAD, the Applicant was afforded numerous opportunities to supplement his record; he chose not to seize the opportunities seeking instead a hearing before the IAD. The Applicant did not offer any authority for the bold proposition that he is entitled to an oral hearing whenever he wants one. There may be circumstances where an oral hearing may be mandated. But there is no indication that this may be one of those cases. The Applicant was invited repeatedly to participate by providing information. He chose not to do so. There was no violation of his ability to participate fully in his case

[54] Without saying so, the Applicant seemed to suggest, more than demonstrate, that the decision under review is not reasonable. He alluded to that possibility in his Application for Leave and Judicial Review where he alleged errors of law and fact in making the decision of January 2024. S. 2 of the IRPR defines a "conjugal" partner as being "a foreign national residing outside of Canada who is in a conjugal relationship for a period of at least one year". Faced with that hurdle, the Applicant cannot do any better than to claim that "the relationship" started in June 2020. That assertion is based on the form entitled "Relationship Information and Sponsorship Evaluation" (Affidavit of Kebreab Tesfu Ogbit Stifanos, exhibit 3, p. 81) where the Applicant answers the question concerning contacts before the sponsor met the person by stating that he "initiated the 1st contact by adding her as a friend in Facebook. After she accepted my friend request, I text messaged her on Messenger on June 7, 2020". Whether or not this may constitute a "relationship", that cannot qualify as anything close to a "conjugal relationship". At its highest, the Applicant offers that there is a "real possibility" that there existed that relationship given their marriage in August 2021. Not only is that mere speculation, but that

would not satisfy the requirement that the conjugal relationship be in existence at least one year before the application in April 2022.

[55] The Applicant had to demonstrate that the *obiter dictum* of the IAD commenting on the limited existence of evidence of a conjugal relationship is not reasonable. In fact, there are two issues with that generic contention. First the remark is said by the IAD as being *obiter*, and accordingly not necessary for the resolution of the case. Second, there is no demonstration that the comment is unreasonable, as the notion is understood since at least *Vavilov*. On this record there is no serious shortcoming nor any identified failure of rationality (the Applicant goes no further than suggesting "a real possibility") or anything untenable in light of legal and factual constraints (*Vavilov*, para 99 to 101). The Applicant has not discharged his burden to show that the comment was unreasonable, let alone that the IAD decision of January 29, 2024 as a whole was unreasonable.

VII. Conclusion

[56] That disposes of the judicial review application. There is no violation of procedural fairness as the Applicant was given a full opportunity to present his case. Moreover, the decision under review was reasonable, the Applicant having failed his burden to demonstrate that it was unreasonable. I should add that our Court in *Tang v Canada (MCI)*, 2015 FC 973 and *Nanji v Canada (MCI)*, 2022 FC 1306 expressed serious reservations concerning the "*Tabesh* conversion" on which the Applicant relied heavily. In *Tang*, Justice Fothergill wrote:

> [32] The "Tabesh conversion" is a creation of the IAD. It appears to be derived from s 67(2) of the IRPA, which states that where the IAD allows an appeal it may set aside the original

> decision and substitute the determination that "in its opinion, should have been made". However, opinion is divided among members of the IAD regarding its authority to make such a conversion (*Rahimi v Canada (Minister of Citizenship and Immigration)*, 2014 CarswellNat 6113 (Imm. and Ref. Bd. (App. Div.))). Even where the authority is believed to exist, the decision to permit such a conversion is wholly discretionary (*Shahabi v Canada (Minister of Citizenship and Immigration)*, 2006 CarswellNat 6397 (Imm. and Ref. Bd. (App. Div.))).
>
> [33] Assuming, without deciding, that the IAD had a duty to consider an alternative category of relationship under s 117(1)(a) of the Regulations, the onus was on Mr. Tang to provide sufficient credible evidence in support of his request (*Oladipo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 366 at para 24). The IAD was not required to invite additional submissions regarding the possible existence of a conjugal relationship once it found that the formal requirements of a marriage under Vietnamese law had not been met.

[57] I respectfully add my voice to those of my colleagues to suggest the dubious precedential value of *Tabesh*. In my view, it is less than persuasive that the analysis conducted in that case had to be a pronouncement that can go any further than the opinion of the panel member in that case (para 25), that is that it is incumbent on the visa officer to consider not only whether the person sponsored is the spouse, but also whether the person is a common-law or conjugal partner.

[58] Indeed, *Tabesh* seems to take into account that the obligation to conduct the further analysis is not unreasonable, a policy consideration which may be the province of others (para 26), and that "the facts of the relationship which are readily available to the visa officer also go to determination of whether the couple may be considered conjugal or common-law partners" (para 27). As this case demonstrates, the facts of the relationship are not always readily available.

Indeed, we do not even know how often that kind of evidence is available. In *Tabesh*, the evidence was ruled to be insufficient.

[59] The judicial review application is dismissed.

[60] The Applicant strangely suggested in the last two paragraphs of its reply memorandum that file IMM-13551-23 be joined with this file. In its memorandum of fact and law, counsel for the Applicant had indicated that the October 23, 2023 decision from the IAD had been made the subject of a judicial review application bearing the file number IMM-13551-23. It was said that the application is still pending.

[61] Since then, and as noted earlier in these reasons, the decision of October 23, 2023, which found that no hearing was granted to address whether or not a Tabesh conversion should take place, was resolved by this Court by dismissing the leave application (August 19, 2024). A motion to join the two files (IMM-13551-23 and IMM-2757-24) had already been dismissed on May 27, 2024. It follows that there is no need for this Court to address this issue.

JUDGMENT in IMM-2757-24

THIS COURT'S JUDGMENT is as follows:

1. The judicial review application is dismissed.

2. The parties were canvassed and no serious question of general importance was identified. It follows that no such question is stated.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	MONTRÉAL, QUEBEC
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