Federal Court  Cour fédérale

Date: 20251003

Docket: IMM-13327-24

Citation: 2025 FC 1634

Ottawa, Ontario, October 3, 2025

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

OMOKPIA OROBOSA EDUGIE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This Application concerns a decision related to the Applicant, Mr. Omokpia Orobosa Edugie, and his third application to sponsor his wife as his spouse for permanent residence. Mr. Edugie, a permanent resident of Canada, seeks judicial review of the Immigration Appeal Division's [IAD] decision dated July 6, 2024 that dismissed his spousal sponsorship appeal for lack of jurisdiction because *res judicata* was met [Decision Under Review or Decision].

[2] In simple terms, *res judicata* is a doctrine that can be defined as a preclusion on raising issues or bringing forth matters that have been fully and finally adjudicated previously by a competent court or tribunal and where the same claim, demand or cause of action may not be pursued further by the same parties: Bryan A. Garner, ed, *Black's Law Dictionary*, 12th ed (St. Paul, MN: Thomson Reuters, 2024) *sub verbo* "*res judicata*".

[3] The Officer determined that *res judicata* clearly applied to the appeal before the IAD, there were no special circumstances warranting an exception to the application of *res judicata*, and there was no breach of procedural fairness.

[4] On judicial review before this Court, Mr. Edugie raises three issues with the Officer's Decision:

a. Whether the Officer's Decision is unreasonable considering the evidence before them?

b. Whether the IAD unreasonably applied the principle of *res judicata* to the spousal sponsorship appeal?

c. Whether there is a breach of procedural fairness?

[5] First, Mr. Edugie submits the Decision was unreasonable because the evidence contradicts the Officer's conclusion and argues this leads to the inference that the Officer did not review the evidence or arbitrarily disregarded it.

[6] Second, Mr. Edugie submits that the presence of new evidence, notably evidence that tends to prove the genuineness of the relationship, is a special circumstance that justifies not applying the doctrine of *res judicata*.

[7] Third, Mr. Edugie submits that the IAD rendered its Decision without an oral hearing, which amounted to a breach of procedural fairness because Mr. Edugie claims he was not provided with an opportunity to present his case.

[8] In response, the Minister of Citizenship and Immigration [Minister] submits that the Decision is reasonable because the Officer considered each piece of evidence mentioned by Mr. Edugie and explained that the new evidence proposed did not address the prior decision-maker's concerns. Therefore, the case before the IAD did not present special circumstances to justify not applying the *res judicata* doctrine. The Minister further submits that the Decision was not procedurally unfair because an oral hearing was not required.

[9] For the reasons that follow, I dismiss the application for judicial review. The Officer reasonably assessed Mr. Edugie's application and justified why Mr. Edugie's wife did not qualify as a spouse under subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Moreover, Mr. Edugie did not establish that there was a breach of his right to procedural fairness.

II. Background

[10] Between 2015 and 2023, four separate decision-makers found that Mr. Edugie's marriage is not genuine. The Officer summarized the background facts concisely in its Decision at paras 5-9, which I refer to below.

[11] In June 2015, Mr. Edugie applied to sponsor his wife for permanent residence for the first time. That first visa officer noted concerns with the relationship and a possible misrepresentation and sent a procedural fairness letter to Mr. Edugie, noting that the couple had not seen each other since 2009; that there was very limited evidence to show a genuine relationship; and the two photos of the wedding submitted appeared photoshopped. After reviewing the documents, the first visa officer refused the application, concluding that the relationship was not genuine, the couple were not legally married, and it was unclear that they were present at the registry at the time of the marriage. Mr. Edugie filed an appeal with the IAD but withdrew it in July 2018.

[12] In September 2018, Mr. Edugie filed a second sponsorship application. In that second application, the couple did not provide photos of their 2008 wedding, nor an explanation for failing to provide their wedding photos but instead provided photos of their 2016 anniversary. There was no proof to the couple's assertion that Mr. Edugie's wife was abducted for four years between February 2009 and August 2013, and there was no break in his wife's address during that time. That second visa officer interviewed Mr. Edugie's wife in May 2019 during which she said that during the four-year period when she was abducted, no one in her family reported her missing, and she did not know why that was. On June 10, 2019, the second sponsorship application was refused.

[13] Mr. Edugie appealed this second sponsorship refusal to the IAD and, on May 11, 2020, after a full hearing where both Mr. Edugie and his wife testified, the IAD rendered its decision [IAD's 2020 decision]. The Member concluded the marriage was not genuine (no shared relationship of permanence with a serious commitment to each other) and the couple was not

credible for several reasons. The most relevant findings of the IAD's 2020 decision were summarized by the Officer in the Decision Under Review, some of which I have included below:

- After his wife was abducted in 2009, Mr. Edugie fled to Canada and made a refugee claim, but did not notify his wife's family that she had been abducted. The Member of the IAD found this assertion to undermine the Appellant's credibility, and that "the lack of action in this regard causes the panel some concern as to where this marital relationship was at the time of abduction."

- The Member of the IAD was troubled by the spouse's answer about why her husband had not contacted her family—she said he did not know how to call them to remind them about their daughter. Again, the Member was concerned about Mr. Edugie's failure to inquire about his wife's wellbeing after he was safe in Canada.

- In August 2013, Mr. Edugie was told that his wife returned home. Mr. Edugie said that his wife's family had asked where she had gone, both during the abduction and afterwards. However, at her interview, the spouse said no one looked for her and after returning home, she did not go to either the police or the hospital. The Member of the IAD found Mr. Edugie's response to this contradiction to be not credible.

- Mr. Edugie was unable to explain how the relationship continued after the spouse returned home in August 2013.

- Mr. Edugie returned to Nigeria for the first time since the abduction in August 2016. He described their relationship as "best friends." Mr. Edugie said he still wanted to be married to his spouse but had mixed feelings because he had not contacted her family while she was abducted. The Member did not understand how this relationship resumed after 4 years of absence and 7 years from their last physical contact.

- The Member noted that there was "a lack of clear and convincing evidence that this marriage has resumed as described and that they are planning a family."

- The Member was concerned that despite the assertion that the couple reconnected in 2013, Mr. Edugie did not sponsor her for years after he found out she was still alive, even though Mr. Edugie said he did not have enough money to sponsor her.

- Despite the previous sponsorship refusal, the couple said they had not discussed what they would do if the appeal were dismissed. The Member found the lack of discussion about a plan for the future to show a non genuine relationship.

[14] Mr. Edugie did not seek judicial review of the IAD's 2020 Decision on his second sponsorship application.

[15] Rather, in March 2023, Mr. Edugie filed a third application to sponsor his spouse, and his application was refused again by yet another visa officer, to which Mr. Edugie again sought to appeal to the IAD for a second time. The IAD invited Mr. Edugie and the Minister to make submissions on the issue of *res judicata.*

[16] Following review of the submissions of the parties, the IAD dismissed Mr. Edugie's appeal because it found that *res judicata* applied and there were no special circumstances warranting an exception to the doctrine. This is the Decision Under Review.

III. Standard of Review

[17] The parties agree that the merits of the decision are reviewable on the presumptive standard of reasonableness and that the issue of procedural fairness is determined on the basis that approximates correctness review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10,16-17, 25 [*Vavilov*].

[18] To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness – justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision will always depend on the constraints imposed by the legal and factual context of the decision under review: *Vavilov* at para 90.

[19] The Court must avoid reassessing and reweighing the evidence before the decision-maker; however, a decision may be unreasonable, if the decision-maker "fundamentally misapprehended or failed to account for the evidence before it": *Vavilov* at paras 125-126. The reviewing court must ultimately be satisfied that the decision-maker's reasoning "adds up": *Vavilov* at para 104.

[20] The party challenging the decision bears the onus of demonstrating that the decision is unreasonable: *Vavilov* at para 100.

[21] On the other hand, breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise […] 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied": *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*].

[22] The duty of procedural fairness "is 'eminently variable', inherently flexible and context-specific"; it must be determined with reference to all the circumstances, including the non-exhaustive list of factors stated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 22 and 23: *Vavilov* at para 77.

[23] In sum, the focus of the reviewing court is whether the process was fair. In the words of the Federal Court of Appeal in *Canadian Pacific* at para 56, the ultimate or fundamental questions are:

> [56] No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. It would be problematic if an a priori decision as to whether the standard of review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice—was the party given a right to be heard and the opportunity to know the case against them? Procedural fairness is not sacrificed on the altar of deference.
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> [Emphasis added]

IV. Preliminary Issue

[24] The Minister raises a preliminary issue – that Mr. Edugie has sought to introduce into evidence a confirmation of marriage certificate (confirming their marriage in Ehor, Nigeria on March 28, 2008) and their child's birth certificate (confirming the birth on June 27, 2024, in Benin City, Nigeria with Mr. Edugie and his wife listed as the parents). Mr. Edugie explains that his original marriage certificate was initially submitted with the first spousal sponsorship application, but it was never returned despite having filed requests for access to information and privacy, and this can only be substantiated if the IRCC returned his documents. The Minister submits that it is unclear whether the marriage certificate was before the IAD but that the birth certificate was clearly not before the IAD because the decision mentions that the child had not yet been born. The Minister therefore submits that the birth certificate is inadmissible, and any argument based on it should be disregarded.

[25] In the normal course, evidence that was not before the decision-maker and that goes to the merits of the matter is not admissible in an application for judicial review in this Court:

Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22 at para 19 [*Access Copyright*].

[26] I have conducted a careful review of the record before this Court and note the IAD's 2020 decision states, "[Mr. Edugie] and [his wife] married in Nigeria on March 28, 2008, in a civil ceremony marriage" and specifically references the Mariage Certificate at footnote 5 at page 58 of the record. I therefore admit the confirmation of marriage certificate into evidence before me because it was clearly on the record before the IAD, which is confirmed by the Officer setting forth this conclusion in the Decision Under Review at page 3. It remains to be seen whether this confirmation of marriage certificate has any practical effect as the marriage *per se* was not at issue, only the genuineness of the marriage was.

[27] After a careful review of the record before this Court, including the Certified Tribunal Record, I agree with the Minister and find the birth certificate inadmissible as it is clearly evidence that goes to the merits of the matter and was not before the decision-maker. In that regard, I rely on para 39 of the Decision of the IAD reproduced hereinafter:

> [39] In this case, the evidence about a child of the marriage and in support of family reunification, is not strong. As of yet, a child has not been born. There is only a pregnancy. Paternity has not been established**,** although it appears the [Applicant] was in Nigeria at the relevant time. While a child of the marriage would favour a finding of a genuine marriage, it is not determinative. This evidence does not shed much light on the issues I need to address in this appeal.
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> [Emphasis added]

[28] In *Access Copyright* at para 20, the Federal Court of Appeal held that there are a few recognized exceptions to the general rule, which "exist only in situations where the receipt of the evidence by the Court is not inconsistent with the differing roles of the judicial review court and the administrative decision-maker". The Federal Court of Appeal then listed the three non-exhaustive exceptions, which I summarize as follows:

a. Where the new evidence provides general background information in circumstances where that information might assist in understanding the issues relevant to the judicial review but does not add new evidence on the merits;

b. Where the new evidence brings to the attention of the reviewing court procedural defects not found in the evidentiary record of the decision-maker; and

c. Where the new evidence highlights the complete absence of evidence before the decision-maker on a particular finding.

[29] A simple reading of the abovementioned *Access Copyright* exceptions convinces me that they do not apply to the birth certificate. As such, the birth certificate is not admissible in this judicial review application.

V. Analysis

A. *Legal Framework*

(1) Genuineness and Purpose of the Marriage

[30] Pursuant to subsection 12(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, a foreign national may be selected as a member of the family class on the basis of their relationship as a prescribed family member of a Canadian citizen or permanent resident. In this case, the foreign national is a member of the family class if, with respect to a sponsor, the foreign

national is the sponsor's spouse, common-law partner or conjugal partner (see paragraph 117(1)(a) of the IRPR)

[31] Subsection 4(1) of the IRPR states:

Bad faith	**Mauvaise foi**
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.

[32] Spousal sponsorship applications can only be approved if an applicant establishes both that the marriage was not entered into for the primary purpose of acquiring immigration status or privilege under the Act and that the marriage is genuine: *Singh v Canada (Citizenship and Immigration)*, 2014 FC 1077 at paras 8.

(2) *Res judicata*

[33] The doctrine of *res judicata* is well established in the case law. In *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44 [*Danyluk*], the Supreme Court of Canada explained that litigants must "put their best foot forward to establish the truth of their allegations when first called upon to do so" and "an issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner." The purpose of the doctrine is to

balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case: *Danyluk* at para 33.

[34] The first step is to determine whether the three preconditions for a finding of *res judicata* are met:

i. the same question has been decided in an earlier proceeding;

ii. the prior judicial decision which is said to create the estoppel was final; and,

iii. the parties to the judicial decision were the same persons as the parties to the proceedings in which the estoppel is raised.

(*Angle v Minister of National Revenue*, [1975] 2 SCR 248 at 254 1974 CanLII 168 (SCC), cited in *Danyluk* at para 25)

[35] However, the jurisprudence has established special circumstances that may justify an exception to the application of the doctrine, for example:

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.

(*Danyluk* at para 80; *Saskatoon Credit Union v Central Park Enterprises Ltd*, 1988 CanLII 2941 (BC SC) at para 33)

[36] For this second part of the test, "the decision-maker must consider whether the application of issue estoppel or res judicata would lead to an injustice": *Kamara v Canada (Citizenship and Immigration)*, 2021 FC 1117 at para 15 [*Kamara*], citing *Rahman v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1321 at para 20; *Danyluk* at para 67.

B. *Issue 1 - Whether the Officer's Decision is unreasonable considering the evidence before them?*

[37] Before the Officer in the Decision Under Review, Mr. Edugie did not contest the Minister's position that the three preconditions for a finding of *res judicata* were met, namely that (1) the issue on appeal before both the Officer in the Decision and the IAD's 2020 decision was whether the marriage is genuine (i.e. the same issue was decided in an earlier proceeding); (2) the IAD's 2020 decision is final as Mr. Edugie did not challenge it before the Federal Court, and (3) the parties are the same in both proceedings. Similarly, in the application for judicial review before me, Mr. Edugie does not submit that the Officer in the Decision Under Review was unreasonable when it concluded that all three preconditions of *res judicata* were clearly met. Rather, Mr. Edugie argues that the new evidence before the IAD should have triggered the decisive new evidence exception.

[38] Mr. Edugie submitted new evidence before the Officer that included messages exchanged between accounts purporting to be the couple's accounts from 2021-2024, money transfers from 2023 and 2024, evidence showing his trip to Nigeria from October 2023 to November 2023, evidence showing his wife is pregnant and is due in July 2024 and photos of the couple together from the visits. Mr. Edugie argues that this new evidence is crucial to prove the genuineness of the marriage and that the evidence submitted should be considered as a whole, to support the genuineness of the marriage.

[39] The Decision provides a summary of other evidence on the record, which consisted of evidence showing a trip to Nigeria in 2021, Mr. Edugie's financial support of his wife and other unidentified people, texts between accounts purporting to be the couples' accounts from 2019

and 2021, and from 2021 and 2022, and a police report allegedly from 2009 which I note was not filed with the original sponsorship application and does not mention the murder of his mother.

[40] After summarizing the evidence, the Officer indicated:

> [26] The crux of the issue before me is whether this new evidence is sufficient to overcome the applicability of *res judicata*. The problem here is that the evidence before me does not adequately address the core concerns related to the couple's credibility and the relationship trajectory as outlined in Member Dickenson's decision from 2020.
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> [Emphasis added]

[41] The Officer then pointed out that the Member in the IAD's 2020 decision noted that, after considering the evidence, he remained unsure how the relationship resumed after a lengthy period of no contact. As it is stated in the IAD's 2020 decision, the evidence in the hearing did not assist him in resolving this problem:

> [44] Furthermore, there was a lack of credible corroborating documentary evidence of communication from shortly after [Mr. Edugie's wife] returned to the family home in August 2013 to date [May 11, 2020]. Also, the information contained in the telephone records, which appear to be of July and August 2018, does not sufficiently assist the Panel in how this relationship resumed after the period and time stated. The Panel makes a negative credibility finding as a consequence.

[42] The Officer then reasonably concluded in their Decision:

> [32] The new evidence presented does not address the problems in Member Dickenson's decision. Member Dickenson's credibility concerns were profound and related to the clear break in the marriage, the lengthy period of no visits, and the highly problematic testimony about the [wife]'s four-year abduction and [Mr. Edugie]'s absolute and unsatisfactorily explained inaction after that incident. The recently disclosed police report and the

> other evidence filed does not address the credibility issues and the break in the relationship discussed at length in the [IAD's] 2020 decision.

[43] Mr. Edugie submits that the police complaint, which mentions the abduction of his wife and the threat to his life, was submitted in the first application for spousal sponsorship as well as the subsequent sponsorship applications, but that it has been consistently ignored in reaching the decision for all the applications.

[44] I do not agree with Mr. Edugie. It is clear from the Decision that the Officer did not ignore the one-page police complaint from 2009 (where Mr. Edugie reported that his life has been on constant threat from the fleeing militants who narrowly missed him when they invaded his residence, burnt all his properties and abducted his wife). In fact, the Officer specifically mentioned that there was a police report allegedly from 2009, and that the newly disclosed police report does not address the credibility issues and the break in the relationship discussed at length in the 2020 Decision: Decision Under Review at paras 25 and 32.

[45] Mr. Edugie relies on *Sami v Canada (Citizenship and Immigration)*, 2012 FC 539 [*Sami*] at para 78 to argue that there is considerable jurisprudence to support the notion that proof of subsequent commitment can represent proof that a marriage was genuine when it was entered into. The Officer acknowledged that *Sami* stood for the principle that the length of a couple's relationship can be considered to be "new evidence" as it shows commitment over time. However, the Officer reasonably addressed this in the Decision when stating that the main issue in this case is that there was clearly a break in the relationship when Mr. Edugie left the family home after his mother was murdered and his wife was abducted in 2009. The Officer reasonably

added that the new evidence did not address Mr. Edugie's "absolute and unsatisfactorily explained inaction after that incident" or explain how the couple's relationship resumed after extensive time apart.

[46] The IAD also reasonably relied on Madam Justice Go's words in *Okonkwo v Canada (Citizenship and Immigration)*, 2023 FC 524 [*Okonkwo*], at para 34:

> While I acknowledge that the IAD may accept evidence showing "commitment over time" to a marriage in its determination, per *Sami* at paras. 78-79, the new evidence must still meet the high threshold of being decisive in order to justify not applying the doctrine of *res judicata*
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> *Kaloti v Canada (Minister of Citizenship and Immigration*), 2000 CanLII 17123 (FCA)], at paras. 8-9; *Ping v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1121 [*Ping*] at para 23.

[47] Relying on that jurisprudence, the Officer concluded that the evidence in this case does not meet that high threshold and must do more than "bolster the genuineness of the marriage": *Ping*, at para 22.

[48] In this case, the new evidence submitted by Mr. Edugie did not address the above-referenced core concerns of the IAD's 2020 decision. Therefore, it did not prove to be decisive new evidence that is "practically conclusive of the matter" (*Ping* at para 23) to justify not applying the doctrine of *res judicata*: *Okonkwo* at paras 33-34; *Ping* at paras 12-13, 20-29, 35.

[49] In addition, Mr. Edugie submits that the proof of pregnancy of his wife is new evidence warranting the non-application of the doctrine of *res judicata*. The new evidence before the Officer did contain photos of his pregnant wife.

[50] In the Decision Under Review, the Officer also dealt rather extensively with the new evidence of the pregnancy and why, in their view, it does not shed much light on the issues.

[51] The Officer noted that Mr. Edugie cited *Kamara* at para 23 where the Court held that preventing family reunification is a potential injustice the IAD must consider when exercising its discretion to revisit an earlier determination regarding whether a marriage is genuine, as in this case. However, the Officer correctly distinguished *Kamara* on the differing facts because the children of the relationship in *Kamara* were alive at the time of the first sponsorship application while in this case, there was only a pregnancy. In the Decision Under Review, the Officer reasonably held that the noted objective in *Kamara* for family reunification is not served where there is no genuine family relationship to facilitate through reunification.

[52] The Officer correctly cited the presumption from *Gill v Canada (Citizenship and Immigration)*, 2010 FC 122 [*Gill*] that great weight must be attributed to the birth of a child, and there is an evidentiary presumption in favour of a genuine relationship where there is a child born of the relationship: *Gill* at para 8. However, the Officer noted the Minister's argument that the pregnancy or a child of the marriage does not, on its own, establish the genuineness of the relationship citing *Dhaliwal v Canada (Citizenship and Immigration)*, 2012 FC 1182 (CanLII) [*Dhaliwal 2012*], where Justice Hughes considered *Gill* and concluded at para 11:

> [11] In the present case, the IAD did consider the fact of the birth of a child but did not consider that to be evidence sufficiently decisive so as to displace the doctrine of estoppel. In the present case at least two of the previous decisions holding that the marriage was not genuine did consider that, in one case, there was a miscarriage and, in another case, that the couple were endeavouring to have a child. Nonetheless, in every case, the conclusion was that the marriage was not genuine.

[53] The Officer also cited another decision of one of their IAD colleagues where both *Gill* and *Dhaliwal 2012* were considered in another *res judicata* case:

> More recently, Justice Hughes of the Federal Court provided a more restrictive and nuanced assessment. **In the Dhaliwal case,[8] he held that the birth of a child is not conclusive evidence of the genuineness of a relationship,** but **where there is** no **question of paternity,** it must be viewed as evidence that favours a finding of genuineness. **A lack of credible evidence from the parties, however, may overwhelm the evidence that there is a child of the marriage.** At paragraph 10, the Court referred to the decision of Justice Barnes in Gill, supra, in which Justice Barnes opined that the birth of a child will ordinarily be sufficient to dispel any lingering concerns as to the genuineness of the marriage. Justice Hughes implicitly refused to accept Justice Barnes's contention, noting that the case law upon which he (Justice Hughes) relied was not considered by Justice Barnes in Gill.
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> **I adopt the reasoning of the Court in Dhaliwal and Justice Hughes's finding that the existence of a child of the marriage will favour a finding of genuineness, but it is not determinative.** While the reasoning of Barnes, J. suggests that evidence relating to the existence of a child of the marriage and care for that child may be "practically conclusive" evidence that the marriage is genuine, the same cannot be said for Hughes J.'s position.
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> *Dhaliwal v Canada (Citizenship and Immigration)*, 2022 CanLII 94665 (CA IRB) [*Dhaliwal 2022 IRB*], upheld in *Dhaliwal v Canada (Citizenship and Immigration)*, 2023 FC 1249 [*Dhaliwal 2023*]
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> [Emphasis added.]

[54] The Officer then concluded that in this case, the evidence about a child of the marriage and in support of family reunification, is not strong. The Officer relied on there only being a pregnancy and importantly that paternity had not been established, although it appeared that Mr. Edugie was in Nigeria at the relevant time. These findings are reasonable. The Officer reasonably found that this evidence of a pregnancy does not shed much light on the issues, let alone be decisive as to justify not applying the doctrine of *res judicata*, because a child of the

marriage is not determinative of a finding of a genuine marriage in the absence of proof of paternity where there is a question of paternity like in this case: *Gill* at para 8; *Dhaliwal 2012* at paras 9-10.

[55] Mr. Edugie also submitted that the new evidence before this Court of the birth of their baby girl on June 26, 2024, the child from their marriage, is proof of continuity and genuineness of their relationship. However, as mentioned above, I was unable to admit into evidence the birth certificate referencing the couple as the parents of the baby girl, which was not before the Officer who made the Decision Under Review. In any event, where there is a question of paternity like in this case, I note in passing that the birth certificate is not conclusive evidence of the paternity of Mr. Edugie as, for example, a paternity test or DNA test would be.

[56] I find that the Officer did not ignore any evidence. It is clear from the above reasons that the Officer notably considered the continuation of the marriage, the contact between the spouses, money transfers, his trip to Nigeria, pictures of the couple together, the wife's pregnancy, and the 2009 police complaint. Mr. Edugie failed to raise a reviewable error with how the Officer considered the evidence in its *res judicata* analysis and whether it triggered the decisive new evidence exception. It is not this Court's role to reweigh the evidence that was before the IAD: *Vavilov* at para 125.

C. *Issue 2 - Whether the IAD unreasonably applied the principle of res judicata to the spousal sponsorship appeal?*

[57] The issue before the Officer was not whether the marriage was genuine, but rather whether the doctrine of *res judicata* applied. As such, the Decision only dealt with this narrow issue. As was the case before the Officer (see paragraph 37 above of my Judgment and Reasons), Mr. Edugie concedes before this Court that the three preconditions of *res judicata* are met but argues that the new evidence before the IAD should have triggered the decisive evidence exception. Thus, the only question before me is whether the Officer's determination that the new evidence before them did not trigger the decisive evidence exception is reasonable.

[58] Similar to Justice Go's conclusion in *Okonkwo* at para 32, I agree with the Minister that the Officer reasonably applied the legal principles and authorities surrounding *res judicata* in arriving at the Decision. While Mr. Edugie attempted for a second time on judicial review to compare his case to *Sami* and *Kamara*, I agree with the Minister that the Officer reasonably held that the length of marriage was not a special circumstance such as to thwart the application of the *res judicata* doctrine. The new evidence did not address the core concern of the genuineness of the marriage given the credibility issues and the lack of explanation as to how the relationship resumed after 4 years of absence and 7 years since their last physical contact. Furthermore, only 4 years had elapsed since the IAD's 2020 Decision that held the then 11-year marriage not to be determinative given the extensive break of the marriage.

[59] I am of the view that, in the circumstances of this case, the Officer was entitled to rely on the reasoning of their colleague in *Dhaliwal 2022 IRB*, which was later held to bear "all the hallmarks of reasonableness" in *Dhaliwal 2023* at para 50. I also find that the new evidence of the wife's pregnancy in this matter does not shed much light on the credibility issues, let alone be

decisive as to justify not applying the doctrine of *res judicata*. My reasoning for same, which is the same reasoning as the Officer, is that where like in this case, there is a question of paternity, a child of the marriage is not determinative of a finding of a genuine marriage given the absence of proof of paternity.

D. *Issue 3 - Whether there is a breach of procedural fairness?*

[60] Mr. Edugie submits that the Officer rendered the Decision without giving him and his wife the opportunity to allay the concerns and put across their case in an oral hearing before the IAD. Mr. Edugie relies on *Kamara* at para 32 where the Court indicated "the IAD may therefore be assisted by hearing from the Applicants and their daughter in person" [emphasis added]. The Minister points out that in *Kamara*, the Court did not hold that the IAD **must** hold an oral hearing before dismissing an appeal on the basis of *res judicata*. Rather, it merely observed, in *obiter*, that the IAD "may" be assisted by viva voce evidence and that the IAD "should consider whether to permit [it]" on redetermination. In this case, the Officer of the IAD did consider whether to permit an oral hearing and reasonably found it was unnecessary:

> [4] I am satisfied that I can decide this appeal fairly based on the information before me. I have the appeal Record, along with the evidence and submissions from the Appellant and submissions from the Minister's counsel. I asked for and received a copy of the previous IAD decision.

[61] I agree with the Minister that Mr. Edugie has not established any breach of procedural fairness in that he knew the case to be met, having gone through the process many times already, and has had an opportunity to respond and even submit new evidence on his recent application. I

agree with the Minister that this case is similar to the situation in *Dhaliwal 2023*. I adopt as my own Justice Ahmed's conclusion in *Dhaliwal 2023* at para 49:

> [49] I agree with the Respondent. While the underlying issues concerned credibility and the IAD may have been assisted by *viva voce* evidence, the Applicant has already been interviewed several times and the IAD did not make any new credibility findings of which the Applicant was unaware. The IAD's findings concerned the sufficiency of the Applicant's new evidence in the context of its discretionary decision whether or not to apply the doctrine of *res judicata.* For this reason, I find that the IAD's decision is procedurally fair.

VI. Conclusion

[62] The Officer's Decision is reasonable and does not raise a procedural fairness issue.

[63] The Officer reasonably considered Mr. Edugie's new evidence to try to establish the genuineness of the couple's spousal relationship and was not satisfied that this new evidence amounted to the requisite special circumstances needed to put aside the doctrine of *res judicata.* Given the evidence before the Officer, their Decision bears the hallmarks of reasonableness – justification, transparency, and intelligibility.

[64] The Application for judicial review is dismissed, with the Court noting that neither party proposed a question of general importance for certification, and I agree that there are none.

JUDGMENT in IMM-13327-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Ekaterina Tsimberis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-13327-24
STYLE OF CAUSE:	OMOKPIA OROBOSA EDUGIE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 7, 2025
JUDGMENT AND REASONS:	TSIMBERIS J.
DATED:	OCTOBER 3, 2025

APPEARANCES:

SHUBH AMRIT VIR SINGH RANDHAWA	FOR THE APPLICANT
ZOFIA ROGOWSKA	FOR THE RESPONDENT

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SHUBH AMRIT VIR SINGHRANDHAWA MISSISSAUGA, ON	FOR THE APPLICANT
ATTORNEY GENERAL OF CANADA TORONTO, ON	FOR THE RESPONDENT