Date: 20080312

Docket: IMM-1637-07

Citation: 2008 FC 335

Toronto, Ontario, March 12, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

RAJIV KHANNA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant Rajiv Khanna is an adult male permanent resident of Canada. He was born in India, resided for a period of time in the United States of America and become a permanent resident of Canada in November 1999. The Applicant went through a form of marriage with his cousin Seema Khanna in India in April 1999. Both had been previously married and divorced. The Applicant sought to sponsor Seema Khanna for a permanent resident visa to enter Canada in the Family Class category on the basis of the marriage.

[2] By a letter dated November 4, 2004 a Visa Officer refused to issue a permanent resident visa to Seema Khanna stating that the marriage to Rajiv Khanna was not valid. An appeal was taken from that decision to the Immigration Appeal Division which, in a written decision dated March 22, 2007, dismissed the appeal. The Applicant obtained leave to seek this judicial review of that decision. For the reasons that follow, I find that the Application is dismissed.

[3] This review raises a substantive issue and a procedural issue. The substantive issue is whether the Visa Officer and the Immigration Appeal Division were correct in their determination that the Applicant and Seema were not validly married. Procedurally, the issue is whether the Immigration Appeal Division was correct in refusing to receive in evidence a print-out of a Wikipedia definition of "Gotra" and an Internet chat room exchange between one Manish Modi and one Yashwant Malaiya re: "Gotra", and if it was not correct, what is the appropriate result.

[4] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 S.C.R. 9 has brought much needed clarity to the question of standard of review. There are only two standards, reasonableness and correctness. The standard of correctness must be maintained in respect of jurisdictional and some other questions of law. Reasonableness is a deferential standard to be applied where the question is one of fact, discretion or policy and shall apply where the legal and factual issues are intertwined and cannot readily be separated.

[5] Therefore, in this case the principal issue is to be reviewed on the standard of reasonableness. That is, given the record was the Visa Officer's decision reasonable and was the

Immigration Appeal Division decision reasonable in deciding that a valid marriage had not been established on the evidence.

[6] Procedurally, the issue is, should the Wikipedia definition and Internet chat room definition of "Gotra" have been admitted into evidence and, if so, would they have been likely to have any effect on the outcome.

[7] The substantive issue is whether the marriage between Rajiv and Seema can, on the evidence, be considered as a valid marriage. They were married in India. They are Hindus. They are first cousins. Their mothers were sisters. It is common ground that section 5(iv) of the *Hindu Marriage Act 1955* of India prohibits marriage between two persons who are within prohibited degrees of relationship such as first cousins, except when "*custom and usage*" permits otherwise. The expression "*custom and usage*" is defined in subsection 3(a) of that *Act*:

> *the expression "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family.*

[8] The Canadian *Immigration and Refugee Protection Regulations*, SOR/93-22, section 4 states that a foreign national shall not be considered a spouse if the marriage was not genuine and entered into primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[9] The evidence in the record includes several affidavits, all virtually identical in form attesting that a marriage ceremony was performed "*according to Hindu Rites*", and that "*Hindu Law and as per custom and usage governing each other…permits marriage between the divorcees*". The Applicant submits that, in rendering its decision, the Immigration Appeal Division ignored this affidavit evidence and further submits that the affidavits ground a finding that "custom and usage" allows marriage between first cousins. However, the affidavits do not address the issue of "*custom and usage*" in respect of a marriage between first cousins. Other affidavits simply state that "*there was no legal impediment*" to the marriage and that the marriage "*is according to law and not in contravention of any provision of law and even otherwise governed by Custom and Usage*."

[10] No evidence directly addresses the issue of a purported marriage between first cousins and whether "*custom and usage*" as it applies to these particular persons would recognize such a marriage. This is in contrast, for instance, to the circumstances considered in *Canada (MCI) v. Mann*, 2004 FC 1338 where the Immigration Appeal Division had before it a legal opinion of a practicing lawyer in India which relied upon views of a Professor of Laws in an Indian University as well as the evidence of several persons in the relevant communities. In the present case I find that the Visa Officer and Immigration Appeal Division made a reasonable decision, on the evidence presented, that no "*custom*" or "*usage*" had been established that would make the marriage valid.

[11] The next question is whether the evidence would have been different in any material way had the Wikipedia evidence or Internet chat room correspondence been received in evidence. The Wikipedia evidence is general in nature only. It indicates that in some parts of India marriages

between cross-cousins (between children of brothers and sisters) may be permitted. However, in the present case Rajiv and Seema are children of two sisters, not brother and sister. The Wikipedia reference is of no material significance. The online correspondence is between two unidentified persons and has two pages of discussion of Gotras, none of which is directly or even generally relevant to the parties. Even if entered in evidence, there would have been no material difference to the body of evidence before the Immigration Appeal Division. In any event that Division, under section 175 of the *Immigration and Refugee Protection Act*, *supra*, is entitled to reject evidence that it does not consider to be credible or trustworthy in the circumstances. I find that the rejection of this evidence was reasonable. Wikipedia is an "open source" reference that can be modified by anyone. There is minimal control over the accuracy of its content. The source of the Internet chat room correspondence has not been explained in any way. It was reasonable to exclude each from evidence.

[12] Accordingly, the application is dismissed. No question for certification arises. No Order as to costs.

JUDGMENT

For the Reasons given:

THIS COURT ADJUDGES that:

1. The application is dismissed;

2. No question is certified;

3. No costs are awarded.

"Roger T. Hughes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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