

**Date: 20080418**

**Docket: IMM-3814-07**

**Citation: 2008 FC 508**

**Toronto, Ontario, April 18, 2008**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**MADELEINE MAHMOUDIAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Madeleine Mahmoudian married Babak Pajouhi by proxy on December 4, 2004. She seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Appeal Division that she had not established on the balance of probabilities that the marriage was genuine.

[2] Section 4 of *the Immigration and Refugee Protection Regulations*, S.O.R./2002-227, provides as follows:

For the purposes of these Regulations, a foreign national shall not be considered a

Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux,

<p>spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.</p>	<p>le conjoint de fait, le partenaire conjugal ou l'enfant adoptif d'une personne si le mariage, la relation des conjoints de fait ou des partenaires conjugaux ou l'adoption n'est pas authentique et vise principalement l'acquisition d'un statut ou d'un privilège aux termes de la Loi.</p>
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## I. BACKGROUND

[3] Ms. Mahmoudian met her husband Babak Pajouhi in Iran in 2001, when they worked together as graphic designers for a year. Ms. Mahmoudian was a full time student, but worked part time as well. The couple stayed in contact socially after her contract with the company ended. In January 2004, Mr. Pajouhi asked Ms. Mahmoudian to consider marrying him. After four months of dating, engagement ceremonies were held for family and friends.

[4] At the time of the engagement, Ms. Mahmoudian was in the process of being sponsored to Canada by her sister as a dependent child of her mother. Her sister was informed that marriage would make Ms. Mahmoudian ineligible for sponsorship in that category due to the definition of “dependent child” in the *Immigration and Refugee Protection Regulations*, SOR/2002-227, but that her engagement would not pose an issue.

[5] Ms. Mahmoudian and Mr. Pajouhi were not married until after she had landed in Canada on November 25, 2004. Their marriage was celebrated by proxy on December 4, 2004, and Ms. Mahmoudian began the process of sponsoring her husband to Canada on January 1, 2005. She

travelled to Iran in March, 2005 and spent a month with her husband and his family. She also visited him in January 2006. At neither time did they have an official wedding ceremony because her mother wanted her family to be present and the financial implications of them all going to Iran made that too difficult.

[6] Mr. Pajouhi was interviewed in Tehran on September 25, 2005. The interview notes show that Mr. Pajouhi stated that when he met Ms. Mahmoudian she was not a student, that she worked full-time, and that she continued to work full-time until she left for Canada. When confronted with Ms. Mahmoudian's assertion that she was a full-time student during this period of time and working only part-time, he provided a number of explanations but finally ended by stating that "I don't know anything about her case."

[7] The Visa Officer decided on November 14, 2005, that Mr. Pajouhi was not eligible under the family class as the marriage was not genuine.

[8] Ms. Mahmoudian appealed to the Immigration Appeal Division, which heard the case on January 26, 2007. The appeal was *de novo* as was correctly noted by the Panel. The Panel heard testimony from Ms. Mahmoudian, Mr. Pajouhi and Ms. Mahmoudian's sister.

[9] The IAD listed a number of areas of discrepancy in the evidence of Ms. Mahmoudian and Mr. Pajouhi. The two that counsel correctly identified as being the most troublesome from the perspective of the IAD were the issue of Mr. Pajouhi's lack of knowledge concerning his wife's

work and study status and the discrepancy in their evidence concerning the time spent together in Iran in 2005, following the proxy marriage. This latter was described by the Board as the “central contradiction”.

## II. DECISION

[10] Counsel for both parties acknowledged that this application was primarily factual in nature and both took considerable time to guide the Court through the transcript of the proceedings below, highlighting relevant testimony.

[11] Both made reference to the recent decision of the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*), with respect to the standard of review now being that of reasonableness. The Minister also suggested that the “reasonableness” standard in *Dunsmuir* had to be interpreted in light of the express wording of section 18.1(4) of the *Federal Courts Act*.

[12] Ultimately, I do not have to address that issue as, in my view, regardless of the standard one applies, the Board made no reviewable error.

[13] With respect to the evidence regarding the husband’s lack of knowledge concerning his wife’s employment and schooling status, Ms. Mahmoudian’s counsel relied on the evidence of the Applicant’s sister that Iranian men care little for women’s education and thus the husband’s lack of knowledge in this regard would not be surprising. Counsel also formulated an argument that the

Board relied too heavily on the record of Mr. Pajouhi's knowledge when the husband spoke initially to the Visa Officer, rather than the evidence he gave some months later to the Board.

[14] In November 2005, when interviewed by the Visa Officer, the husband stated that his wife was working full-time when they met in 2001, and that she was not a student. This was at a time some four years after they met and after they had been engaged for a year and one-half during which they claimed that they were seeing each other on a frequent basis.

[15] In January 2007, he testified before the Board that his wife was a part-time employee and a full-time student when they met in 2001, and continued to be so until she travelled to Canada.

[16] When questioned as to what he meant by the phrase "full-time" with respect to work, he answered that he meant someone who worked nine to five each day. Yet his wife testified that she worked only a few hours each day when they worked together in 2001, and they both testified that they had worked in the same office for more than one year.

[17] Mr. Pajouhi's explanation for the confusion in his responses as to his wife's status was found by the Board to be unsatisfactory. Specifically, the Board stated that it was "incredible that an individual would not seek to know the reason his wife-to-be would be considered a dependant child when, to his knowledge, she is an adult working full-time as a designer". In other words, the Board found it to be incredible that Mr. Pajouhi would not have known, when interviewed in

November 2005, that his wife had been a full-time student and part-time employee since at least 2001. In my view, based on the record, that finding was not unreasonable.

[18] As earlier noted, the Board's reasons indicate that the contradictory testimony that was found to be central to the negative credibility findings surround the details of where and for how long the couple stayed when Ms. Mahmoudian visited her husband in March 2005 for the first time after their proxy marriage. The member described the discrepancy as follows:

The appellant was very clear that her return to Iran in March 2005 was for a month-long honeymoon in Iran, which the couple spent together, with eight to ten days at Babak's Villa and rest of the time in Tehran. She confirmed this when she was cross-examined, saying that she stayed at Babak's home, with some time spent up north at the villa. When the applicant testified he declared that they took a trip to the north part of the country where they have a villa, and stayed there with his family. He was asked if they had stayed elsewhere, he said no, they always stayed with his family because she did not have much time in Iran, so they stayed at the villa for three to four weeks.

[19] The Applicant notes that Mr. Pajouhi's response that they had not stayed elsewhere came when he was asked if they had stayed anywhere "other than his parents' house or the villa". Counsel suggests that Mr. Pajouhi's evidence is not necessarily inconsistent with that of the Applicant.

[20] However, in my view, the transcript is clear that each was asked specifically how long they spent at the villa and while the Applicant responded that it was a period of eight to 10 days, her husband responded that it was three or four weeks. Despite counsel's imaginative, interpretative

suggestions, in my view, the responses are clearly contradictory and thus could reasonably form the basis for a finding that the evidence was not credible.

[21] The Board stated the basis for its conclusion that this contradiction was central to the adverse finding on credibility.

I cannot reconcile this discrepancy with the idea that this is a genuine marriage between two young people who were together at last after having to go through a difficult prolonged courtship ....

[22] In my view, that assessment was open to the Board. It was not engaged in a microscopic examination of the evidence; rather it was faced with a glaring inconsistency in the evidence of the husband and wife on a fact that, were the marriage genuine, could reasonably be expected to be consistent.

[23] The Board supported its conclusion as to credibility based on the two contradictions noted as well as other less significant contradictions in the evidence of the husband and wife.

[24] The conclusion of the Board that this was not a genuine marriage falls within the range of acceptable outcomes as described by the Supreme Court in *Dunsmuir*, above, based on the evidence before the Board and, in my view, the decision is not reviewable.

[25] While the Applicant initially sought her costs of the Application, this was not pursued at the hearing.

[26] For the foregoing reasons, I dismiss the application. Neither party has submitted any question of general importance for certification. I find no such questions certifiable on the facts of this case.



**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application is dismissed and
2. No question of general importance is certified.

“Russel W. Zinn”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3814-07

**STYLE OF CAUSE:** MADELEINE MAHMOUDIAN v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 14, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN, J.

**DATED:** April 18, 2008

**APPEARANCES:**

Melissa Melvin

FOR THE APPLICANT

Negar Hashemi

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

GREEN & SPIEGEL LLP  
Barristers and Solicitors  
Toronto, Ontario

FOR THE APPLICANT

JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT