

Federal Court



Cour fédérale

Date: 20121001

Docket: IMM-3425-12

Citation: 2012 FC 1139

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 1, 2012

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

JEAN STUART

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Immigration Appeal Division (the IAD) of the Immigration and Refugee Board, dated March 14, 2012, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). The panel dismissed the applicant's appeal of the refusal of his wife's application for permanent residence, in the family reunification category, on the grounds that the marriage was not genuine and was entered into

primarily for the purpose of acquiring status, which is contrary to section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR).

I. Facts

[2] The applicant is a 67 year-old Canadian citizen who was born in Canada. He is also a citizen of the Ivory Coast by his marriage to Aicha Sangare (wife). He has worked in finance since 1975. He is on his fourth marriage and he has two children. His wife is a citizen of the Ivory Coast and is 36 years old. This is her first marriage and she has no children.

[3] They met on the Internet in October 2007 and started a relationship. The applicant sent approximately \$65,000 CAD to the wife between February 2008 and April 2008, the year that the applicant asked her to marry him. A traditional ceremony took place in the Ivory Coast on May 31, 2008, in the applicant's absence. The applicant married his wife in a civil ceremony on June 5, 2008, during his first visit to the Ivory Coast, the day he arrived. He stayed for five days.

[4] The applicant invested in a car wash and a cafeteria in the Ivory Coast. These two businesses are managed by his wife. The applicant also paid a sum of \$1,000 CAD per month so that his wife could move into a more spacious apartment. According to the applicant's statements, she used part of the money received to provide for her paralyzed uncle's needs.

[5] The applicant filed a sponsorship application in October 2008 in support of his wife's permanent resident visa application, which was rejected in October 2009. She had attended an interview at the visa office. The appeal before the IAD was dismissed.

II. Decision under review

[6] The panel came to the conclusion that the applicant did not discharge his burden of proving that his relationship with his wife is genuine and that his primary goal is not to help the wife obtain status. It found that, based on the testimony of the applicant and his wife, the applicant acted in good faith in his relationship, but she did not and does not foresee living with the applicant once she comes to Canada.

[7] In coming to this conclusion, the panel analyzed the relationship between the applicant and the wife in light of several criteria used to assess the genuineness of a relationship, including financial support, the presence of members of the wife's family in Canada and how the relationship developed.

[8] The panel generally weighed several factors surrounding the circumstances of the marriage, including the fact that the applicant was married the day he arrived in the Ivory Coast and that he stayed for only five days, that the couple did not take a reasonable amount of time to get to know each other and that the marriage proposal was made even before they had seen each other in person.

[9] According to the IAD, the wife was not able to answer the visa officer's concerns satisfactorily during her interview. In addition, the panel gave little probative value to her testimony because she did not specifically explain how the applicant has the qualities she looks for in a wife.

[10] As for the traditional celebration, the panel found that the wife's testimony lacked credibility in that she did not remember the date of the celebration.

[11] As for the absence of the applicant at this celebration, the panel was not satisfied by the applicant's explanation that he was too busy to go to the Ivory Coast to attend, considering the importance of such a ceremony.

[12] As for the large sums sent to the wife, the panel was not satisfied with the explanations of the wife and the applicant with respect to how they were used. Despite the fact that financial support is a criterion that generally weighs in favour of the genuineness of a relationship, the panel believed that that is not the case in this situation since the sums are considerable. In addition, the wife's evasive answers with respect to the use of the money to meet her sick uncle's needs have an impact on the wife's credibility. Finally, at the time that the wife accepted the marriage proposal, she had a sum of \$65,000 CAD, sent by the applicant.

III. Parties' submissions

Respondent's submissions

[13] First, the applicant submits that the panel's decision contains a contradiction with respect to the panel's assessment of the applicant's credibility, which renders this decision unintelligible. On the one hand, the panel states that it is persuaded of the applicant's good faith, that his testimony is credible and reliable, but on the other hand, it finds that he did not discharge his burden of proving that the relationship is genuine and that it was not entered into primarily to obtain status.

[14] Second, the applicant submits that the finding that his wife is in a precarious situation and that she wants to improve her lot by coming to Canada is unreasonable given that the applicant's

investments in the Ivory Coast have helped her achieve a good standard of living in her country of origin and that it did not give any importance to the fact that it was the applicant who proposed to his wife and sent her money without her asking.

[15] Third, the applicant submits that there is a mix-up in the panel's decision in paragraphs 30 and 33 because it referred to the [Translation] "appellant" and in the passages in question, it is impossible to know whether it refers to the appellant or his wife.

Respondent's submissions

[16] The respondent submits that the IAD's decision is reasonable in light of the evidence and the testimony of the applicant and his wife.

[17] First, the respondent submits that it is imperative that the evidence show the genuineness of the relationship of both spouses, but that proving the genuineness of the intentions of only one of the two spouses is not sufficient.

[18] Second, as regards the wife, the respondent submits that it was open to the IAD to draw a negative conclusion from all the factors, including the age difference between the applicant and his wife, the absence of a long-term relationship and the traditional ceremony that took place in the applicant's absence.

[19] With respect to the amounts of money sent, regardless that financial support is generally perceived to favour a genuine relation, considering the size of the sum, it was reasonable for the IAD to draw a negative conclusion from it.

IV. Issue

[20] Did the panel make an unreasonable decision in finding that the marriage of the wife was primarily to obtain privilege and is not genuine?

V. Standard of review

[21] The applicable standard of review in determining the genuineness of a marriage is reasonableness, because it is a question of fact that requires deference to the decision rendered (*Ma v Canada (Minister of Citizenship and Immigration)*, 2010 FC 509, at paras 31-32, [2010] WDFL 2919).

VI. Analysis

[22] The IAD's decision is reasonable and no intervention is required by this Court.

[23] The conclusion it drew based on all the evidence, including the testimony of the applicant and his wife, is a reasonable option for the issue put before it (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47, [2008] 1 SCR 190).

[24] First, it is important to point out that this Court has already noted that there is no specific test to establish whether a marriage is genuine (*Zheng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 432, at para 23, 388 FTR 61). In *Khera v Canada (Minister of Citizenship and Immigration)*, 2007 FC 632, at para 10, [2007] WDFL 3916, this Court validated the IAD's approach in which factors such as the length of the spouses' relationship, their age difference, their respective financial situation and employment, their knowledge of one another's histories, their

language, their interests and the fact that some members of the wife's family live in Canada are relevant in determining whether a marriage is genuine. Therefore, the criterion that must guide the IAD in its analysis of the facts and evidence is therefore relevance and it is open to it to take into consideration all the factors it considers relevant.

[25] To come to the conclusion that the wife did not act in good faith, the IAD weighed the credibility of her testimony. Her testimony as to the reason why she wanted to marry a man from a different culture, without ever having met him in person, was vague. She also did not give the IAD a satisfactory explanation as to her decision to marry a person 30 years her senior, in a hurried manner, considering that she had not had a long-term relationship with a man before. She only provided general answers.

[26] As to her testimony with respect to the traditional ceremony, it was open to the IAD to not give it probative value given that she did not remember the date that it took place, although this type of ceremony is of some importance in the Ivory Coast, all the more so because she specifically remembered certain other dates such as the date of the marriage proposal and the civil ceremony. In addition, the IAD did not find the explanations of the applicant and his wife about his absence at the traditional ceremony satisfactory and it found that the traditional ceremony could have taken place at another time, which would have allowed the applicant to attend.

[27] In addition, the wife provided evasive answers with respect to the use of the money sent by the applicant, stating generally that they went to the cost of her uncle's medical treatments, to a business venture that proved to be unsuccessful and to the payment for her apartment, without,

however, being able to provide specific amounts, which warrants the IAD's negative finding as to the wife's credibility and her true intentions.

[28] As to the applicant's argument that the IAD's decision is contradictory and must fail, it is acknowledged that an administrative tribunal's decision must be read as a whole and not literally. In fact, it is clear in reading it that the panel's finding notes that the applicant was acting in good faith, but that he did not discharge his burden of proving that his wife was not seeking to acquire status, a burden that was his to discharge (*Nguyen v Canada (Minister of Citizenship and Immigration)* 2004 FC 709, at para 7).

[29] The wife was not able to satisfy the IAD, although the applicant testified with confidence and conviction about his story. The wife's testimony and the IAD's findings about her are reasonable in the circumstances.

[30] In its decision, the IAD properly relied on the wife's testimony in concluding that she had not acted in good faith. In fact, only she could testify, and not the applicant who was found to be credible, about her intention to immigrate to Canada to live with the applicant (*Canada (Solicitor General) v Bisla*, 88 FTR 312 at paras 9-10, 52 ACWS (3d) 176).

[31] With respect to the reference to [Translation] "the appellant" at paragraphs 12, 19, 21, 22, 30 and 33 of the decision, it is clear in reading the relevant passages that the IAD had intended to refer to the wife. Contrary to what the respondent claims, a mere error in referring to the wife in the IAD's decision does not require this Court's intervention.

[32] For all these reasons, the IAD's decision is reasonable and justifiable according to the facts in evidence.

[33] The parties, although invited to do so, did not submit questions for certification.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed and no question is certified.

“Simon Noël”

Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3425-12

STYLE OF CAUSE: JEAN STUART v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

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**REASONS FOR JUDGMENT
AND JUDGMENT:** MR. JUSTICE SIMON NOËL

DATED: October 1, 2012

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