

Federal Court



Cour fédérale

**Date: 20140113**

**Docket: IMM-4396-13**

**Citation: 2014 FC 31**

**Ottawa, Ontario, January 13, 2014**

**PRESENT: THE CHIEF JUSTICE**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**MARI ANNA SLOAN**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This Application for Judicial Review concerns a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board. In its decision, the IAD allowed an appeal from a visa officer's decision to refuse a permanent resident visa to Ms. Sloan's husband.

[2] The Minister submits that the IAD erred in concluding that Ms. Sloan's marriage is genuine and was not entered into primarily for the purpose of acquiring any status or privilege under the

*Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Specifically, the Minister submits that the IAD erred by ignoring important evidence in reaching these findings.

[3] For the reasons that follow, I disagree. Accordingly, this Application will be dismissed.

## **1. Background**

[4] Ms. Sloan is a 54 year old citizen of Canada. In early 2011, she and her husband of 32 years were divorced, after separating in early 2008.

[5] Mr. Lihyaoui is a 28 year old citizen of Morocco. In early 2009, Ms. Sloan added Mr. Lihyaoui as a “friend” on Facebook. Approximately six months later, they began to chat online.

[6] After corresponding over the Internet, by telephone and over Skype on a daily basis, Ms. Sloan and Mr. Lihyaoui were married on April 16, 2010, during Ms. Sloan’s first visit to Morocco.

[7] In September 2011, Mr. Lihyaoui submitted an application for a permanent resident visa as a member of the family class. That application, which was sponsored by Ms. Sloan, was rejected after a visa officer found that the marriage was not genuine and had been entered into primarily for the purpose of acquiring a status or privilege under the IRPA.

[8] The visa officer reached these conclusions after identifying various concerns, including:

- i. The marriage proposal occurred over the Internet and prior to the couple meeting in person.
- ii. Throughout his interview, Mr. Lihyaoui “gave pat answers and behaved arrogantly.”
- iii. The marriage was not celebrated, yet the celebration of marriage is an important part of Moroccan culture.
- iv. There were no photos of the marriage.
- v. Mr. Lihyaoui described another woman, whose picture was in the file before the visa officer and who he identified as being a 40 year old friend of his father, as being an “old woman.” The visa officer considered this to reflect the perception of male-female relations in the Moroccan cultural context.
- vi. The couple had only seen each other during the single trip that Ms. Sloan took to Morocco in April 2011, and there was scant evidence of contact between them.
- vii. Mr. Lihyaoui appeared to have a superficial knowledge of Ms. Sloan’s life and was not able to explain what unites them, despite their many differences, including the significant differences in their age and cultural backgrounds.
- viii. The couple has no common vision of important aspects of their future together, including the possibility of having children and where they will live.
- ix. Mr. Lihyaoui has a fairly precarious situation in Morocco and his life plan appears to be founded more on looking for a future in Canada, rather than sharing his life with Ms. Sloan.

## **II. Relevant legislation**

[9] Section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-2007 [Regulations] provides that a foreign national shall not be considered to be a spouse for the purposes of the Regulations if the marriage in question (i) was entered into primarily for the purpose of acquiring any status or privilege under the IRPA, or (ii) is not genuine.

## **III. The Decision under Review**

[10] In the course of reaching its decision, the IAD stated that it was satisfied that Ms. Sloan's intention to have a genuine marriage with Mr. Lihyaoui is not in doubt. This finding is not contested by the Minister.

[11] The determinative issue for the IAD was identified as being whether Mr. Lihyaoui's intentions reflected a desire to have a genuine relationship with Ms. Sloan or a desire to marry her primarily for the purpose of immigration.

[12] After recognizing the possibility that Mr. Lihyaoui may have sought out and taken advantage of Ms. Sloan for immigration purposes, the IAD found, on a balance of possibilities, that Ms. Sloan had met her onus of demonstrating that her relationship with Mr. Lihyaoui is genuine and not primarily for the purpose of immigration.

[13] Among other things, the IAD stated that this conclusion emerged “from a thorough evaluation of the available evidence, relying in particular on [Ms. Sloan’s] insistence that theirs is a committed relationship supported by evidence of ongoing communication between them.”

#### **IV. Standard of Review**

[14] It is common ground between the parties that the IAD’s decision is reviewable on a standard of reasonableness.

[15] In determining whether a decision is reasonable, the general test is whether the decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47 [*Dunsmuir*]). In this regard, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process (*Dunsmuir*, above). If there exists a reasonable basis upon which the decision maker could have decided as it did, the court must not interfere (*Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 SCR 654, at para 53 [*Alberta Teachers*]). In other words, the IAD’s decision will stand where it can be “rationally supported” (*Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 SCR 364, at para 47 [*Halifax*]).

## V. Analysis

[16] The Minister submitted that the IAD erred by failing to address the following concerns with respect to the evidence that it had identified in its written submissions to the IAD:

- i. Inconsistent testimony provided by Ms. Sloan and Mr. Lihyaoui regarding the date upon which they agreed to marry.
- ii. Discrepancies in their testimony regarding the date upon which they intended to get married.
- iii. Mr. Lihyaoui's failure to identify three of Ms. Sloan's siblings when asked about her family members.
- iv. Mr. Lihyaoui's inability to state when Ms. Sloan converted to the Muslim faith.
- v. Discrepancies in the couple's testimony regarding a dowry that was allegedly paid to her.
- vi. Inconsistencies in their testimony regarding where they intended to live.
- vii. The fact that the couple had not commingled their finances.
- viii. Photographs of a purported marriage ceremony taken during Ms. Sloan's second visit to Morocco may have been taken primarily for immigration purposes.

[17] The Minister maintained that the foregoing evidence should have been addressed by the IAD because it was "in marked contradiction" to the IAD's conclusion.

[18] I disagree.

[19] Although Ms. Sloan initially stated that Mr. Lihyaoui proposed to her “around February 10, 2009,” she quickly corrected herself during the IAD’s hearing and identified the date as having been February 10, 2010. She also clarified that the couple had simply been “kidding around” when they initially discussed marriage in August 2009.

[20] With respect to the date upon which the couple intended to get married, Ms. Sloan testified that she had hoped to be able to get married during her first visit to Morocco in April 2011, whereas Mr. Lihyaoui stated that they had not planned to get married at that time, but that they did so because Ms. Sloan “was really smart and she – she brought some papers that helped us to get married.”

[21] With respect to Mr. Lihyaoui’s failure to mention three of Ms. Sloan’s five siblings, Ms. Sloan explained that the question appeared to have been focused on her family in Abbotsford, and that the siblings who were not identified by Mr. Lihyaoui live elsewhere. It is readily apparent from the transcript at page 522 of the Certified Tribunal Record that the question posed before the IAD was indeed focused on Ms. Sloan’s family in Abbotsford.

[22] Regarding Mr. Lihyaoui’s inability to identify the date upon which Ms. Sloan converted to the Muslim faith, Ms. Sloan testified that she had been studying the faith on the Internet and that the couple would be going to the mosque once she was physically united with Mr. Lihyaoui.

[23] Regarding the dowry that allegedly was paid to her, Ms. Sloan initially stated that she believed it was 1,000 dirham and that it would be payable to her if the couple ever got divorced. She

then immediately added that she didn't really know what it was about and thought that it may have been paid for the wedding. In her submissions on this Application, she stated that she made a mistake when she testified that the dowry was 1,000 dirham, and that she had intended to say \$1,000 Canadian dollars, which is approximately equivalent to 7,000 dirham, the amount indicated in the documentation that was before the IAD.

[24] With respect to where the parties intended to live, Mr. Lihyaoui stated that the couple would live wherever it was safe and quiet, and that after the adverse reaction that Ms. Sloan had to the heat in Morocco, he was concerned about whether she could live there. He added that he was also prepared to pursue his studies at a school in Quebec that was twinned with the school in Morocco where he studied. For her part, Ms. Sloan testified that she and Mr. Lihyaoui had discussed living together in Morocco, but that she preferred to settle down with him in Canada because she could not take the hot climate in Morocco and her family is located in Canada. She added that she would need a knee replacement at some point in the future and then would have difficulty with the toilets in Morocco.

[25] With respect to the wedding photographs that were submitted to the IAD, Ms. Sloan stated that her formal marriage, during her first visit to Morocco, was a small ceremony and that she did not think to take any pictures with her smart phone because of everything else that she was required to do that day. She added that, had she been aware that she needed such photos for the purposes of Mr. Lihyaoui's application for permanent residence, she would have taken them. When she returned to Morocco the second time, she made sure to take photographs of the celebrations that took place.



[26] Based on the explanations provided by Ms. Sloan and Mr. Lihyaoui, it was not unreasonable for the IAD to have failed to specifically refer to the above-mentioned “inconsistencies” and discrepancies.

[27] As to the IAD’s failure to discuss the fact that the couple did not commingle their finances, I am satisfied that this was not unreasonable. The Minister did not tender any evidence to support the inference that most couples commingle their finances.

[28] In reaching its conclusion that the couple’s marriage was genuine and was not entered into primarily for the purpose of immigration, the IAD explicitly engaged with some of the more troublesome aspects of the evidentiary record. After recognizing the possibility that Mr. Lihyaoui had sought out and taken advantage of Ms. Sloan to facilitate his immigration to Canada, the IAD characterized the question of the genuineness of their relationship as being a “difficult” one to answer. Then, after stating its conclusions, it observed that “some doubts remain,” in part because Mr. Lihyaoui is “a relatively sophisticated user of social networking media, who approached the appellant online, followed by a relatively quick romance and some cursory marriage events.” It also referred, in a general way, to the “discrepancy in the evidence” regarding the couple’s plans for children and their cultural and age differences. However, taking into consideration the totality of the evidence, and the “balance of probabilities” test, it concluded that the marriage was not entered into primarily for the purpose of acquiring any status or privilege under the Act, and was genuine.

[29] In reaching these conclusions, the IAD made three findings that had a bearing on them from Mr. Lihyaoui's perspective. First, it observed that both he and Ms. Sloan had testified that they had resolved their cultural and age differences to their own satisfaction. Second, it stated that the supporting documentation reflected ongoing communication between the couple. Third, it observed that Mr. Lihyaoui had a level of knowledge of Ms. Sloan that was reasonably commensurate with what would be expected between a married couple in their circumstances.

[30] In my view, the second and third of these findings, taken alone, could not have provided a reasonable basis or rational support for the conclusions reached by the IAD. However, taken together with the first finding, and the IAD's engagement with some of the more troublesome aspects of the evidentiary record, I am satisfied that the IAD's conclusions fell within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. They were also reasonably justified, transparent and intelligible, as they were rationally supported (*Halifax*, above). In brief, there exists a reasonable basis upon which the decision maker could have decided as it did (*Alberta Teachers*, above), notwithstanding the fact that the same could be said, indeed with greater force, for the contrary conclusions reached by the visa officer.

[31] I would simply add in passing that the IAD was not required to consider and comment upon every issue raised by the Minister in his submissions (*Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65, [2012] 3 SCR 405, at para 3).

[32] Accordingly, this Application will be dismissed.

[33] At the end of the hearing, the parties declined to propose a question for certification. I agree that no such question arises on the particular facts of this case.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed.

"Paul S. Crampton"

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Chief Justice

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

**DOCKET:** IMM-4396-13

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND IMMIGRATION  
V. MARI ANNA SLOAN

**PLACE OF HEARING:** VANCOUVER, ONTARIO

**DATE OF HEARING:** JANUARY 8, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT:** CRAMPTON

C.J.

**DATED:** JANUARY 13, 2014

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N/A

(ON HER OWN BEHALF) FOR THE RESPONDENT