

Federal Court



Cour fédérale

Date: 20140228

Docket: IMM-2830-13

Citation: 2014 FC 201

Ottawa, Ontario, February 28, 2014

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

GENARO GONZALEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

*“Love, all alike, no season knows, nor clime,
Nor hours, days, months, which are the rages of time”
(John Donne)*

[1] Section 4 of the *Immigration and Refuge Protection Regulations* provides that a foreigner is not to be considered a spouse for the purpose of a spousal sponsorship for permanent residence if the marriage “(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or (b) is not genuine.”

[2] The applicant, Mr. Genaro Gonzalez, a Canadian citizen, married his wife Laura Olivia Cano Sauza, a Mexican citizen, in Mexico, in November 2009.

[3] Her application for a visa was denied. Mr. Gonzalez appealed to the Immigration Appeal Division of the Immigration and Refugee Board of Canada. The appeal was dismissed as the decision maker was of the view that it had not been demonstrated on the balance of probabilities that the marriage was genuine, and that the marriage was entered into for the sole purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act* (IRPA). Consequently, his wife was excluded for membership in the family class under s. 117(1)(a) of the *Immigration Regulations*. This is the judicial review of that decision.

I. Issues

[4] Mr. Gonzalez submits the judicial review should be granted on the grounds of a breach of natural justice. If that is so, no deference is owed to the decision maker. He also submits that the decision was unreasonable. On that basis, some deference is owed in that even if the Court does not agree with the Tribunal's assessment and conclusion, it should not interfere as long as the decision falls within a range of reasonable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

II. Decision

[5] I shall grant judicial review on the basis of a breach of natural justice. I am satisfied that the decision maker did not approach the hearing with an open mind. One is entitled to be heard

before an impartial decision maker. Remarks during the hearing show a bias, rather than the required neutrality. In any event, the decision was unreasonable.

[6] Mr. Gonzalez encountered his future wife in 2006 on a website, not a dating website, but rather one which dealt with computer problems. There was no further contact until 2008. It is clear that Mr. Genaro Gonzalez was the pursuer and Ms. Cano Sauza the pursued. He visited her for nine days in Mexico in July 2008. Thereafter, at some point upon his return to Canada, he asked her to marry him. The marriage took place in Mexico and was attended by Ms. Cano Sauza's mother, son, sisters and nieces.

[7] Since the marriage, the spouses have been in regular contact, and he visits her in Mexico whenever he can, given his limited income and holidays.

[8] The only conclusion I can draw from reading the transcript is that the tribunal member had a fixed idea of how romances should develop, and that one should keep a specific diary of events, rather than treat an ongoing developing relationship as a continuum.

[9] She found slight inconsistencies in extraneous issues as to exactly when Mr. Gonzalez met his wife's son, when they fell in love and the date of his actual proposal.

[10] Notwithstanding today's Internet romances, the Tribunal stated:

I repeat my question, how do you fall in love with somebody after one month that you have met on the internet. Never met her in person. Explain to me.

[11] As to falling in love, the testimony, which is consistent with every day life, is repleted with statements such as “liking”, “beginning to fall in love”, “falling in love”, “definitely in love” and “finished falling in love”.

[12] Husband and wife were constantly interrupted during the hearing, which caused Mr. Gonzalez to lose his temper, quite understandable in the circumstances.

[13] One of many examples of sarcasm relates to the questioning of Ms. Cano Sauza as to the date on which Mr. Gonzalez proposed. She had said it was after his trip to Mexico, some time in July or August. The Tribunal’s comment was “well, which is it, would you like to pick a date.”

[14] The Tribunal was concerned that telephone calls were of very short duration. The answer was that they were simply to set up a communication by Skype. No consideration was given to the parties’ income and the cost of international long distance telephone calls (see *Owusu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1195, [2006] FCJ No 1488 (QL)).

[15] To say that the burden of proof was upon the applicant is not the same as saying there was a presumption that the marriage was entered into for immigration purposes. The Tribunal appears to have presumed there was bad faith and to an abuse of our immigration laws and set out to prove it. She concluded that minor inconsistencies led to bad faith. This was not a reasonable inference, but simply outright speculation which has no value.

[16] If there is a sense of déjà vu over this, the decision maker is the same as in *Sereiboth v Canada (Minister of Citizenship and Immigration)*, 2013 FC 736, [2013] FCJ No 778 (QL) in which judicial review was also granted.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The application for judicial review is granted.
2. The decision of the Immigration Appeal Division, of the Immigration and Refugee Board of Canada, dated March 27, 2013, in IAD file number MB0-06322, is quashed.
3. The matter is referred back to another tribunal member of the Immigration Appeal Division for redetermination.
4. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2830-13

STYLE OF CAUSE: GENARO GONZALEZ v MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 5, 2014

REASONS FOR ORDER AND ORDER: HARRINGTON J.

DATED: FEBRUARY 28, 2014

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