Federal Court  Cour fédérale

Date: 20120302

Docket: IMM-3454-11

Citation: 2012 FC 287

Ottawa, Ontario, March 2, 2012

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

SURJIT KAUR GILL
(SURJIT KAUR CHEEMA)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION **Respondent**

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Surjit Kaur Gill, seeks judicial review of the decision made on April 27, 2011, by the Immigration Appeal Division of the Immigration and Refugee Board rejecting her appeal of a decision to deny her application to sponsor her husband for permanent residence in Canada.

[2] This application is brought under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. For the reasons that follow, the application is dismissed.

BACKGROUND:

[3] Ms. Gill, originally from India, was sponsored by her daughter and became a permanent resident in 2000. She wishes to sponsor Mr. Brar, a citizen of India.

[4] The applicant's divorce from her second husband, whom she had sponsored, became effective in October 2007. She then met Mr. Brar in India in January 2008. They were introduced by a friend of the applicant who is also Mr. Brar's cousin. She met him once during that visit but they had apparently been acquaintances during their youth. The friend encouraged Ms. Gill to consider Mr. Brar as a prospective husband. She went to India again in July 2008 and met Mr. Brar a second time. She was not sure of the marriage when she left India in August 2008. In November she decided to marry him and went back to India in December for the wedding.

[5] In August 2009 Ms. Gill applied to sponsor her new husband and his son for permanent residency in Canada. She went back to India for two months in the fall of 2009. In December 2009, the couple accompanied by Mr. Brar's son were interviewed by an Immigration Officer in New Delhi. The interview was conducted in Punjabi, the language of the couple, without an interpreter.

[6] The Immigration Officer rejected the sponsorship application on the basis that the marriage was not *bona fide*. In rejecting the application, the Officer considered that the remarriage of a widow of Ms. Gill's age (60) was not common in the Sikh tradition, that it was unusual for a woman her age with children and grandchildren to remarry, that the marriage was not performed at Mr. Brar's residence, that the marriage was arranged in haste, that the marriage was attended by few

people, that the children of both Ms. Chill and Mr. Brar did not attend the ceremony, that the couple did not live together after the marriage, that the husband displayed a considerable lack of knowledge of Ms. Gill's family and that Mr.'s Brar's passport still displayed his ex-wife as his spouse.

[7] The applicant appealed the Officer's decision to the Immigration Appeal Division of the Immigration and Refugee Board, hereafter "the Board".

DECISION UNDER REVIEW:

[8] The Board considered that it was not necessary for it to determine whether the 2010 amendments to s.4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (hereafter the Regulations) applied as it was satisfied that the marriage was not genuine and was entered into primarily for the purpose of acquiring status in Canada.

[9] The Board noted that the closeness in age of the spouses and the fact that they shared a common religion and culture supported the application. The Board also indicated that the telephone records, greetings cards, pictures and supporting affidavits submitted by the couple supported the application.

[10] However, the Board found several inconsistencies in the evidence that it considered to be fatal to the appeal. The couple gave different versions of when they decided to get married (November 2008 for Ms. Gill and August 2008 for Mr. Brar). The couple was inconsistent on the number of occasions they spoke on the phone (2 then 1 time for Ms. Gill, never for Mr. Brar). The

marriage was conducted hastily with little interaction. The Officer's interview notes contain many references to Mr. Brar's lack of knowledge about his new spouse and her family.

[11] The couple had also stated that an interpreter they had brought with them to the interview was sent away by the Officer and that they could not understand the Officer correctly because she spoke a mix of Punjabi and Hindi. The Board observed that the Officer's Computer Assisted Immigration Processing System ("CAIPS") notes indicate that the couple understood her and that no incident happened during the interview.

[12] The Board considered the negative and positive evidence and came to the conclusion on the balance of probabilities that the marriage was not genuine and was done to gain status.

ISSUES:

[13] In the applicant's written representations it is contended that the Officer breached the *Official Languages Act*, RSC, 1985, c 31 (4th Supp) in conducting the interview in Punjabi instead of in French or English. This argument was not pressed at the hearing. I am satisfied, in any event, that the argument has no merit. While the Canadian public has the right to receive services from the federal government in English or French, the *Official Languages Act* does not prevent the conduction of government business in other languages, especially in immigration cases when the Officer speaks the native language of the applicant: *Abbasi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 288 at paras 12-17.

[14] The issues that remain are as follows:

1. Did the Officer breach her duty of procedural fairness?

2. Was the Board's decision reasonable and based on all the evidence?

3. Were the Board's reasons adequate?

ANALYSIS:

Standard of Review;

[15] Where procedural fairness is in question, as here, the Court must consider whether the requirements of natural justice in the particular circumstances of the case have been met: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *CUPE v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100; *Velasquez Perez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1336 at para 28.

[16] The second issue is one of mixed fact and law and is reviewable upon the standard of reasonableness: *Mendoza Perez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1 at para 11; and *Gao v Canada (Minister of Citizenship and Immigration)*, 2011 FC 368 at para 5. This Court owes deference to the Board with regards to the weighing of the evidence: *Khatoon v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1016 at para 17.

[17] Where reasons have been provided, as the Board did in this case, their adequacy is also to be reviewed upon the reasonableness standard: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 21-22.

[18] When the standard of review is reasonableness, the Court will only intervene when the decision lacks justification, transparency and intelligibility or if the decision does not fall 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.

Did the Officer breach her duty of procedural fairness?

[19] The applicant alleges that the Officer breached procedural fairness in conducting the interview in a mix of Hindi and Punjabi which the applicant and her husband could not properly understand. The Board unreasonably discounted this concern and did not accept the evidence submitted by the applicant, a receipt for the interpreter's services. For the Officer to act both as interviewer and interpreter was a conflict of interest, according to the applicant.

[20] The Board preferred the evidence of the Officer's contemporaneous notes entered into the CAIPS system immediately following the interview over that of the applicant and Mr. Brar. The CAIPS notes do not support the applicant's version of the facts. With regard to the receipt from the interpreter the applicant allegedly brought to the interview, the Board noted that the piece of paper did not prove the presence of the interpreter and that it would have been easy to obtain a statement from the interpreter that he accompanied the applicant to the interview but was not allowed to stay. These findings of fact were reasonably open to the Board to make on the evidence that it heard and saw.

[21] In my view, the Officer did not play the role of interpreter. She simply communicated in Punjabi with the couple to ease the interview process. As stated by Justice Pinard in *Toma v Canada (Minister of Citizenship and Immigration)*, 2006 FC 779 at paragraphs 32-33, it would be strange – and I would add inefficient – for the Officer to use an interpreter when he or she can speak the applicant's language. I conclude that neither the Officer nor the Board breached procedural fairness.

Was the Board's decision reasonable and based on all the evidence?

[22] The applicant argues that the Board unreasonably ignored and rejected portions of her evidence. My review of the certified tribunal record and of the Board's reasons for decision did not find support for these submissions.

[23] The Board is presumed to have considered all of the evidence and is not required to mention every piece of evidence in its reasons: *Ramos Villegas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 699 at para 16; and *Florea v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No 598 (CA).

[24] Nevertheless, the Board, in this case, did conduct a comprehensive review of the evidence and categorized it in terms of evidence in support of the applicant's appeal and evidence against the appeal. The Board then reviewed the negative evidence in detail to explain why it thought that this evidence significantly undermined the applicant's claim.

[25] The applicant contends that she suffers from a medical condition that caused her memory to fail during the interview and Board hearing. However, no evidence was submitted to establish that this would have had a material effect on the outcome of the appeal.

[26] In applying the standard of review of reasonableness, this Court must demonstrate deference to the Board's findings of fact: *Ma v Canada (Minister of Citizenship and Immigration)*, 2010 FC 509 at paras 31-32. In this case, I am unable to find that the Board's findings fell outside the range of possible outcomes defensible in respect of the facts and law.

Were the Board's reasons adequate?

[27] The applicant submits that the Board's reasons were insufficient to provide a reasonable explanation as to why it reached the conclusion that the marriage did not respect s.4 of the Regulations. They were not, she contends, sufficiently clear, precise and intelligible for her to know why her appeal failed.

[28] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, above, at paragraph 12, the Supreme Court of Canada has confirmed that in applying the reasonableness standard, a reviewing court must pay "respectful attention to the reasons offered or which could be offered in support of a decision" (see also para 18).

[29] In the present case, the Board reviewed all of the evidence and explained clearly why it found that the evidence demonstrated that the marriage was not genuine and was entered into for the

purpose of gaining status in Canada. The Board's reasons sufficiently demonstrate the required justification, transparency and intelligibility within the decision-making process. The decision was clear and well explained. I therefore conclude that the Board's reasons were sufficient.

[30] No serious questions of general importance were proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3454-11
STYLE OF CAUSE:	SURJIT KAUR GILL (SURJIT KAUR CHEEMA) and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	February 1, 2012
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