

Federal Court



Cour fédérale

Date: 20180709

Docket: IMM-4953-17

Citation: 2018 FC 708

Ottawa, Ontario, July 9, 2018

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

JASBIR KAUR PADDA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Jasbir Kaur Padda, is a 40-year-old Canadian citizen who applied in October 2013 to sponsor her spouse, Jatinder Singh, for permanent residency in Canada. A visa officer at the visa post in New Delhi refused the sponsorship application on the grounds that the marriage was entered into primarily for Mr. Singh's immigration to Canada or is not genuine. On March 2, 2015, the Applicant appealed this refusal to the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada. The IAD dismissed the Applicant's appeal in a

decision dated October 27, 2017. The Applicant has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA], for judicial review of the IAD's decision. She asks the Court to quash the IAD's decision and return the matter for redetermination by another member of the IAD.

I. Background

[2] The Applicant was sponsored to Canada by her first husband in 1997. Since then she has sponsored three spouses to Canada, including Mr. Singh whose marriage to the Applicant is his first. The Applicant's introduction to Mr. Singh came about following a party at the home of her father's cousin, at which Mr. Singh's aunt, Kashmir Kaur, was present. Ms. Kaur introduced the Applicant and Mr. Singh by telephone in early July 2013. At this time, the Applicant was not on speaking terms with her parents due to disagreements about the end of her previous marriage.

[3] The Applicant went to India in July 2013 to meet Mr. Singh. She claims she trusted him and liked the way he spoke, and appreciated that he did not drink and was also of the Jat sub-caste. Mr. Singh did not conduct the traditional background checks prior to marrying the Applicant. The Applicant and Mr. Singh announced their engagement on July 30, 2013, and were married on August 4, 2013. Several hundred people attended the wedding, but the Applicant's parents did not. Following the marriage, the Applicant returned to Canada, but visited her husband in India on three occasions between January 2014 and January 2016. In addition, they speak regularly by phone and via FaceTime.

[4] On February 13, 2015, a visa officer refused the sponsorship application pursuant to subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, on the grounds that the marriage was primarily entered into for Mr. Singh's immigration to Canada or is not genuine. The officer refused the application for the following reasons: (i) a lack of compatibility in age, marital status, and education, in that Mr. Singh is two and a half years younger and has less education than the Applicant, and has never been married; (ii) the marriage was arranged in haste, which was unusual given the Applicant's history of failed marriages; (iii) no one from the Applicant's family attended the wedding; (iv) the Applicant has not been in contact with her family since 2007 and had not explained why; (v) the Applicant did not look happy in her wedding photos; and (vi) the Applicant's prior marriages were short in duration.

II. The IAD's Decision

[5] The Applicant appealed the visa officer's decision to the IAD on March 2, 2015. The IAD dismissed the appeal on October 27, 2017. The IAD noted that in order to allow the appeal it had to find on a balance of probabilities that the marriage was not entered into for an immigration purpose and is genuine. The IAD also noted that the test for whether a marriage was entered into for an immigration purpose focuses on the primary intention of one or both of the spouses at the time of the marriage. The IAD cited the non-exhaustive factors to assess the genuineness of a marriage established in *Chavez v Canada (Citizenship and Immigration)*, [2005] IADD No 353 [*Chavez*], noting that these include: intent of the parties to the marriage; length of the relationship; amount of time spent together; conduct at the time of meeting, engagement, and at the wedding; behaviour subsequent to the wedding; knowledge of each other's relationship histories; level of continuing contact and communication; financial support;

knowledge of and sharing of responsibility for the care of children brought into the marriage; knowledge of and contact with the extended families of the spouses; and knowledge of each other's daily lives.

[6] After noting the visa officer's reasonable concerns about the Applicant's prior marriages, the IAD canvassed her relationship history in detail and remarked that she was consistent in her testimony and also that the presence of children from the prior marriages indicated some degree of sincerity in those relationships. The IAD noted that while Mr. Singh had moved from Greece to India in March 2013 to care for his mother, he was willing to leave India after he married the Applicant. Based on the evidence, the IAD found Mr. Singh was motivated to marry the Applicant in order to leave India; that he had entered into a traditional arranged marriage with someone with whom he was not compatible in age, education, or marital status; that he had married in haste without conducting background checks; and that he had provided scant evidence about his and the Applicant's compatibility beyond statements about their caste affiliation and his understanding of Ms. Padda's marriage history.

[7] After making these findings, the IAD reviewed the conduct of the Applicant and Mr. Singh at the time of meeting, the engagement, and the wedding, as well as their behaviour subsequent to the wedding. The IAD also reviewed their knowledge of each other's relationship history, the sharing of responsibility for the Applicant's two daughters, and their knowledge of each other's daily lives. Following review of these factors, the IAD concluded that the Applicant and Mr. Singh married for an immigration purpose and that their marriage is not genuine. Specifically, the IAD found as follows: the marriage was entered into primarily for the purpose

of Mr. Singh's immigration to Canada; the time frame between the Applicant's first conversation with Mr. Singh on July 3, 2013 and their marriage on August 4, 2013, was, in the IAD's view, "hasty, especially given the appellant's background and relationship history"; the Applicant's prior marriages had immigration purposes; there was a lack of evidence on why they were a good match from either an arranged or non-arranged marriage perspective as well as conflicting evidence about her estrangement with her family; and while Mr. Singh claimed to return to India to take care of his ailing mother, he also quickly married someone who would take him out of the country.

III. Is the IAD's decision unreasonable?

A. *Standard of Review*

[8] The parties agree, and the Court concurs, that the appropriate standard for judicial review of the IAD's decision is one of reasonableness (see *Le v Canada (Citizenship and Immigration)*, 2016 FC 330 at para 3, [2016] WDFL 2283). The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "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 at para 47, [2008] 1 SCR 190). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708). So long as "the process and the outcome fit

comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome”; nor is it “the function of the reviewing court to reweigh the evidence” (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339).

B. *The Parties' Submissions*

[9] The Applicant says the IAD drew unreasonable conclusions concerning the haste with which she entered into the marriage. According to the Applicant, the IAD ignored the fact that she was tired of being a single mother and believed her children needed a father. In the Applicant's view, the IAD unreasonably applied not only North American reasoning to an arranged marriage to find that it had been conducted in haste but also Indian norms to the lack of compatibility even though both she and Mr. Singh had spent considerable periods of time outside of India. The Applicant claims the IAD erred by impugning her current marriage on the basis that she had entered into prior relationships which had an immigration purpose, and that if the IAD did not accept that her prior marriages were genuine, it was obligated to provide a proper credibility analysis.

[10] The Applicant further says it is an error of fact, rather than weight, to rely on some of the factors established in *Chavez* while excluding others, and it is also an error to “cherry-pick” a case's weaknesses while ignoring its strengths. In the Applicant's view, the IAD unduly focused on negative factors while ignoring positive ones such as her financial support to Mr. Singh, the four-year duration of their marriage, and the knowledge of many aspects of each other's life, including her knowledge of Mr. Singh's work and immigration history, and his land ownership

and extended family, as well as his knowledge of her depression and illness, her family vocation, and the role and support of her previous spouses.

[11] The Respondent says a determination as to the genuineness of a marriage is a fact-based inquiry and should not be interfered with unless there is bad faith or reliance upon extraneous or irrelevant considerations. According to the Respondent, even though the IAD did not mention the Applicant's testimony that she was tired of being a single mother and wanted a father figure for her children, that does not mean it ignored this evidence since the IAD is presumed to have considered all of the evidence and may refer to only important evidence rather than citing all of it. In the Respondent's view, the IAD's finding concerning the haste of the marriage was based on the Applicant's prior marriage breakdowns and sponsorship applications.

[12] The Respondent further says the IAD's statement about children from prior marriages showing some degree of sincerity does not negate its finding that those marriages had an immigration purpose. The Respondent maintains that *Chavez* does not hold that any one factor is more important than the others, but that the genuineness of a marriage can be assessed based on a combination of the factors listed in that case. Ultimately, the Respondent characterizes the Applicant's arguments as a request for the Court to re-weigh the evidence, something which does not raise any reviewable error, and where a tribunal's inferences and conclusions are reasonably open to it, the Respondent says the Court should not intervene.

C. *Analysis*

[13] The IAD's treatment of the "haste" in which the Applicant and Mr. Singh got married is problematic. The IAD found it unusual that she would move so quickly given her history of failed relationships. A similar situation was considered by the Court in *Nadasapillai v Canada (Citizenship and Immigration)*, 2015 FC 72, [2015] WDFL 1153 [*Nadasapillai*], where in allowing the application for judicial review Justice Diner stated:

[17] The Panel criticized the haste based on Ms. Raman's troubled past relationship and marriage, and the fact that Ms. Raman was 38 years of age at the time, i.e., getting on in age for a single mother. There are two reasons that this is a weak conclusion.

[18] First, one can easily understand why Ms. Raman was ready for the companionship that she clearly explained she had longed for: older couples can be quick in deciding to get married (although haste is certainly not the exclusive domain of any particular age). Older people are often ready to move more quickly into a lifelong commitment, as they know what they want. As Ms. Raman stated in her testimony, "I am getting older. I am very old now and I don't know how long I'll be able to live. ... I found him a good person. So I took two or three days... to think about it and then decide it" (Transcript, CTR, p 430).

[19] Second, if the basis of finding haste was one steeped in a certain culture, it is unfair. In the context of the Refugee Protection Division, the Court has found that where the Board [RPD] draws plausibility conclusions about evidence without considering the proper cultural and socio-political context, this can constitute grounds for quashing a decision (see: *Bhatia v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 2010 at para 16) [*Bhatia*]. The Board, must be careful about imposing western or Canadian paradigms on non-western culture (*Bains v Canada (Minister of Employment and Immigration)* (1993), 63 FTR 312 [*Bains*] and I recognize that both *Bains* and *Bhatia* involved refugee claims, not sponsorship appeals.

[20] My conclusion on the Panel's "haste" finding is that it was speculative at best, or otherwise made without taking into account non-western values.

[14] In view of *Nadasapillai*, I find the IAD's decision in this case to be unreasonable. I agree with the Applicant that the IAD unreasonably applied not only North American reasoning to an arranged marriage to find it had been conducted in haste, but also applied Indian norms to the lack of compatibility even though both the Applicant and Mr. Singh had each spent considerable periods of time outside of India. Moreover, the IAD's determination that the Applicant and Mr. Singh lack compatibility from an arranged marriage perspective fails to have regard to the Court's observation in *Gill v Canada (Citizenship and Immigration)*, 2010 FC 122, 362 FTR 281:

[12] ... the Board's observation that their respective ages and Ms. Gill's status as a divorced person were inconsistent with prevailing cultural norms in India. ...does not mean that marriages that fall slightly outside of the range do not occur. The same can be said for the Indian cultural view on divorce. Presumably marriages between previously unmarried persons and divorced persons do take place in India...

IV. Conclusion

[15] The Applicant's application for judicial review is therefore granted. The IAD's decision is set aside, and the matter returned to the IAD for a new determination by a different panel member in accordance with these reasons for judgment.

[16] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-4953-17

THIS COURT'S JUDGMENT is that: the application for judicial review is allowed; the decision of the Immigration Appeal Division dated October 27, 2017, is set aside; the matter is returned to the Immigration Appeal Division for a new determination by a different panel member in accordance with the reasons for this judgment; and no serious question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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