

Federal Court



Cour fédérale

Date: 20231127

Docket: IMM-2055-22

Citation: 2023 FC 1572

Ottawa, Ontario, November 27, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MIR AMIR MOHAMMAD TOUFAN KESHMIRI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mir Amir Mohammad Toufan Keshmiri, seeks judicial review of a decision of the Immigration Appeal Division (“IAD”) dated February 17, 2022, upholding a visa officer’s decision to deny the Applicant’s spousal sponsorship application pursuant to section 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“IRPR”). The

IAD concluded the Applicant's spouse entered into the relationship with a primary purpose of acquiring status or privilege in Canada.

[2] The Applicant submits that the IAD's decision is unreasonable in basing its findings on presumptions, going beyond the scope of its mandate under the *Immigration and Refugee Protection Act*, SC 2001, c 27, and ignoring jurisprudence from this Court that provides the factors relevant to assessing the genuineness of the marriage.

[3] While I am sympathetic to the Applicant's circumstances, especially in light of his self-representation at the oral hearing for this application, for the reasons that follow I find that the IAD's decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicant*

[4] The Applicant is a 42-year-old Canadian citizen. The Applicant's wife, Nareerat Keshmiri (Ms. "Keshmiri"), is a 41-year-old citizen of Thailand.

[5] The Applicant has been married twice: the first marriage spanning July 2008 to December 2010, the second December 2013 to February 2015. This is Ms. Keshmiri's first marriage.

[6] In September 2014, the couple met on the dating website “ThaiFriendly.” The Applicant claims that he was on ThaiFriendly to speak to locals and research Thailand in anticipation of visiting the country. Ms. Keshmiri claims that she was on the website to improve her English. The Applicant states that they quickly began messaging one-another, almost every day.

[7] Within three weeks of first meeting Ms. Keshmiri online, the Applicant began sending her money. The first transfer of \$54 CAD was on September 26, 2014. Further transfers in 2014 included \$54 on October 3; \$53.89 on November 14; and \$269 and \$147 on December 19 and 26, respectively. In January 2015, the Applicant began sending Ms. Keshmiri approximately \$850 monthly, as she told him that she had lost her job. This amount raised to approximately \$1200 monthly in September 2015. The Applicant stated that he continued to support Ms. Keshmiri financially at the time of the IAD decision.

[8] On October 22, 2014, Ms. Keshmiri was issued a Thai passport, six weeks after coming into contact with the Applicant. On February 18, 2015, she applied for a visitor’s visa to Canada, approximately five months after coming into contact with the Applicant. This visa was denied owing to her lack of travel history and her unstable employment history.

[9] The couple has met in Thailand three times: once for four weeks in June/July of 2015, once for ten days in October 2016, and once for two weeks with the Applicant’s father in November 2018.

[10] The Applicant states that he proposed marriage to Ms. Keshmiri in January 2016. She agreed and they married in Thailand on October 11, 2016.

[11] In October 2018, the Applicant submitted a sponsorship application, which was refused on February 10, 2020.

B. *Decision under Review*

[12] In a decision dated February 17, 2022, the IAD dismissed the appeal. The IAD found that the marriage is genuine but was entered into primarily for the purpose of acquiring status or privilege.

[13] The IAD made several findings that called into question the motivation behind this marriage. The IAD doubted that the Applicant was on ThaiFriendly simply to learn more about Thailand, given his recent separation and the fact that there are other websites and resources to learn about Thailand. The IAD also did not believe Ms. Keshmiri was there only to learn English, finding that there are other ways to practice English than going on a dating website.

[14] The IAD concluded that Ms. Keshmiri was profiting financially from the relationship, while the Applicant's motivations were unclear. The IAD acknowledged the Applicant providing Ms. Keshmiri with financial assistance early on in their relationship, thereby showing the relationship to be transactional.

[15] The IAD found that the fact that Ms. Keshmiri applied for a passport after knowing the Applicant for just over a month and sought a visitor visa to travel for the first time outside of her home province in Vietnam after five months of communication with the Applicant strongly suggested that Ms. Keshmiri's primary purpose to enter into this relationship was to obtain status in Canada. Acknowledging that she had misled Canadian immigration authorities about her employment history numerous times, the IAD concluded that she sought to "see the potential living situation in Canada, before becoming any further involved with the Applicant."

[16] The IAD considered the Applicant's marriage history and his testimony about his relationship and concluded that the Applicant has sincere love for her, but is someone who "falls in love easily." The IAD agreed that the evidence shows Ms. Keshmiri to have "genuine affection" for the Applicant, and that the extended family's involvement in the marriage supports the marriage's genuineness.

[17] The IAD thus concluded that the marriage was genuine, but was entered into primarily to obtain status or privilege, dismissing the Applicant's appeal.

III. Issue and Standard of Review

[18] The sole issue in this application for judicial review is whether the IAD's decision is reasonable.

[19] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[20] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[21] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100). While a decision-maker is not required to respond to every line of argument or mention every piece of evidence, a decision’s reasonableness may be called into question where the decision exhibits a “failure to meaningfully grapple with key issues or central arguments” (*Vavilov* at para 28).

IV. Analysis

[22] The Applicant submits that the IAD unreasonably characterized the marriage and doubted Ms. Keshmiri's reasons behind her travel history, and exceeded its mandate in finding that he "is inclined to fall in love easily." I disagree. Viewed as a whole and in regards to its legal and factual constraints, the IAD's decision is justified, transparent, and intelligible (*Vavilov* at paras 15, 99-101).

[23] The Respondent submits that the IAD drew reasonable conclusions about Ms. Keshmiri's intentions in regards to the evidence before it, including her haste in obtaining a passport and applying for a Canadian visitor visa after meeting the Applicant, her provision of false information in her visa application, and her willingness to travel to see the Applicant after only five months of contact. The Respondent further submits that the IAD is entitled to consider the "overall background" for the purposes of determinations under subsection 4(1) of the *IRPR*.

[24] I agree with the Respondent. The IAD reasonably concluded that there was no credible reason as to why Ms. Keshmiri applied for a passport in October 2014 after only knowing the Applicant for approximately one month and having only "good" feelings about him. The fact that that Ms. Keshmiri had never left her hometown of Pattaya before meeting the Applicant supports this conclusion. Additionally, Ms. Keshmiri's identification of the Applicant as a "family friend" in her visa application after having admitted to the Applicant that she had romantic feelings for him undermines the notion that she had no ulterior motive to travel to Canada.

[25] In my view, the Applicant provides no evidence that contradicts these findings, and these inconsistencies and Ms. Keshmiri's provision of false information to immigration authorities are sufficiently "rationally related" and "major enough by themselves" in the context of section 4(1) of the *IRPR* to undermine her credibility (*Kambanda v Canada (Citizenship and Immigration)*, 2012 FC 1267 at para 42). Additionally considering the Applicant's testimony about Ms. Keshmiri's difficult financial situation at the time and his stated intention to visit Thailand, the IAD's conclusion that Ms. Keshmiri's reasons for travelling to Canada were not credible and that she sought to visit Canada to evaluate it for the prospects of immigration is justified, transparent, and intelligible (*Vavilov* at para 15).

[26] I further agree with the Respondent that the IAD did not go beyond the scope of the determination that the IAD was required to make. The Applicant failed to provide legal arguments or point to evidence that substantiate his submissions. As the analysis above shows, the IAD reasonably found that there was direct evidence from which an inference could be drawn that this marriage was entered into to gain status. I see no reason to disturb these findings.

V. Conclusion

[27] This application for judicial review is dismissed. The IAD's decision is justified, transparent, and intelligible. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2055-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2055-22

STYLE OF CAUSE: MIR AMIR MOHAMMAD TOUFAN KESHMIRI v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: AHMED J.

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