

Federal Court



Cour fédérale

Date: 20240726

Docket: IMM-4502-23

Citation: 2024 FC 1185

Ottawa, Ontario, July 26, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

HARPREET BATH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Harpreet Bath [Applicant] seeks judicial review of the March 14, 2023 decision [Decision] by the Immigration Appeal Division [IAD] refusing to grant a family class sponsorship appeal on the basis that the marriage was for immigration purposes and not genuine.

[2] The application for judicial review is allowed. The Applicant submitted both that her right to procedural fairness was breached and that the Decision is unreasonable. I find that the Decision is unreasonable. Accordingly, the issue of procedural fairness need not be addressed.

II. Background

[3] The Applicant is a 43-year-old naturalized Canadian citizen who was born in India. She came to Canada by way of a spousal sponsorship application in 2000, but this first marriage ended shortly afterward. In 2002, she entered into a family-arranged marriage and has two children from this second marriage who are currently 20 and 16 years old. The Applicant separated from her abusive second husband in 2017 but both continued to reside in separate parts of the marital home until 2020. In 2020, the Applicant's second husband was charged with assault and was issued a no-contact order. The Applicant filed for divorce from her second husband in October 2019 and the divorce was finalized in January 2021.

[4] Mr. Singh is a 27-year-old Indian national. The Applicant and Mr. Singh state that they met through Facebook in 2017 after Mr. Singh sent two friend requests to the Applicant, the second of which she accepted. They began communicating regularly as friends and met in person in January 2018 when the Applicant travelled to India with her sister. The Applicant and Mr. Singh began a relationship in February 2019, during the Applicant's second trip to India. The Applicant visited India for a third time in November 2019 and proposed to Mr. Singh. They married in India in January 2021, after the Applicant's divorce from her second husband was finalized. Following the marriage, the Applicant applied to sponsor Mr. Singh.

[5] On May 3, 2022, the Applicant and Mr. Singh received decision letters from a visa officer [Officer] refusing to grant Mr. Singh's application for a permanent resident visa as a member of the family class. The Officer was not satisfied that Mr. Singh met the requirement under subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] as the Officer was not satisfied that the marriage was genuine and that it was not entered into primarily for the purpose of acquiring permanent residence in Canada. The Applicant and Mr. Singh appealed to the IAD.

III. Decision

[6] At the hearing on March 7, 2023, the IAD member [Member] considered (1) whether the couple married primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]; and (2) whether the marriage was genuine. The Member found that the couple failed to show on a balance of probabilities that their initial friendship was a coincidental happening that developed into a relationship. The Member also found that they failed to demonstrate a level of knowledge and interaction that reflects a genuine relationship and instead, the evidence was consistent with the marriage having the primary purpose of enabling Mr. Singh to acquire immigration status.

[7] The Member found that the couple did not provide a reasonable and believable explanation for how they met and fell in love. The Member further concluded that the evidence showed that it was more likely than not that Mr. Singh's participation in the marriage was not genuine and was primarily for immigration, even if it were possible that the Applicant was genuinely motivated in this relationship.

[8] The Member identified several negative factors against the relationship being genuine. Specifically, the couple did not provide a believable explanation for how and why they began to communicate online, such as their motivations for Mr. Singh's random Facebook friend request to a stranger and the Applicant's acceptance of the request. The Member determined that it was unclear how Mr. Singh's parents learned about the relationship and the proposal, and how the parents came to accept the marriage after their initial disapproval. The couple's level of knowledge of one another did not reflect their extent of communication and interaction, as it gave the impression of being rehearsed, without the addition of any personalized observations. The only financial intermingling was substantial transfers from the Applicant to Mr. Singh, and they provided vague or rehearsed explanations for the transfers that gave the impression that the transfers were more consistent with being strategic support for the sponsorship. The couple also failed to give compelling examples of Mr. Singh's relationship with the Applicant's children.

[9] The Member found that the lack of haste into the marriage had a neutral impact. First, the apparent lack of haste and years of interaction before marriage was mitigated by the fact that the couple were married the same month that the Applicant's divorce was finalized. Second, the alleged communication and interaction for several years was not complemented with a depth of knowledge.

IV. Issues and Standard of Review

[10] The determinative issue in this matter is whether the Decision was reasonable. Accordingly, the remaining parts of the Judgment and Reasons will not address procedural fairness.

[11] The Applicant and Respondent agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I agree. This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Vavilov*. Therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

V. Analysis on Reasonableness

A. *Applicant's Position*

[12] The Member rendered unreasonable implausibility findings and failed to engage with the evidence about how the couple met and fell in love. It is trite law that decision-makers must analyze documents and issue a fulsome explanation for any conclusions that run counter to the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 14-17). However, the Member ignored supporting documentary and testimonial evidence concerning years of communication and the development of their relationship.

[13] The Member rendered an unreasonable implausibility finding concerning the couple's meeting. The Member found that the Applicant did not explain why she accepted the friendship request as a "one-time random act", but she testified that she accepted it because of the ongoing distress and marital abuse at the time so she desired friendship and support. She also changed her privacy settings afterward, which is why it was a one-time act.

[14] By failing to consider the Applicant's explanation, the Member also failed to engage with the guidelines by the Immigration and Refugee Board [IRB] entitled Chairperson's Guideline 4: Gender Considerations in Proceedings before the Immigration and Refugee Board [Gender Guidelines]. The Gender Guidelines state that implausibility findings should only be made in the clearest of cases and that members should not rely on gender-based myths, stereotypes, and incorrect assumptions. The Gender Guidelines require that, when credibility is an issue, a member must explain it to the person, allow the person to respond, consider the person's response, evaluate the totality of the circumstances and the internal consistency of the evidence, and explain in their reasons whether the response reasonably accounts for the discrepancy (7.4). The Member did not raise any issues concerning the explanations for the one-time act of accepting a friend request from a stranger. Given that this unreasonable analysis informed a matter of central importance, it renders the Decision unreasonable.

[15] The Gender Guidelines are not intended to apply only to the Refugee Protection Division since it lists "Immigration and Refugee Board" in the title and the IAD is an IRB decision-maker. Guidelines intended to apply only to one IRB division will specifically state so in the title.

[16] The Member further rendered adverse findings without regard to the evidentiary record, resulting in a series of unjustified and unreasonable conclusions. In response to the Member's questions, the Member ignored the following explanations by Mr. Singh: he did not see the proposal as a moment to be surprised; the Applicant's parents may have heard of the marriage

from someone else but not the Applicant or Mr. Singh; and his conversation with his parents informing them of his desire to marry only the Applicant.

[17] Furthermore, the 16-year age gap between the couple implicitly informed the Member's decision, as the Member began the section concerning the development of the relationship by highlighting the age difference, including by noting the age gap between Mr. Singh and the Applicant's children. However, the Applicant and Mr. Singh provided testimony about their age difference, including the Applicant's conversations with her children and their approval of the relationship.

B. *Respondent's Position*

[18] The Member reasonably concluded that the Applicant and Mr. Singh failed to discharge their onus under subsection 4(1) of the *IRPR* to prove, on a balance of probabilities, that their marriage was genuine and not entered into for Mr. Singh to acquire immigration status. The IAD is an expert tribunal that is owed deference on factual findings and questions of credibility (*Wafa v Canada (Citizenship and Immigration)*, 2018 FC 179 at para 6; *Nguyen v Canada (Citizenship and Immigration)*, 2016 FC 1207 at para 24).

[19] The Member reasonably found that the couple failed to explain aspects of their relationship that would show the marriage was genuine and not entered into for Mr. Singh to acquire immigration status. First, the couple failed to explain how they met, their relationship progression, and what attracted them to each other given their differences. Second, the couple showed a lack of knowledge of each other, despite their statements that they communicated

regularly. Third, the couple attempted to embellish their evidence by adding information about the proposal of the marriage, but it contradicted the first officer's notes as to who proposed. Fourth, various parts of Mr. Singh's testimony was vague, including his knowledge of the Applicant's interactions with her family, how his family came to accept the marriage, how they became engaged, and how they received his family's blessing. Fifth, the couple's evidence was not credible, as they could not add spontaneous and anecdotal details about how a Facebook friend request led to marriage.

[20] Furthermore, the genuineness of the marriage is assessed at the time the marriage was entered into. If there is any evidence that may show that the marriage may have become genuine after the fact, it is irrelevant to assessing its genuineness. Evidence such as the tattoos and photos after the marriage is not evidence to support the analysis.

[21] It is also unclear how the Gender Guidelines apply to this matter. It is specific to refugee claimants and the Applicant has not provided any jurisprudence showing it is applicable in a genuine marriage context.

[22] The remainder of the Applicant's argument amounts to a disagreement with the result and is a request for the Court to reweigh evidence to come to a different conclusion, which is not the role of the Court on judicial review.

C. *Conclusion*

[23] The Decision was unreasonable.

[24] The onus is on an applicant to demonstrate, on a balance of probabilities that the marriage is genuine and that it was not entered into for the purpose of acquiring immigration status (*Canada (Citizenship and Immigration) v Moise*, 2017 FC 1004 at para 15 [*Moise*]). An applicant must meet both conditions as subsections 4(1)(a) and (b) of *IRPR* are disjunctive (*Ferraro v Canada (Citizenship and Immigration)*, 2018 FC 22 at para 12). The genuineness of the marriage is evaluated at the time of the decision while the intent with which the marriage was entered into is evaluated in the past (*Moise* at para 16). As a result, the analysis contains two separate steps.

[25] I find that the Member ignored contradictory evidence in making its findings. The Member took issue with the story of how the couple met and, in doing so, ignored the Applicant's explanation that she accepted this random Facebook request because she was feeling depressed and desired someone to speak to because of the ongoing abuse she was facing from her second husband. The Member accepted that it was credible that the Applicant would appreciate a supportive friendship during that time, but continued to state that it still did not explain accepting a friend request from a stranger. This reasoning is unintelligible.

[26] Furthermore, Mr. Singh was asked three times at the IAD hearing if he was surprised about the proposal, then once if he was expecting the proposal. Mr. Singh replied that he was happy about it because he had wanted to propose, that it was not a moment to be surprised, and that he did not have any expectations for it but he had wanted to propose to her. The Member only acknowledged that Mr. Singh said he was happy because he wanted to marry the Applicant. This is another example of the lack of engagement with the evidence.

[27] Mr. Singh was also asked if the Applicant's parents knew about the marriage, and he replied, "[t]hey might be knowing [sic] it through somebody because we don't talk to them". The Member acknowledged both that the Applicant was estranged from her parents and that it did not matter either way if the parents knew, but offered this as an example that Mr. Singh had limited knowledge of the Applicant's family interactions and relationships. The Member did not explain how Mr. Singh would be expected to know the answer when neither he nor the Applicant speak to her parents.

[28] Although the Member determined that it was "unclear when [Mr. Singh] told his parents about [Ms. Bath] or the proposal", this ignores Mr. Singh's testimony that he first told his parents about her 10-15 days before her visit on November 15, 2019. Mr. Singh did not give an exact date for when he told his parents about the proposal, but he stated that he informed them about it after meeting the Applicant during that visit.

[29] The Member determined that, "[Mr. Singh] did not explain when or how his parents came to accept the marriage", however, in his testimony Mr. Singh explained that his parents came to accept the marriage around the end of August or beginning of September 2020, which is when they agreed to speak to the Applicant for the first time. The Applicant and Mr. Singh provided a consistent timeline of events. Mr. Singh also explained that his parents came to accept the marriage because they saw his happiness and through conversations where he said that he would only marry the Applicant and no one else. Although the Member commented that Mr. Singh offered no details of how he reached an understanding with his parents, as he only provided

conclusions and not a description of the interactions, the Member ignored Mr. Singh's answers about what he told his parents that convinced them to change their minds about his relationship.

[30] A reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker and absent exceptional circumstances, a reviewing court will not interfere with factual findings (*Vavilov* at para 125). However, a reasonable decision must be justified in light of the facts and a decision may be jeopardized where the decision-maker has “fundamentally misapprehended or failed to account for the evidence before it” (at para 126). The Member fundamentally failed to account for and engage with the evidence before it throughout the Decision, leading to multiple adverse findings of the genuineness of the relationship and Mr. Singh's intent for entering into the relationship. The Member demonstrated a sustained lack of engagement with the factual matrix that leads me to the view that the Decision was not transparent, intelligible, and justifiable.

VI. Conclusion

[31] For the reasons above, this application for judicial review is allowed.

[32] The parties do not propose a question for certification and I agree that none arises.

[33] The Applicant suggested that the style of cause should reference only the Applicant and not Mr. Singh, though nothing turns on this. The Respondent took no position on this point. I agree that the style of cause should refer to only the Applicant.

JUDGMENT in IMM-4502-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted to a different member of the Immigration Appeal Division for re-determination.
2. The style of cause is amended to remove Mr. Singh from the style of cause.
3. There is no question for certification.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4502-23

STYLE OF CAUSE: HARPREET BATH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 12, 2024

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