Date: 20060925

Docket: IMM-7030-05

Citation: 2006 FC 1112

BETWEEN:

ANNIE THERRIEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

PINARD J.

[1] This is an application for judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board (IRB), dated October 27, 2005, dismissing the appeal from the refusal to issue a permanent residence visa in the family class to Amine Karam, a citizen of Morocco.

The facts

[2] The relationship between the applicant and her husband began in July 2001. That was when the applicant and Amine Karam (the claimant) began exchanging messages via the Internet.

[3] In December 2001, Mr. Karam's brother, Abdel Karam, who was in Montréal, contacted the applicant. He met with her mother shortly before Easter 2002, that is just prior to March 31, 2002.

[4] Abdel Karam accompanied the applicant to Morocco on her trip to that country on July 20, 2002.

[5] On August 2, 2002, the spouses received an administrative certification for their marriage from the Moroccan authorities.

[6] On August 7, 2002, the Canadian authorities issued a certificate of competence allowing the applicant to marry.

[7] On August 8, 2002, the spouses were examined by a Moroccan physician in order to obtain the necessary medical certificate to marry.

[8] On August 17, 2002, the marriage ceremony took place. However, the marriage is dated August 29, 2002.

[9] On September 19, 2002, the applicant returned to Canada.

[10] On or about February 11, 2003, Amine Karam filed an application for permanent residence in the family class — an application sponsored by the applicant — at the Canadian Embassy in Paris.

[11] On October 20, 2003, the visa officer in Paris held an interview with the claimant.

[12] On October 22, 2003, the visa office rejected Amine Karam's application for permanent residence, a decision that resulted in the appeal to the IRB.

[13] The applicant returned to Morocco from July 30 to September 30, 2004.

[14] After the IRB had reserved its decision on the case, the applicant visited Morocco from September 16 to October 1, 2005.

[15] On October 27, 2005, the IRB dismissed the applicant's appeal.

Analysis

[16] The appeal to the IRB was an appeal *de novo*. According to this Court's jurisprudence, the onus was on the applicant, in her appeal to the IRB, to demonstrate on a balance of probabilities that her husband did not marry primarily for the purpose of obtaining a status or a privilege under the Act (*Horbas v. Minister of Employment and Immigration*, [1985] 2 F.C. 359).

[17] This Court will intervene only if the panel's findings are patently unreasonable. In *Dhillon v. Minister of Citizenship and Immigration*, 2004 FC 846, my colleague Noël J. wrote:

> [4] I agree with the Respondent that, as set out in *Tse v Canada (Secretary of State)* [1993] A.C.F. No. 1396, decisions of the Immigration Appeal Division of the Immigration and Refugee Board ("Board") should be upheld unless they are patently unreasonable. I also agree that where the Board has considered all of the relevant factors in deciding the Applicant's case, it is not up to this Court to re-weigh the evidence. . . .

[18] However, as this Court stated recently in *Minister of Citizenship and Immigration v. Savard*, 2006 FC 109, "the appropriate standard of review for questions of interpretation of law is correctness."

[19] According to the applicant, the IRB clearly misapprehended the evidence.

[20] The applicant criticizes the IRB, first, for noting her naiveté but without being willing to acknowledge that it might have wished to have this naiveté demonstrated in particular by her marriage. Concerning the simplicity of the marriage ceremony, the IRB, she alleges, thought this

was scheming by her husband, since “A discreet marriage can therefore be dissolved with less social impact,” despite the fact that she had clearly explained that she was the one who wanted the ceremony to be simple.

[21] In my opinion, the applicant is right to say that this is a speculative conclusion. The IRB gave no reason why it should not think it was the applicant’s request that the marriage ceremony be so simple.

[22] Furthermore, the IRB had no evidence before it concerning the conditions in which a marriage can be dissolved in Morocco, or the possible social impact of such dissolution, so this conclusion was also speculative.

[23] The IRB also wrote at paragraph 40 of its decision that “the panel agrees with the visa officer’s assessment regarding the appellant’s true plans to gain entry to Canada in order to continue his studies.” However, the applicant argues that there is no statement to this effect in the transcript of the hearing.

[24] The only reference in the file to the claimant’s desire to continue his studies appears in the notes of the immigration officer, where it is written: [TRANSLATION] “[t]he candidate lives with his parents in Casablanca and attends a computer school. He would like to continue his computer studies in Canada.” In my opinion, these two sentences do not allow the IRB to find

that the claimant is seeking access to Canada to continue his studies, and there is nothing else in the record to confirm this. This conclusion was also speculative.

[25] The applicant further criticizes the IRB for speaking of local customs and traditions without any documentation on these customs and traditions having been filed; in this regard, the IRB stated:

> [40] . . . A discreet marriage can therefore be dissolved with less social impact. When that is weighed against the local customs and traditions, it is not unreasonable to expect the appellant and the applicant to supply a plausible explanation to satisfy the panel that a simple wedding was a legitimate choice under the circumstances.

[26] The applicant is right. No document in the file refers to local customs and traditions in respect of marriage ceremonies, and the customs referred to in the testimony did not contradict the legitimacy of the relationship.

[27] Concerning Abdel, the applicant also objects to the following observations of the IRB:

> [34] First, the brother, Abdelouahed, was certainly more involved than the visa officer could have suspected during the interview on October 20, 2003. In fact, the appellant admitted that the brother wanted to meet her before any marriage was proposed. Mrs. Couture admitted that he visited the family often, but she did not say how he had managed to enter Canada. . . .
>
> [35] Abdel's visits certainly led the visa officer to reach the conclusion that the panel reached at the hearing—that the appellant is a very naive person who has been duped by her lover. . . .

[28] The IRB assumes a scenario according to which the claimant's brother sought to get to know the applicant and play the role of a matchmaker. In my opinion, this is a harsh interpretation that is unsupported by the evidence. Furthermore, the relationship between the applicant and the claimant had gone on for about five months before she met Abdel. I consider this to be another speculative conclusion, therefore.

[29] According to the applicant, at no time was any evidence adduced concerning Abdel, the claimant's brother, nor was he called as a witness. The reference to Abdel's file and to the visa officer's opinion on this matter appears clearly in the IRB's observations:

> [29] First, the applicant has a brother who made a patently unfounded refugee claim in order to obtain some kind of status in Canada. That brother took advantage of the time it took to process his refugee claim to marry a Canadian and thereby obtain status, given the inevitably negative outcome of his initial claim for refugee status.

[30] First, it is true that the claimant stated on October 20, 2003 that he had no problem of political persecution, but in my opinion that is far from sufficient to allow an inference as to Abdel's refugee claim made around 1997. There was no evidence before the IRB that would allow it to determine that Abdel had made a patently unfounded claim. In my opinion, this conclusion was purely speculative.

[31] Second, the applicant argues that the IRB could not make such a finding without having seen either the decision or Abdel's file. In her opinion, the IRB clearly relied on the notes of the visa officer and on the latter's opinion about Abdel Karam's file, which reveal:

> [Translation]
>
> The candidate's brother was sponsored by a Canadian citizen after applying for and being refused refugee status in Canada.
>
> The candidate admitted that he had no problems regarding political or other persecution in Morocco that would qualify him or members of his family as genuine refugees.

[32] The applicant also argues that, contrary to the reasons of the IRB, the claimant never said that "the ceremony was simple because of the time of year—it was *Ouhda* . . . ." Again, the applicant is right. The claimant never stated that Ouhda was the reason why the ceremony was simple.

[33] The applicant is also right when she argues that, contrary to paragraph 37 of the Board's reasons, where it stated that she "does not know how to explain how a purely virtual relationship via the Internet became so serious that she would travel to Morocco with all the documents required to complete the plan," she explained this relationship in detail.

[34] Furthermore, the IRB wrongly writes that "[t]he couple has no alternative plan to live together in Morocco." However, it appears that the claimant reported certain alternatives, among them that if he was refused, the applicant would go and live in Morocco.

[35] Finally, the applicant argues that the IRB did not consider all of the evidence, including the evidence filed on October 7, after the hearing of June 31, 2005.

[36] At paragraph 23 of the decision, the IRB reports a return trip made from July 30 to September 30, 2004, but does not mention the trip to Morocco made from September 6 to October 1, 2005. The applicant then filed about 19 pages illustrating in various ways the events of this trip to see her husband again. In its decision, the IRB says nothing about this trip or this claim; it does not even mention receiving this fresh evidence.

[37] The decision in *Cepeda-Gutierrez v. Canada (M.C.I.)*, 157 F.T.R. 35, [1998] F.C.J. No. 1425 (T.D.) (QL), is clear authority for the proposition that the IRB's failure to mention evidence in the reasons is not necessarily fatal to the decision. However, the duty to provide an explanation increases in proportion to the relevance of the evidence in question to the disputed facts.

[38] By the time of the IRB's decision, the applicant had visited the claimant three times, not once, and for a total duration of four and a half months, not two months. The applicant submits that this evidence should certainly have been sufficient, on a balance of probabilities, to allow that this was an authentic, intimate, stable and steady relationship.

[39] In my opinion, it is hard to know whether the IRB ignored this evidence or whether it accepted it but nevertheless considered it insufficient. However, I am of the opinion that this evidence is central and that the fact that the IRB mentioned the applicant's trip made in 2004, but not the one made in 2005, indicates that the Board probably overlooked this evidence.

Conclusion

[40] To my mind, these numerous errors committed by the IRB so impair the decision as a whole as to make it patently unreasonable, and warrant the intervention of this Court.

[41] Accordingly, the application for judicial review is allowed, the decision of the IRB, dated October 27, 2005, is set aside and the matter is referred back to the IRB for reconsideration and redetermination by a differently constituted panel.

"Yvon Pinard"
Judge

Ottawa, Ontario
September 25, 2006

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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Date: 20060925

Docket: IMM-7030-05

Ottawa, Ontario, the 25th day of September, 2006

Present: Mr. Justice Pinard

BETWEEN:

ANNIE THERRIEN

Applicant

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THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

The application for judicial review is allowed. The decision of the Immigration Appeal Division of the Immigration and Refugee Board (IRB), dated October 27, 2005, is set aside and the matter is referred back to the IRB for reconsideration and redetermination by a differently constituted panel.

"Yvon Pinard"

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