

Federal Court



Cour fédérale

Date: 20090508

Docket: IMM-2554-08

Citation: 2009 FC 479

Ottawa, Ontario, May 8, 2009

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

TROY ISAAC GLEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Troy Glen, born in Guyana in 1980, became a permanent resident of Canada in 2000. In July 2002 he met Ms. Allison Antoine, a citizen of Grenada, at their mutual workplace. They had a child together in 2004 and married in June 2005.

[2] Mr. Glen filed an application to sponsor Ms. Antoine. After interviewing Ms. Antoine in Grenada in May 2006, a visa officer rejected the application on the basis that she considered the marriage not to be genuine. Mr. Glen appealed the decision to the Immigration Appeal Division (IAD). In April 2008, the IAD dismissed the appeal and upheld the officer's finding that the

marriage was not genuine and had been entered into primarily for the purpose of securing status in Canada, contrary to s. 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (see Annex A).

[3] Mr. Glen argues that the IAD erred by failing to consider his explanations for some of the weaknesses the IAD identified in the evidence, and misconstrued some of that evidence. He submits that the IAD's decision was unreasonable and asks me to order a new hearing.

[4] I agree with Mr. Glen that the IAD's treatment of the evidence was unsatisfactory and, as a result, its conclusion was unreasonable. I must, therefore, allow this application for judicial review and order a new hearing.

[5] The sole question before me is whether the IAD's decision was reasonable.

I. The IAD's Decision

[6] The IAD noted the following areas of concern in the evidence:

- (i) There was no documentary evidence to support Mr. Glen's contention that he lived with Ms. Antoine four or five nights a week between 2002 and 2005 – no photographs, letters, witnesses. Further, Mr. Glen could not provide the family name of Ms. Antoine's roommate.

- (ii) Mr. Glen testified that he and Ms. Antoine were in an exclusive relationship beginning in 2002. However, six months after their daughter was born, Mr. Glen had a relationship with another woman in 2005, from which another child was born. Mr. Glen claimed that the latter relationship was no more than a one-night stand, although he pays the child's mother child support. The IAD suggested that Mr. Glen had failed to show any difference between the two relationships.
- (iii) According to phone records, communication between Mr. Glen and Ms. Antoine was brief. Letters and cards between them were all dated after the visa officer had rejected the sponsorship application, in part, because of an absence of such evidence.
- (iv) While Mr. Glen visited Ms. Antoine in 2006 and 2007, these visits, again, post-dated the visa officer's decision, in which it was noted that there had been an absence of visits.
- (v) In general, there was little evidence supporting a genuine relationship. There were only a few photographs of the wedding and one of the visits to Grenada.
- (vi) Mr. Glen provides some financial support to Ms. Antoine. The IAD stated that this money "could be for any number of reasons".
- (vii) The couple married just days before Ms. Antoine was removed from Canada. The IAD rejected Mr. Glen's assertion that this was a mere coincidence. Further, there

was nothing in the pre-removal interview notes about the upcoming marriage.

- (viii) Mr. Glen displayed a lack of knowledge about Ms. Antoine's life. He did not know the name of her employer or whether she worked full- or part-time.

[7] On the basis of these concerns, the IAD concluded that the marriage was not genuine and was entered into primarily to assist Ms. Antoine in gaining status in Canada. Accordingly, she could not be considered a "spouse" under s. 4 of the Regulations.

II. Is the IAD's Decision Reasonable?

[8] In his testimony before the IAD, Mr. Glen attempted to address a number of the concerns expressed by the IAD. He maintains that the IAD either ignored or misconstrued his evidence.

He asks me to consider the following:

- Mr. Glen explained to the IAD that he was no longer in contact with Ms. Antoine's roommates and, therefore, could not obtain evidence from them. Further, it was common for persons without status in Canada to keep confidential their family names. He knew that Ms. Antoine's roommate's name was Sherry Ann, but he never knew her family name.
- Mr. Glen stated that he had an ongoing relationship with Ms. Antoine while he merely had a one-night relationship with another woman. He presented evidence supporting the

existence of his relationship with Ms. Antoine. There was no basis for the IAD's suggestion that the two relationships were the same.

- The issue of the duration of phone calls was not raised in the hearing. It was addressed by counsel in final submissions. Accordingly, Mr. Glen did not have an opportunity to address the IAD's concern in this area. In any case, the evidence showed that Mr. Glen and Ms. Antoine spoke by telephone several times a week.
- While some of the evidence before the IAD arose after the visa officer's decision, the IAD had an obligation to consider and weigh it along with all the other evidence.
- The IAD's suggestion that the support payments to Ms. Antoine "could be for any number of reasons" was speculation. There was no basis for characterizing those payments as anything other than support for his wife and children.
- Mr. Glen never testified that the timing of the wedding was a mere coincidence. He said that the timing of the wedding was not determined by the date of Ms. Antoine's removal from Canada.
- Mr. Glen knew that Ms. Antoine worked in a clothing store. At the hearing, he was never asked the name of it.

[9] In my view, the IAD failed to consider Mr. Glen's explanations for many of the areas of concern identified by the IAD in its decision. Certainly, it was open to the IAD to question the cogency of those explanations. But it had a duty at least to consider them. Further, there were areas of Mr. Glen's testimony that were mischaracterized by the IAD.

[10] Accordingly, looking at its reasons as a whole, against the background of the evidence before it, I find that the IAD's decision does not meet the test of being intelligible, justified or transparent, as established by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47.

III. Conclusion and Disposition

[11] It appears that the IAD failed to take into account Mr. Glen's testimony in several areas where the IAD had concerns. In other areas, the IAD misconstrued the evidence. Accordingly, I must conclude that its decision was unreasonable. Mr. Glen is entitled to a new hearing before a different panel of the IAD. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is allowed and a new hearing is ordered.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex “A”

*Immigration and Refugee Protection
Regulations, SOR/2002-227*

Bad faith

4. For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.

*Règlements sur l’immigration et la protection
des réfugiés, DORS/2002-227*

Mauvaise foi

4. Pour l’application du présent règlement, l’étranger n’est pas considéré comme étant l’époux, le conjoint de fait, le partenaire conjugal ou l’enfant adoptif d’une personne si le mariage, la relation des conjoints de fait ou des partenaires conjugaux ou l’adoption n’est pas authentique et vise principalement l’acquisition d’un statut ou d’un privilège aux termes de la Loi.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2554-08

STYLE OF CAUSE: TROY ISAAC GLEN v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 13, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: May 8, 2009

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