Federal Court  Cour fédérale

Date: 20110325

Docket: IMM-5032-10

Citation: 2011 FC 368

Ottawa, Ontario, March 25, 2011

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

XIAO WEI GAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Applicant, Ms. Xiao Wei Gao, is a permanent residence of Canada, originally from China. Her husband, Mr. Shu Jin Liang, currently resides in the People's Republic of China. In 2007, the Applicant applied to sponsor Mr. Liang and his daughter to come to Canada. This application was rejected by a visa officer based on s. 4 of the *Immigration and Refugee Protection*

Regulations, SOR/2002-227 (the *Regulations*). The visa officer was not satisfied that the Applicant's marriage to Mr. Liang was genuine and not entered into primarily for the purpose of acquiring status under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA* or the *Act)*.

[2] The Applicant appealed this decision to the Immigration and Refugee Board, Immigration Appeal Division (IAD). In a decision dated August 11, 2010, the IAD dismissed the appeal.

[3] The Applicant seeks to quash the decision of the IAD on the basis that the IAD erred in its treatment of the evidence before it.

II. Legislative Scheme

[4] Pursuant to provisions of the *Act* and the *Regulations*, Canadian residents may sponsor their spouses (and other family members) to come to Canada as members of the "family class". However, s. 4 of the *Regulations* (in place at the time of the sponsorship application) states that a foreign national shall not be considered a spouse and therefore a member of the family class if the marriage is not genuine and is entered into primarily for the purpose of acquiring immigration status. The initial assessment of the relationship between a sponsoring resident and his or her spouse is carried out by a visa officer. If the application is denied, s. 63(1) of *IRPA* grants the sponsor a right of appeal to the IAD.

III. Standard of Review

[5] Assessments of applications for permanent residence under the family class, and genuineness of the marriage in particular, involve questions of mixed fact and law which are to be determined on a standard of reasonableness (see *Natt v Canada (Minister of Citizenship & Immigration)*, 2009 FC 238, 80 Imm LR (3d) 80 at paragraph 12; *Harris v Canada (Minister of Citizenship and Immigration)*, 2009 FC 932, 84 Imm LR (2d) 245 at paragraphs 21-24). On this standard, the Court will only intervene if the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] at paragraph 47).

IV. Analysis

[6] The IAD, in the case before me, concluded that the Applicant's relationship with Mr. Liang was: (1) not genuine; and (2) entered into for the primary purpose of acquiring status under the *Act*.

[7] The Applicant submits that the IAD erred by making unreasonable inferences and by finding contradictions in the Applicant's story that did not exist. I do not agree.

[8] It is trite law that the burden, on appeal, is on an applicant to provide adequate evidence to demonstrate that the marriage is genuine (see *Nabin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 200, [2008] FCJ No 250 (QL) at paragraph 7; *Tran v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1257, 214 FTR 245 at paragraph 6).

[9] This Court has held that it should not interfere with the IAD's assessment of credibility – since an oral hearing has been held and the IAD has had the advantage of hearing the witnesses – unless this Court can satisfy itself that the IAD based its conclusions on irrelevant considerations or that it ignored important evidence (*Strulovits v Canada (Minister of Citizenship and Immigration)*, 2009 FC 435, [2009] WDFL 4047 at paragraph 40; *Grewal v Canada (Minister of Citizenship and Immigration)*, 2003 FC 960, [2003] FCJ No 1223 (QL) at paragraph 9).

[10] In the present case, the IAD found that the Applicant did not testify in a clear or persuasive manner. The Applicant was not able to provide detailed answers during the hearing and these answers were sometimes contradictory. In addition, the IAD found that much of the evidence in this case, including most of the testimony of the witnesses in significant areas regarding their initial encounters and overall development of the relationship, lacked cogency. The IAD found that corroborative evidence was lacking in several specific instances. For example, the Applicant's testimony raised the following issues:

- no credible evidence was adduced to explain how the relationship progressed through their alleged phone communication, where it was admitted that Mr. Liang could not express himself well over the phone;

- no credible evidence was adduced to explain why there was no progression in the relationship of the parties since no reasonable efforts were made to explore ways to facilitate the Applicant's travel to China to visit her husband since the marriage;

- no credible evidence was adduced to explain why the wife had not taken active steps to try and integrate Mr. Liang into her family;

- the Applicant's credibility was undermined by the fact that she was allegedly able to call Mr. Liang on a phone number that he claimed he no longer used; and

- the Applicant's testimony lacked detail, was contradictory, or simply did not make sense.

[11] This led the IAD to the conclusion that the couple had not developed a foundation for their combined future lives together in the context of a relationship with a genuine spousal purpose.

[12] In its decision and as described above, the IAD gave examples of how the evidence lacked cogency, was not plausible, and where inadequate explanations were provided. This Court cannot look microscopically at the implausibility findings but should review the decision as a whole (*Lan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 169, [2010] FCJ No 202 (QL); *Chen v Canada (Minister of Citizenship and Immigration)*, 2009 FC 677, 84 Imm LR (3d) 112; *Ikhuiwu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 35, [2008] FCJ No 35 (QL)). In my view, the decision of the IAD was reasonable.

[13] The Applicant submits that the IAD misconstrued the evidence when it found that the Applicant and Mr. Liang made contradictory statements. Having read the transcript of the hearing before the IAD and the documentary record, I am satisfied that the IAD did not err. In respect of

each alleged erroneous finding, the Applicant does no more than provide an alternative interpretation of the evidence before the IAD.

[14] The Applicant focuses much of her argument on three findings made by the Board.

[15] The first allegedly erroneous contradiction relates to whether the Applicant and Mr. Liang ever discussed the possibility of sponsoring her parents. The Board, in its decision, stated that there was a contradiction in the testimony. The Applicant submits that there are no such contradictions in the transcript; when asked whether they had discussed sponsorship, both she and Mr. Liang answered "no". However, later in the transcript, Mr. Liang does acknowledge that he and the Applicant had discussed the future care of her parents. Contrary to the assertions of the Applicant, it was not unreasonable to find that comments made regarding the future care of the Applicant's parents contradicted comments made that denied discussing sponsoring her parents in the future. The IAD obviously found it improbable that a discussion of the future care of the Applicant's parents would not include a reference to their future sponsorship, since they currently reside in China. The conclusion that there was a contradiction is supported by the transcript.

[16] The second allegedly erroneous finding of the IAD concerned the relationship between the Applicant's parents and Mr. Liang. The Applicant testified that "my mother like my husband very much". In its reasons, the IAD states that, "this information is contradicted by [Mr. Liang] confirming that the [Applicant's] father and sister liked him, and her mother liked him less" [emphasis added]. The Applicant asserts that Mr. Liang never said that. It is true that Mr. Liang never uttered the exact words attributed to him. However, when asked specifically "whether the

mother, the father and/or the sister like you", Mr. Liang initially responded that the father and the sister liked him. Only after prompting from counsel did Mr. Liang respond that "everybody like[s] [him]". I acknowledge that the IAD may have taken liberty with the words used by Mr. Liang. Nevertheless, the omission of the mother from Mr. Liang's initial response and his somewhat lukewarm final response that "everybody like" could be seen as inconsistent with the Applicant's claim that her mother liked Mr. Liang "very much". Moreover, it must be observed that this was only one of a number of examples that supported the IAD's overall conclusion that the Applicant and Mr. Liang had not demonstrated the type of ties with other family members – including parents – which one would normally see in a genuine marriage.

[17] Finally, the Applicant asserts that the IAD's finding on Mr. Liang's inability to speak Mandarin is not supported by the record. With respect to language, the IAD appears to have used a failure of Mr. Liang to respond to a question at the hearing posed to him in Mandarin to support a conclusion that he had difficulty communicating with the Applicant. Having reviewed the transcript and the affidavit of the counsel who appeared before the IAD, I am satisfied that the IAD ought not to have concluded from that specific exchange that Mr. Liang was unable to understand Mandarin. The switch of language at the hearing from Cantonese to Mandarin was done abruptly and without any notice to Mr. Liang. His hesitation in responding in Mandarin was understandable in the situation. Nevertheless, there was other evidence of language difficulties that would tend to support the IAD's evaluation that there were communication issues between the Applicant and Mr. Liang. If there was an error, it is of no great moment with respect to the overall decision.

[18] In my view, all of the findings made by the IAD were open to it on the evidence. As a result, the decision, as a whole, falls within the realm of reasonable acceptable outcomes that are defensible in facts and law (*Dunsmuir*, paragraph 47).

[19] Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that :

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5032-10
STYLE OF CAUSE:	XIAO WEI GAO v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 21, 2011
REASONS FOR JUDGMENT:	SNIDER J.
DATED:	MARCH 25, 2011

APPEARANCES:

Lorne Waldman	FOR THE APPLICANT
Leila Jawando	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT