Federal Court  Cour fédérale

Date: 20120116

Docket: IMM-4154-11

Citation: 2012 FC 39

Ottawa, Ontario, January 16, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

JIAN HUA LIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision, dated May 26, 2011, by the Immigration Appeal Division (IAD) of the Immigration and Refugee Board of Canada (IRB). In that decision, the IAD dismissed the applicant's appeal of a decision of a Visa Officer refusing his application to sponsor his spouse for permanent residency. For the reasons that follow the application is granted.

Facts

[2] The applicant came to Canada from China in 1990 seeking refugee protection. His claim was refused; however, he was granted status in 1996. He sponsored his then wife but that marriage

ended in divorce in August 2006. The applicant subsequently re-married another Chinese citizen, Dan Wen Lin, a 44-year old mother of two. Her first marriage had also ended in divorce in 1996.

[3] The applicant's applications for sponsorship and permanent residency with respect to Dan Wen Lin were refused on August 21, 2008, the same day that the applicant and his wife attended at an interview at the visa post in Hong Kong. The Visa Officer found that the marriage fell within section 4.(1) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) (IRPR):

4. (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership	**4.** (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(*a*) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	*a*) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(*b*) is not genuine.	*b*) n'est pas authentique.

[4] The Visa Officer found that the applicant and his wife had entered into marriage primarily for the purpose of acquiring status or privilege under the *Immigration and Refugee Protection Act*, 2001, c. 27 (*IRPA*). The applicant appealed that decision to the IAD and the appeal was subsequently dismissed. It is this decision for which the applicant seeks judicial review.

Analysis

[5] According to the applicant, the IAD committed a reviewable error in rendering a decision which failed to meet the benchmark of reasonableness in accordance with the criteria set forth in the jurisprudence.

[6] The standard of review applicable to the adequacy of reasons is that of reasonableness. To meet that standard the reasons must communicate, with minimal cogency, the rationale for the findings and conclusions. The reasons must be transparent, meaning that the factual and legal analysis which underlies the conclusion or result must be apparent. This does not require that all arguments, jurisprudence and evidence be referenced but it does mean that the reasons, when read as whole and in the context of the record, demonstrate the reasonableness of the decision: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

[7] The reasons in issue do not meet these criteria. It is sufficient for the purposes of this decision to note but a few examples.

Example 1

[8] At paragraph 42 the IAD wrote:

> The panel has considered whether a couple would have to the extent that this couple has, if the marriage was not genuine. The panel must look to the evidence, on the balance of probabilities, for that answer. The Applicant and her children are those who stand to gain primarily from this impugned marriage. She has expressed an interest for her children to be educated in Canada. She has taken steps for her to benefit from her emigration to Canada by her application to assume custody of him. Counsel argues that the transfer began on October 8, 2006. That comment was launched well after the application. This

> might be so (albeit it comes from a self-serving source), but it does not address why the Applicant, as opposed to her ex- husband, brought the application since he allegedly had the challenges to raise his son. As well, this comment was stated well after the application; it was not the reason given in the November 28, 2006 application. To iterate, the Court remarked about opening a matter that had been resolved so long ago. That speaks to the primary purpose of the impugned marriage.

[9] All that can be determined from this paragraph is that the genuineness of the applicant's marriage is being examined, but the reasons supporting the findings cannot be discerned. The passage cannot be understood even when situated in the context of the pertinent exhibits.

Example 2

[10] At paragraph 41 of the decision the IAD writes:

> Of relevance is the fact that the Appellant admits that he had never bought that type of insurance before, even though he was married and had a child. He gives no credible or sufficiently cogent evidence about what motivated him to purchase insurance when he did. To iterate, the bank information are exact inquiry from the visa officer….

[11] Once again, it is impossible to discern what this finding is intended to mean, suggest, or infer. The link between the purchase of insurance and the question at hand, namely, the marriage, is not evident.

Example 3

[12] The same may be said of the words in the following passage:

> Separate from the credibility factor, there are factors that arise from the evidence at the appeal hearing. Having evaluated this evidence and notes its material relevance to the core issues (the two prong of the test), the panel finds on the balance of probabilities, the Appellant

> has not answered these concerns satisfactorily. This is not duplicitous at all. Most are different concerns from those raised by the visa officer. In addition, it evinces the couple's pattern of conduct and how far they will go toward their determination to gain entry to Canada as members of the family class. The panel ascribes negative weight to this as well.

[13] It is unclear what or who is being duplicitous, what relationship this has to the IAD's concerns, and to what is *negative weight* being given. To meet the standard of transparency, reasons must link, if not explicitly, then implicitly or by logical consequence or context, the conclusions to the evidence.

Example 4

[14] To conclude, the IAD also made findings of fact that fall within the scope of section 18.1(4)(d) of the *Federal Courts Act* (R.S.C., 1985, c. F-7) (*FCA*):

> Another fact that makes this arrangement suspect is that the Applicant claims that she had not had any involvement with a man since the dissolution of her marriage. Yet she meets a stranger on a tour, within a few days, she invited him to her home for dinner with her children and began cohabitating on December 1, 2006 (if she is to be believed), just before he is to return to Canada on December 4, 2006. This segues into another internal contradiction. The Appellant categorically denied that they had stayed together on that trip. He admits that he had invited her to go with him to Xiemen City where they spent two day [sic], but when asked if they stayed together he said they did not, although he paid, because they "were just friends". He "went to see her" on December 3 and he saw her on December 4 at noon; she saw him off at the airport. As well, the Applicant claims that early in the tour, she was aware the Appellant was from Canada.

[15] These are not the facts as found on the record and they entail no element of appreciation or evaluation. More than *a few days* passed before the dinner, indeed, it was 27 days. The facts are simply incorrect and in respect of a material matter.

[16] To the same effect, the record indicates that there were 15 telephone calls between the individuals in a two week period. However, in considering this evidence, the IAD wrote:

> The other curious aspect of this story is that the couple claim that they are in contact two to three times per week. What casts doubt on the credibility of the Applicant's story is that the telephone log the Appellant proffers to support their continued communication, indicates 11 contact between them, for the period March 9, 2010 and March 21, 2010. The Applicant is not clear about the date she had the miscarriage. This is concerning. This happened to her; it is reasonable to expect her and the Appellant to be able to give more detailed [sic] about this, if it did happen at all.

[17] The fact that the applicant underestimated the number of telephone calls he had with his wife does not, in this context, support a conclusion as to credibility.

Conclusion

[18] The Court has approached its review of the reasons in question with deference at the forefront of its analysis. Here, however, as the Court cannot understand why the IAD made its decision the outcome cannot be sustained as one which falls within the realm of reasonable outcomes.

[19] I note, in closing that the respondent made no effort to defend the decision. No effort was made to assess the decision against the standard of review or to put the decision in the context of supportive jurisprudence. Indeed, none was cited. Nor was any effort made to cobble together some parts of the decision that might, when read collectively, satisfy the standard of reasonableness. Neither was the Court directed to exhibits in the record which might have sustained the decision.

[20] The application is granted.

[21] No question for certification has been proposed and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Immigration Appeal Division. No question for certification has been proposed and the Court finds that none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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