Federal Court Cour fédérale

**Date: 20120207**

**Docket: IMM-5080-11**

**Citation: 2012 FC 168**

**Montréal, Quebec, February 7, 2012**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**ARKADY IDLIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

Overview

[1] The heartland of a case is its core substance. Does the overall picture ring true in its overall essence? True and complete disclosure of information is considered essential to the integrity of Canada's immigration system. Any fabrication or falsification of information is considered unacceptable and must bear its own consequences.

Introduction

[2] The applicant has submitted, per subsection 72(1) of the *Immigration and Protection Act* (IRPA), an application for leave and judicial review of a decision rendered by the Immigration Appeal Division (IAD) dismissing the applicant's appeal.

[3] The decision under analysis by this Court concluded that the applicant and his wife were in a non-genuine relationship, one fabricated for the primary purpose of obtaining immigration status (as per section 4 of the *Regulations* (IRPA).

[4] It is noted that the applicant had previously sponsored a spouse with whom he never intended to live in a bona fide, husband and wife relationship; this has also been taken into measured consideration as to the credibility of the applicant.

Analysis

[5] A number of factors are considered to determine whether a marriage is genuine or simply entered into for immigration purposes primarily. The weight given these factors is determined by circumstances specific to each case.

[6] These circumstances include the intention of the parties to the marriage, the duration of the relationship, the length of time the individuals spent together, the behaviour at the meeting, also the comportment of the couple during the engagement, at the marriage ceremony itself and subsequent to it, the extent of knowledge or information in regard to the respective other's past, degree or

intensity of contact and communication, financial support, if any, and understanding and/or knowledge in respect of responsibility for the care of children brought into the relationship, as well as knowledge and contact with the extended families of the respective partners and a knowledge of the daily life or routine of the respective “other”.

[7] In the refusal decision for sponsorship, the visa officer considered a number of factors which led to its conclusion:

(a) no clear documentary evidence of communications was in evidence for the period between 2000 and 2009;

(b) computer printouts of Skype communications did not give validity to explanations in respect of the name given by the sponsor for his Skype exchanges;

(c) no photos were in evidence of the applicant and his “spouse”, neither of the marriage, nor from where they had met. The photos in evidence did not demonstrate an account of the relationship;

(d) a hasty marriage took place three days after the arrival of the new “bride” who had come to Canada on a temporary visa; all of which had not been indicated on the application for a visa;

(e) that which is known is that the applicant had simply assisted as a business facilitator in the registration of a company for the new spouse;

(f) the applicant was not able to recall the date of the marriage;

(g) also other significant information discrepancies were noticed by the immigration officer between the application form of the applicant and his “spouse”;

(h) contradictions in the couple's versions of events occurred as to whether the couple had even spent time together in Greece or Turkey and, whether, they had even been to Egypt.

[8] The genuineness of a relationship and its purpose under the Act are considered factual in nature; and, are therefore reviewable on the standard of reasonableness (*Yadav v Canada (Minister of Citizenship and Immigration)*, 2010 FC 140 and *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 417): "The existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of fact and law are of utmost significance to the outcome" (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190, para 47).

[9] The title given to certain paragraphs does not change the actual outcome if the word "decision" is placed inappropriately prior to its chronological logical insertion, as does a paragraph which appears to be a non-sequiter, not change the essence or overall meaning of the decision when read in context.

[10] The application of the <u>new</u> section 4(1) of the Regulations of the IRPA is appropriate under the current circumstances.

[11] To dismiss the appeal, the IAD had to motivate its decision by explaining with coherent logic that the marriage was not genuine and that it was entered into to acquire status under the Act. This it did.

[12] It is significant to note that even if the IAD would have applied section 4 of the old regulations, the applicant's appeal would have been nevertheless dismissed (as per Justice Marshall Rothstein in *Rogerville v Canada (Public Service Commission Appeal Board),* 2001 FCA 142 at para 28; and, as per Justice Marc Nadon in *Jinadasa v Canada (Minister of Citizenship and Immigration)*, IMM-4691-97, [1998] FCJ No. 1219 at paras 3, 5 and 7, and in the last few paragraphs of that decision).

Conclusion

[13] For all of the above reasons, the application for judicial review is dismissed. No question of general importance for certification.

**JUDGMENT**

**THIS COURT ADJUDICATES that** the application for judicial review is dismissed. No question of general importance for certification.

"Michel M.J. Shore"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5080-11 |
| **STYLE OF CAUSE:** | ARKADY IDLIN and MCI |
| **PLACE OF HEARING:** | Montréal, Quebec |
| **DATE OF HEARING:** | February 7, 2012 |
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**APPEARANCES:**

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| Normand Lemyre | FOR THE RESPONDENT |

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