

Federal Court



Cour fédérale

Date: 20140919

Docket: IMM-3586-13

Citation: 2014 FC 902

Ottawa, Ontario, September 19, 2014

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

PARMINDER KAUR GILL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Parminder Kaur Gill wished to sponsor her spouse, a citizen of India, for permanent residence in Canada. The officer reviewing the application dismissed it on the grounds that, while the marriage was genuine, the couple had entered into it primarily for the purpose of obtaining status under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Therefore, Ms. Gill's husband could not be considered to be a spouse under the *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 4(1) (See Annex).

[2] Ms. Gill appealed the officer's decision to the Immigration Appeal Division. The IAD dismissed the appeal, agreeing with the officer's conclusion that the marriage was motivated primarily by a desire to obtain an immigration advantage.

[3] Ms. Gill argues that the IAD's decision was unreasonable because it failed to consider certain relevant factors and overlooked evidence in her favour. She asks me to set aside the IAD's decision and order another panel to reconsider her application.

[4] I agree with Ms. Gill that the IAD's decision was unreasonable. The IAD placed too much emphasis on the fact that her husband's parents are already resident in Canada, and on the family's immigration history. I must, therefore, allow this application for judicial review.

[5] The sole issue is whether the IAD's decision was unreasonable.

II. The IAD's Decision

[6] The IAD listed five factors that had caused the officer to reject Ms. Gill's application:

- Ms. Gill's husband's family is already in Canada, so he has a strong motivation to join them here. He had already tried to move to Canada by way of a student visa, which had been denied. He conceded that he had agreed to the arranged marriage to Ms. Gill because his parents wanted him to live near them in Canada.

- Ms. Gill's husband had not wished to get married prior to his parents' finding this match for him.
- After the wedding, the couple lived with his parents for two months and did not have a honeymoon.
- Relatives of Ms. Gill's husband had also married at about the same time, but their sponsorship applications were denied because they had relied on fraudulent documents.
- The receipt for the couple's wedding reception appeared to be fraudulent because the phone number on it did not exist.

[7] The IAD applied the approach set out in *Gill v Canada (MCI)*, 2012 FC 1522. It considered whether the couple entered into the relationship primarily for the purpose of obtaining status under IRPA, based on the intentions of one or both of them. It also considered the genuineness of the marriage based on a variety of factors, including compatibility, development of the relationship, mutual communication and knowledge, financial support, and family ties to Canada, and mutual communication and knowledge.

[8] The IAD found that some factors pointed to a genuine marriage – for example, their compatibility and the fact that there was a child of the marriage – but other circumstances indicated that the marriage was arranged and entered into primarily for immigration purposes. In particular, Ms. Gill's husband's parents wanted to facilitate their son's immigration to Canada. The fact that a fraudulent invoice was provided in support of the application, according to the IAD, showed that the couple's motives were suspect.

[9] Overall, therefore, the IAD was satisfied that the marriage was entered into primarily for immigration purposes.

III. Was the IAD's decision unreasonable?

[10] The Minister submits that the IAD's decision was reasonable, even though it did not refer to all of the evidence before it. Further, the IAD cited the main evidence and adequately explained the basis for its conclusion that the marriage was motivated by immigration purposes, notwithstanding the evidence that the marriage began as, and has continued over time to be, a genuine conjugal partnership.

[11] I disagree. In my view, the IAD unreasonably emphasized Ms. Gill's husband's family's motivations, as well as the family's immigration history. In doing so, the IAD arrived at an unreasonable conclusion regarding the primary purpose of the marriage.

[12] The IAD reasoned that Ms. Gill's husband's parents wanted their son to join them in Canada, so they arranged for him to marry a permanent resident. However, it neglected to take account of the fact that the parents spend a substantial portion of each year in India, which mitigates the so-called "pull factor" toward Canada. In addition, the parents' motivation is not necessarily the same as their son's.

[13] Further, the IAD deduced from the family's immigration history – showing that other family members were trying to immigrate to Canada, including by way of sponsorship applications – that Ms. Gill's husband shared those motivations. In my view, it was unfair to

attribute the alleged desires of other persons to Ms. Gill's husband, particularly where there were strong indications that the marriage was, indeed, genuine. The couple may well have been pleased with the immigration possibilities arising from the marriage, but that is far from saying that it was their primary motivation.

[14] Finally, the IAD relied on Ms. Gill's husband's statement to the officer in which he said he had agreed to the marriage because his parents wished him to live in Canada. However, the IAD failed to take account of the couple's testimony before it in which they clarified that the immigration advantages of the marriage were secondary to the genuine grounds for it. The hearing before the IAD was *de novo* and the evidence before it, not just the evidence before the officer, had to be considered as a whole (*Janjua v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1521 at para 12, and see also *El Assadi v. Canada (Citizenship and Immigration)*, 2014 FC 58 at para 21).

[15] It is clear that there are two distinct considerations involved in these kinds of cases – the genuineness of the marriage and the primary motivation for it. An applicant for permanent residence is not considered a spouse if the marriage is not genuine or if the motivation for it was primarily for an immigration purpose. But the two considerations are related (*Grabowski v Canada (MCI)*, 2011 FC 1488, at para 24). This means that the stronger the evidence regarding the genuineness of the marriage (and where there is a child involved, this is strong evidence on its own), the less likely it is that it was entered into primarily to obtain an immigration advantage (*Gill v MCI*, 2010 FC 122, at para 6-8). And *vice versa*. The more compelling the proof that the

couple was seeking immigration status, the more likely it will be that the marriage was not genuine.

[16] Here, there was strong evidence that the marriage was genuine – its duration, the fact that the couple had a child together, and their genuine compatibility. Conversely, the evidence of an immigration motive for the marriage was weak, attributed primarily to the desires of other family members, not those of the couple. On this evidence, I find that the IAD's decision was unreasonable, as it fell outside the range of defensible outcomes based on the facts and the law.

IV. Conclusion and Disposition

[17] The IAD's reliance on others' motivations for the marriage between Ms. Gill and her husband caused it to render an unreasonable decision regarding the primary purpose for the couple's genuine marriage. Accordingly, I must allow this application for judicial review and order another panel of the IAD to reconsider the application. Neither party proposed a question of genuine 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 the matter is referred back for reconsideration by another panel of the IAD; and
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

ANNEX

Immigration and Refugee Protection Regulations, SOR/2002-227, s 4(1)

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

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

(b) is not genuine.

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

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) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

b) n'est pas authentique.

FEDERAL COURT
SOLICITORS OF RECORD

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