

Federal Court



Cour fédérale

Date: 20150428

Docket: IMM-7710-13

Citation: 2015 FC 550

Ottawa, Ontario, April 28, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

CHAN YIU-CHUNG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered Orally from the Bench in Toronto, Ontario on March 26, 2015)

[1] Chan Yiu-Chung [the Applicant] has applied for judicial review of a Decision of the Immigration Appeal Division of the Immigration and Refugee Board [the IAD] dated November 13, 2013 wherein the IAD dismissed his appeal and confirmed an Immigration Officer's decision of April 8, 2011, not to issue a permanent residence visa to the Applicant's wife on the basis that the marriage is not genuine, and was entered into primarily for the purpose of acquiring status or

privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA]. The application is made pursuant to subsection 72(1) of the IRPA.

[2] The Applicant is a 56 year-old Canadian citizen. He was born in Hong Kong, became a permanent residence of Canada in 1979, and obtained his citizenship in 1985. He married his first wife in 1980 and they had three children. They divorced in 2005. The Applicant currently works as a caretaker at his sister's home near Toronto.

[3] The Applicant's wife is a 47 year-old citizen of China.

[4] In February 2009, the Applicant joined China Love, an internet dating site, where he noticed his wife's profile. He added her to his list of "favourites" and subsequently received a message asking him to chat. The two began corresponding by e-mails sent through the dating site. In June 2009, they exchanged phone numbers and began talking on the phone and through Skype.

[5] The Applicant proposed to his wife over Skype on September 20, 2009. He explained that he proposed because he had been alone for many years.

[6] In October 2009, the Applicant travelled to China. He and his wife were married on October 9, 2009, and he stayed in China until October 14, 2009. Since then, he has visited his wife once a year for approximately two weeks per year. His evidence is that he is not able to go

back to China more often because his sister is his boss, and he is needed to take care of her home and property.

[7] During his visits to China, the Applicant has met various members of his wife's family including her mother, sister, brother, sister-in-law and cousin. His wife has also met two of his brothers, as well as his friend who lives in China. The Applicant submitted copies of his phone bills from August 2009 – July 2013, which show regular calls between the Applicant and his wife.

[8] Two years after the marriage, the Applicant began to send his wife approximately \$500.00 per month.

[9] On November 18, 2009, the Applicant's wife applied for permanent residence as a member of the family class and on April 9, 2011, the application was refused. The husband appealed to the IAD and both the Applicant and wife testified at a hearing in Toronto on November, 2013. The wife's testimony was received by teleconference.

I. The IAD Decision

[10] The IAD found that there were a number of significant inconsistencies in their evidence, which cumulatively raised a serious doubt about the genuineness of the marriage, especially in light of the fact that the couple had spent such limited time together. The IAD concluded that the husband had not met his onus to demonstrate a genuine marriage. The IAD said "the panel finds that the evidence does not demonstrate on a balance of probabilities that there is a shared

relationship of some permanence, that there is interdependence between the husband and wife, that there are shared responsibilities or that there is a serious commitment.” The IAD’s Decision was based on the findings described below.

[11] The dating site is titled “Chinese women seeking single foreign men for dating, romance, marriage” and “Leading Matrimonial Service in Asia.” The wife’s profile was entirely in English, even though she does not understand English, and as early as June 13, 2009, the Applicant’s wife wrote in an e-mail that she was interested in moving to her future husband’s country after she married. However, at the hearing, she changed her evidence and testified that she did not consider moving until she married the Applicant in October 2009.

[12] The Applicant’s wife also agreed at the hearing that she was looking for a husband from abroad. However, her testimony about the website was not clear. At first, she said that the site was primarily to match men and women within China, but she later testified that she knew that the site was also matching Chinese people with partners abroad.

[13] There were also significant inconsistencies in their testimony. For example:

- i. the Applicant said that after their marriage, they spent the entire time at his friend’s place in China, while his wife testified that after their wedding, they moved to her home. When confronted with this contradiction, the Applicant explained that they stayed at his wife’s mother’s home if they stayed out late;

- ii. the Applicant testified that his wife works as a cosmetic sales person in a mall, but she testified that she sold cosmetic products to a beauty shop and did not go to the mall on a daily basis;
- iii. the Applicant testified that his wife lives with her mother and brother, and his son; that she supports her family and cares for her sick mother; and that her sister and brother will care for her mother if she leaves China. However, his wife testified that she lives with her mother and nephew. Her brother moved out four years ago. She also said that her mother does not require much care, and that her elder sister will care for her mother if she moves to Canada.

II. CONCLUSIONS

[14] The Applicant submits that the IAD failed to consider all the evidence including his financial support and letters and photos and telephone records showing interaction. However, in my view, the Decision makes it clear in paras. 27 to 29 that the IAD was aware of this evidence. Nevertheless, given that the Applicant spent only two weeks each year with his wife, the IAD found that the Applicant had not achieved a genuine marriage. In my view, this was a reasonable conclusion.

[15] The Applicant also says that the IAD's credibility findings were unreasonable. However, in my view, they were entirely reasonable and demonstrated that the Applicant and his wife failed to communicate on very basic matters such as her work and home life.

[16] Lastly, the Applicant says that the IAD unreasonably included that his wife was looking for a foreign husband so she could leave China. In my view, this conclusion was also reasonable given her evidence that her sister could care for her mother and her e-mail written four months before the marriage saying she would be interested in moving to another country.

[17] No question was posed for certification for appeal under section 74(d) of the IRPA.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7710-13

STYLE OF CAUSE: CHAN YIU-CHUNG v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: SIMPSON J.

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