Federal Court  Cour fédérale

Date: 20160414

Docket: IMM-3078-15

Citation: 2016 FC 414

Ottawa, Ontario, April 14, 2016

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PRITPAL SINGH SAROYA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada [IAD] dated June 9, 2015 [Decision], which determined that the Applicant had not discharged the onus upon him to demonstrate that his

marriage did not violate s 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

II. BACKGROUND

[2] The Applicant is a 43-year-old Canadian citizen who was born in Jalandhar, Punjab, India. He is a member of the Sikh faith. The Applicant lived in the United States from 1993 to 2003. There, he married his first wife in 1996. In 2002 they were divorced and the Applicant returned to India. In 2003 the Applicant married his second wife, a permanent residence of Canada, with whom he had a son in September 2004. The Applicant claims that the marriage ended under acrimonious circumstances in which his then wife made false allegations of abuse against him and his family. The Applicant and his second wife divorced in 2008.

[3] The Applicant traveled to India with his mother to look for a bride in September 2011. There, he met Ramandeep Kaur Saroya [Ramandeep] through an introduction by a family friend. Ramandeep and her family learned of the Applicant's two prior relationships. After making inquiries in their community, they became satisfied that despite the accusations made against him, the Applicant was not at fault for the breakdown of his second marriage. On October 30, 2011, the two married.

[4] The Applicant and Ramandeep filed a spousal sponsorship application. On September 10, 2013, Ramandeep was interviewed by a visa officer who, by way of a letter dated September 30, 2013, refused her application for permanent residence as a member of the family class on the grounds that the marriage had been entered into by her primarily for the purpose of

acquiring status or privilege under the Act or was not genuine. The reasons for the refusal included: the apparent haste of the wedding; a lack of compatibility between the Applicant and Ramandeep in areas such as age, education and marital history; Ramandeep's apparent lack of knowledge of the Applicant; Ramandeep's family's apparent lack of investigation into the Applicant's background, including his previous marriages; and the fact that the Applicant had not visited Ramandeep since their wedding.

[5] Following the refusal, the Applicant claims to have visited Ramandeep in India from December 2013 to January 2014, and again from February to March 2015.

[6] On June 9, 2015, the IAD denied the Applicant's appeal of the visa officer's decision on grounds that the Applicant had failed to demonstrate that his marriage did not violate the exclusionary provisions of s 4 of the Regulations.

III. DECISION UNDER REVIEW

[7] The IAD engaged in an assessment of the available evidence in order to determine whether the primary purpose of the marriage between the Applicant and Ramandeep was Ramandeep's immigration. The Decision acknowledged the need to consider the customs surrounding the practice of arranged marriages when engaging in such an analysis, making note of the evidence that confirmed the typical events that occur in arranged marriages in the Sikh culture.

[8] The Decision noted the evidence of ongoing communication between the couple (including each party's ability to recite the other's employment activities and education pursuits) and of the financial support provided by the Applicant to Ramandeep, concluding that it was consistent with a genuine marriage.

[9] Nevertheless, the IAD determined that there were material concerns regarding the parties' intentions, including the appearance of haste in the arrangement of the marriage and the lack of compatibility in areas such as age, education and marital history. At their hearing, Ramandeep clarified the details she was aware of regarding the Applicant's divorce arrangements with his second wife including the amount of support payment he was responsible for towards his son.

[10] However, the IAD held that it was unlikely that Ramandeep's family made reasonable efforts to obtain independent assurance of the Applicant's compatibility and suitability for their daughter. The only source of information to support the conclusion that the Applicant was honest and not at fault in his second marriage was the Applicant himself. The willingness to take the Applicant's word and illogical explanations regarding his previous relationships raised significant doubts about the parties' intentions in their marriage.

[11] Furthermore, the testimony and content of the hearing raised material concerns about the credibility of the Applicant and Ramandeep and the reliability of their evidence. For instance: while the Applicant testified that he is willing to accept his son if the son wants to see him in the future, Ramandeep testified that they have plans to pursue custody of the son once she arrives in Canada; the parties gave only generic and unbelievable suggestions that their daily phone

conversations (which they allege tend to last up to 1.5 or 2 hours) were romantic in nature; the couple's knowledge and description of the qualities they appreciate in each other was vague and generic; and there was inconsistent evidence regarding Ramandeep's illness which arose following the marriage.

[12] The IAD determined that even where generous allowances were made for the passage of time and faded memory, the evidence of the Applicant and Ramandeep failed to establish that their relationship was genuine. When combined, deficiencies in the evidence and lack of reasonable explanation for the match leave more than mere speculation that the primary purpose of the arrangement was immigration.

IV. ISSUE

[13] The Applicant submits that the following is at issue in this matter:

- Did the IAD base its decision on erroneous findings of fact made in a perverse or capricious manner and without regard to the material before it?

V. STANDARD OF REVIEW

[14] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the

reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[15] The parties agree and I concur that the standard of review applicable to the judicial review of an IAD decision and assessment of whether it made any erroneous findings in a perverse or capricious manner is reasonableness: *Khosa v Canada (Citizenship and Immigration)*, 2009 SCC 12 at para 58 [*Khosa*]; *Kitomi v Canada (Citizenship and Immigration)*, 2012 FC 1293 at para 37; *Singh v Canada (Citizenship and Immigration)*, 2002 FCT 347.

[16] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[17] The following provisions from the Act are relevant in this matter:

Application before entering Canada Visa et documents	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply	11 (1) L'étranger doit, préalablement à son entrée au

to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
Appeal allowed	**Fondement de l'appel**
67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,	67 (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :
(a) the decision appealed is wrong in law or fact or mixed law and fact;	a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;
(b) a principle of natural justice has not been observed; Or	b) il y a eu manquement à un principe de justice naturelle;
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

[18] The following provisions from the Regulations are relevant in this matter:

Bad faith	**Mauvaise foi**
4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner	4 (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de

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.

Family class

116 For the purposes of subsection 12(1) of the Act, the family class is hereby prescribed as a class of persons who may become permanent residents on the basis of the requirements of this Division.

Member

117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is

(a) the sponsor's spouse, common-law partner or conjugal partner;

…

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.

Catégorie

116 Pour l'application du paragraphe 12(1) de la Loi, la catégorie du regroupement familial est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents sur le fondement des exigences prévues à la présente section.

Regroupement familial

117 (1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :

a) son époux, conjoint de fait ou partenaire conjugal;

…

VII. ARGUMENTS

A. *Applicant*

[19] The Applicant submits that the IAD has a duty to consider all of the evidence and to take into account the parties' particular cultural and socio-political context, including the circumstances of an arranged marriage: *Nadasapillai v Canada (Citizenship and Immigration)*, 2015 FC 72. There was ample evidence of a genuine and committed marital relationship between the Applicant and Ramandeep and the Decision was grounded in unreasonable findings that were made without regard to the parties' particular cultural context.

[20] The IAD was not satisfied that Ramandeep's family had made a reasonable effort to assess the circumstances of the Applicant's prior marriages and divorces. The Applicant submits that this conclusion was unreasonable. The evidence indicates that Ramandeep's family was only concerned about the Applicant's second marriage because it had ended amidst allegations of abuse. Contrary to the IAD's account, the family did not simply accept the Applicant's explanations at face value; they consulted with third parties regarding his character and the propensity of his second ex-wife to lie prior to concluding that he was not at fault in the second marriage. The IAD's failure to consider this evidence warrants overturning the Decision, as it directly contradicts its findings on an issue of central importance.

[21] The Applicant clearly testified that, while he wanted a relationship with his son, he decided not to pursue custody out of concern for his son's wellbeing and not wanting to subject

him to a legal battle. The IAD's finding that it was illogical for the Applicant not to fight for custody if he was not at fault in his second marriage is unreasonable.

[22] As regards the compatibility between Ramandeep and the Applicant, the Applicant submits that the IAD had no reasonable basis for concluding that the parties failed to resolve compatibility concerns. The IAD provided no indication as to why it was not persuaded by the compelling evidence that the Applicant and Ramandeep were from the same religion and caste, spoke the same language, were of the same social status and had family origins in the same village.

[23] The Applicant further argues that concerns regarding the haste of the marriage are clearly unreasonably as the evidence establishes that discussions between the families regarding the possibility of marriage spanned approximately 7 or 8 months, which, within the context of the parties' culture, is not a fast timeline for an arranged marriage.

[24] The Applicant says that residents of his home village were indeed a reliable source of information. Even though he had left India in 1993, he left at the age of 21 and his community would have known him well enough to comment on his character. It was unreasonable for the IAD to conclude otherwise.

[25] It is reasonable to assume that the Applicant and Ramandeep would have developed a level of intimacy and romantic feelings for each other quickly. It was unreasonable for the IAD to conclude that the couple could not have had romantic telephone conversations. Similarly,

given that the question of whether someone dresses simply is highly subjective. The IAD had no basis for drawing a negative inference from its comparisons of his description of Ramandeep with photographs of her and her testimony that the couple enjoyed shopping together.

[26] The Applicant submits that the alleged credibility concerns relate to minor issues with very little relevance to the genuineness of the parties' relationship. The IAD placed too much emphasis on minutiae and marginalities without looking to the evidence that bore directly on the *bona fides* of the marital relationship: *Tamber v Canada (Citizenship and Immigration)*, 2008 FC 951.

B. *Respondent*

[27] The Respondent submits that the IAD was not required to mention every piece of evidence in its reasons as there is a presumption that a tribunal has considered all of the submissions that are put forward: *Lai v Canada (Citizenship and Immigration)*, 2005 FCA 125 at para 90.

[28] As regards the IAD's adverse findings of credibility, the Respondent submits that the IAD properly exercised its jurisdiction by providing examples of material inconsistencies in the evidence that supported its conclusions. The IAD noted the following: the contradictory and manufactured testimony about the circumstances of the breakdown of the Applicant's previous marriage; inconsistencies in the Applicant's plans for custody of his son from his previous marriage; and inconsistencies regarding the Applicant's knowledge of the dressing habits of Ramandeep. The IAD reasonably concluded that the cumulative effect of the evidentiary

inconsistencies raised doubts regarding the credibility of the Applicant and Ramandeep, leading to the conclusion that the marriage was for immigration purposes.

[29] The Respondent says that the Applicant has failed to demonstrate that the IAD did not exercise its discretion in good faith or that it relied on irrelevant or extraneous considerations. The Applicant has only raised questions of the weight of the evidence and it is well established that such matters are for the tribunal to decide: *Boulis v Minister of Manpower and Immigration*, (1992) 26 DLR (3d) 216 (SCC) at 21; *Hoang v Canada (Employment and Immigration)* (1990), 120 NR 193 (FCA).

[30] The Respondent notes that the test at s 4 of the Regulations is disjunctive and does not require a bad faith marriage be both primarily for immigration purposes and non-genuine. It is sufficient for the IAD to find that only one of these qualities is present.

[31] The IAD properly reviewed the testimony of the Applicant and Ramandeep and did not err in the questioning of the manner of Ramandeep's assessment of the Applicant's character and its conclusion that by not investigating and questioning his previous wives, she and her family failed to conduct a genuine, deep and independent investigation of the Applicant's marital history.

[32] The Respondent says that the IAD properly reviewed the submitted evidence and did not base its decision on any erroneous findings of fact. It then properly exercised its discretion and the Court should not interfere with its decision.

VIII. ANALYSIS

[33] The Applicant has raised a number of issues for review and I will deal with them in sequence. In general, the Applicant says that the Decision is based upon unreasonable findings that were made without regard to the evidence and without proper consideration of the particular cultural context in which this marriage took place.

A. *Inquiries*

[34] The Applicant says that the IAD's primary reason for refusing the appeal was that the IAD was not satisfied that Ramandeep's family had made adequate inquiries regarding the Applicant's background and previous relationships before agreeing to the marriage.

[35] A reading of the Decision reveals that this was a major concern but it is a little more nuanced than the Applicant asserts, and it was the cumulative effect of the deficiencies that eventually tipped the scales towards a negative conclusion:

> [17] Although some of the evidentiary deficiencies in this case may not independently show that the marriage is not genuine, the deficiencies accumulate to a degree that leaves material doubt about its purpose. As an additional comment, it was notable that the evidence of the appellant and applicant was notably absent words or phrases of an emotional and invested nature. They offered almost identical information about some things but without spontaneous additional personalized evidence to supplement their recollections. By itself that observation would not be sufficient to find that the marriage is not genuine: however, when considered in the context of all of the evidence, it is another cumulative consideration that weighs negatively in the overall assessment.

[36] As regards inquiries, the Applicant says that

> 23. …Contrary to the Panel's suggestion, they did not simply accept the Applicant's account of events at face value. Rather, they consulted various third parties before concluding that he had a good character and that he was not at fault in the breakdown of his second marriage.

[37] The Applicant points to the following:

> 24. At 02:33 of the hearing recording, counsel for the Applicant asked Ramandeep whether she and her family were concerned about the fact that the Applicant had been married twice before. Ramandeep replied:
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> > "We had known the family for a long time but we did do some investigating inquiry done about my husband and found out that he was innocent in both cases. He didn't have any bad habits and my family looked at his family and his qualities and based on these qualities they agreed to the marriage".
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> 25. At 02:40, counsel for the Applicant asked Ramandeep why she and her family believed that the Applicant's second wife's allegations of abuse were false. Ramandeep replied:
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> > "Because we had done some inquiry about his ex-wife before the marriage and the information that we got, because she also belonged to the same place in the Punjab, when they first made inquiries about her, they found that she had made the same complaint about her first husband, that they were beating her."
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> 26. At 03:01, counsel for the Minister asked Ramandeep how she and her family found out that the Applicant was not at fault in his previous two marriages. Ramandeep replied:
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> > "Some of it was mentioned through Charanjeet auntie. And somebody had it done through our relatives. And because my parents knew my in-laws from before my birth, they had known them from before my birth, and also about people from his village, Dehana (phonetic), they inquired from there. Because Pritpal's birthplace was Jalandhar but then he got educated in Delhi, so we had a few

> people who came from Delhi and we inquired from them as well".
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> Minister's counsel then asked who in Delhi had been contacted, and Ramandeep replied:
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> > "In Delhi, my maternal uncle came from there and he has friends over there. I don't know the name of that friend, but through them they made an inquiry. And in Jalandhar, there was an uncle, the name was Dilpak (phonetic) the uncle through him he inquired too" (…).
>
> 27. This evidence establishes that, contrary to the Panel's finding, Ramandeep's family consulted various independent sources before concluding that the Applicant was not at fault in his second marriage. In particular, Ramandeep testified that her family made inquiries among individuals who were from the same area as the Applicant's second wife and learned that she had made false allegations of abuse against her first husband as well. We submit that this information would reasonably lead Ramandeep's family to conclude that the Applicant's second wife was a liar and that her allegations against the Applicant were similarly false.
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> 28. Ramandeep also testified that her family gathered information about the Applicant from his home village as well as Delhi, where he had lived while he pursued his studies. Given this evidence, we submit that it was not open to the Panel to find that the Applicant was "the only real source of information about the prior marriages". We further submit that the Panel's failure to consider this evidence - which directly contradicted its findings on an issue of central importance - constitutes a reviewable error which, in and of itself, warrants overturning the decision.

[38] The Applicant's list of sources who were consulted misses the point. Neither the Applicant nor Ramandeep make it clear how any of the people consulted could have known anything about the Applicant's second marriage. He left India in 1993 and lived in the United States from 1993 until November 2003, was married there from 1996 to 2000, and was divorced in 2002. The Applicant landed in Canada in 2004, but went through a second marriage in December 2003 in India and then moved to Canada with his second wife. That marriage resulted

in a son who was born in September 2004 before it ended acrimoniously and the divorce was completed in 2008. The IAD concluded, with good reason, that although the Applicant and Ramandeep refer to checks and inquiries by independent parties, this did not really occur and, in the end, the Applicant's account of his past was simply accepted at face value:

> [15] What remains lacking on a balance of probabilities is that the applicant's family made reasonable efforts to obtain independent assurance of the appellant's compatibility and suitability. Examples include the following:
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> a. The appellant and applicant both testified that enquiries were made by the applicant's family to find out what had happened in his prior marriages but when the evidence is examined closely the only real source of information about the prior marriages is the appellant. It was not demonstrated on a balance of probabilities that independent sources of information were used to arrive at the conclusion that the appellant was honest and not at fault.
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> b. The applicant testified at some length about the enquiries that her family made in order to be satisfied that the appellant was not at fault and that it was not the appellant but his spouses who caused the divorces. She had told the visa officer that a reason for the first marriage breakdown was because the appellant's first wife smoked. At the IAD hearing she added that this first spouse used heavy illegal drugs and did not want children and appellant gave the same testimony at the IAD hearing. That evidence was, on a balance of probabilities, manufactured for the benefit of this appeal because both of them gave the same evidence but no such information was offered by the applicant during her interview when it would have been reasonable to do so. Even allowing for nervousness, heavy drug use and disagreement about children are more striking characteristics than simply smoking and the failure to mention those as material reasons for divorce is notable. Furthermore, the appellant did not know why the applicant had married this woman who was not of similar cultural background. This evidence left doubts about the credibility of the couple and about the applicant's actual knowledge of the appellant at the interview and, arguably, before agreeing to the match.

c. The circumstances of the second marriage and divorce are also important in terms of compatibility and suitability because, according to the appellant, his second wife left his family home in circumstances that involved the police and allegations of abuse against her by the appellant and his family. It is reasonable that the applicant and her family would seek assurances that the allegations of abuse by his second wife were not well-founded. The appellant testified that in April 2005 his wife called the police and alleged that she was being abused by himself and his family but that after investigation the police found no basis to lay any charges against him or his family. However, he testified that he has not had· any contact with his child since then because his wife would only permit him to visit with their son if he was supervised by either his wife or his wife's sister, arrangements that he was not willing to accept. He testified that he did not fight for custody because by the time the divorce agreement was being finalized his son was 2.5 years old and a stranger given they had not seen each other since April 2005 when the child was six months old. He suggested, somewhat unclearly, about being concerned of frightening his son. The applicant confirmed that she and her family were given this information before agreeing to the match, that they appreciated the appellant's honesty and were satisfied about his suitability because they knew he was not at fault in his previous marriage breakdown.

d. It is not reasonable that the applicant and her family would simply accept the appellant's account of events and his relatively illogical explanations about such serious matters. His ex-wife has sole custody of their child, he has not seen his son since the event involving the police, and he neither sought custody nor pursued any access. Those are illogical outcomes if the appellant is to be believed that he was not at fault, wants to have children, and that he wants to see and have relationship with his son. It is reasonable to expect that the applicant and her family, when presented with that information, would do some additional and independent investigation before agreeing to a marriage. Their willingness to take the appellant's word for it that he was not at fault and to accept his illogical explanation for why he did not have custody of or access to his own son raises substantial doubts about their intentions in the marriage.

> e. Reasonable explanation was not provided for the relative haste between meeting and marriage or how that time afforded opportunity to acquire sufficient background information. The couple met and agreed to the proposal all on the same day and were married within the same month. Both of them testified that they relied substantially on the information given to them by the mutual family friend but the source of her information about the appellant is mainly the appellant himself. They referred to historic connection through their grandmothers but the appellant left India in 1993 so villagers and the family acquaintance would have little knowledge of positive characteristics and life events since leaving except what he disclosed himself. Furthermore, the applicant had less information that [*sic*] what might reasonably be expected if independent background checks were conducted, as previously noted.

[39] The Applicant says that Ramandeep did give evidence of independent consultation. However, she only testified as follows about the Applicant's second wife:

> PRESIDING MEMBER: How do you know she was lying?
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> …
>
> A Because we have done some inquiry about his ex-wife too before the marriage and information we gathered was that because she also belonged to the same place in Punjab and when they inquired information about her was that she has made the same complaint about her first husband, that they were beating her.

[40] In my view, this evidence is not clear enough as to who was consulted and why they were in a position to provide reliable information about the Applicant's own behaviour in his second marriage. The fact that the Applicant's second wife may have made the same complaint about her first husband is not evidence about the Applicant's conduct or behaviour towards his second wife. This evidence suggests that Ramandeep and her family were not prepared to go far beyond

the Applicant's own account, and it does not displace the IAD's general finding that he was the real source of the information.

[41] Before the Court in this application, the Applicant has not shown that the IAD was unreasonable in these conclusions. He has not shown how the alleged independent sources who are cited were able to corroborate his own version of his second marriage. How could villagers and family acquaintances have any real knowledge of what happened in the Applicant's prior marriages? And in a context where compatibility, suitability and propriety are so important it has to raise doubts about whether the marriage to Ramandeep did not require the usual checks because it was entered into for immigration purposes. The concerns of the IAD regarding these matters were not unreasonable.

B. *The Applicant's Son*

[42] The Applicant complains as follows:

> 29. Another reason why the Panel did not believe that Ramandeep's family had made adequate inquiries into the Applicant's background was that the Applicant's explanations regarding his son were "illogical" (Reasons at para 15(d)). According to the evidence, although the Applicant wanted a relationship with his son, he did not fight for custody or access because the breakdown in his relationship with the child's mother, the Applicant's second wife, had been highly acrimonious. In addition to making false allegations of abuse against the Applicant and his family, his second wife made it clear that she would do whatever was necessary to prevent him from having a relationship with their son. The Applicant testified that he did not fight the matter in court because he did not want to negatively affect his son, and instead decided to wait until the child was older before seeking a relationship with him.
>
> 30. The Panel stated that the Applicant's decision not to fight for custody was "illogical" given his testimony that he was not at

> fault in his second marriage, that he wanted to have children and that he wanted to have a relationship with his son. The Applicant submits that this determination is unreasonable as he clearly testified that although he wanted a relationship with his son, he decided not to pursue custody out of concern for his son's wellbeing. It is completely understandable that he did not want to harm his son by subjecting him to what would certainly have been a hostile and potentially drawn-out legal battle.
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> 31. Moreover, the Panel's comment that the Applicant's decision to fight for custody was inconsistent with his testimony that he was not at fault in the marriage is entirely unfounded. This comment implies that a parent would only lose contact with his/her child if s/he was at fault, which is clearly untrue.

[43] These arguments somewhat misread the Decision. The IAD's point is that the Applicant's explanation about not wishing to frighten his son is not a clear explanation for his not pursuing custody (para 15(c)), so that it was not reasonable for the family to simply accept the Applicant's account of events. The Applicant said he wants to have children and that he wants to see and have a relationship with his son. And yet he says he has not sought a relationship because he does not wish to frighten his son. All the IAD is saying is that this doesn't make clear what went on in his second marriage, and it was unreasonable for the family to just accept the Applicant's account on this basis if they were truly concerned about suitability, compatibility and propriety. I see nothing unreasonable in this finding.

C. *Compatibility*

[44] The Applicant argues as follows on this issue:

> 32. The Panel also stated in the Reasons that the visa officer's concerns regarding the "lack of compatibility" between Ramandeep and the Applicant had "not been adequately resolved" (Reasons at para 13). However, the Panel failed to make any negative findings with respect to the parties' compatibility. In fact,

> the Panel explicitly acknowledged the evidence that the spouses were from the same religion and caste, spoke the same language, were of the same social status considering that their fathers had held similar government positions, and had family origins in the same village through their grandmothers (Reasons at para 13). The Panel provided no indication why it was not persuaded by this compelling evidence of compatibility. The Applicant therefore submits that the Panel had no reasonable basis for concluding that the parties had failed to resolve the officer's compatibility concerns.

[45] The IAD refers to compatibility concerns in paras 13 and 14 of the Decision:

> [13] The evidence as described and summarized above is consistent with a marriage that is genuine and that was not primarily for the purpose of immigration. However, there is material evidence in this case that raises concerns about the underlying intentions of the parties. The visa officer was concerned about an appearance of haste in this arrangement and lack of compatibility in significant areas such as age, education and marital history and those concerns have not been adequately resolved. The appellant and applicant both referred to the importance of compatibilities such as culture, language and social status, pointing out that they were from the same religion and caste. They testified that both of their fathers had held similar government positions as draftsman and identified the significance of having family origins in the same village through their grandmothers. Their testimony was that the appellant's marital history was considered but satisfactorily addressed because the appellant was not at fault in the marriage breakdowns. I acknowledge the appellant's argument that the visa officer relied on an assessment of compatibilities that was not grounded in objective evidence but disagree because, from their own testimony, compatibility and suitability were important features that were allegedly assessed by the families before agreeing to the match.
>
> [14] At the IAD hearing, the applicant clarified what she knew about the divorce agreement regarding the appellant's second spouse including the amount of support payment for the appellant's son. I find that any difference between her information to the visa officer and the divorce agreement is not material. It was also reasonably confirmed that the simple fact of prior marriages is not culturally barred. Both the appellant and the applicant testified that divorce is not as frowned upon as it once was in their culture. However, both asserted that the appellant being previously married

> was not a problem because the applicant and her family knew that he was not at fault in his prior marriage breakdowns. From the testimony provided, it is evident that the applicant's family wanted to assess the circumstances of the prior marriages and divorces before agreeing to the match. Divorce may not be a barrier to genuine marriage but the circumstances of a prior marriage and divorce were a relevant consideration when the applicant's family was assessing compatibility and suitability.

[46] Once again, however, this brings the IAD back to the failure of the family to conduct fully independent inquiries so that compatibility could be truly assessed. The negative finding is that such inquiries were not made so that compatibility – which the Applicant and Ramandeep both said was very important – was never really assessed. There is nothing unreasonable about the IAD's conclusions on this point.

D. *Haste*

[47] The Applicant puts forward the following argument:

> 33. Another reason why the Panel refused the appeal was that a "reasonable explanation was not provided for the relative haste between meeting and marriage or how that time afforded opportunity to acquire sufficient background information". The Panel determined that the marriage was conducted in haste because "the couple met and agreed to the proposal all on the same day and were married within the same month" (para 15(e)). The Applicant submits that this finding is clearly unreasonable because the evidence established that discussions between the families regarding the possibility of marriage spanned from March or April 2011 until October 2011, which is approximately 7 or 8 months. In concluding that this timeframe was hasty, the Panel failed to consider that within the context of the parties' culture, this would not be considered a fast timeline for arranging a marriage. For comparison, in *Nadasapillai*, the spouses' wedding took place 40 days after their first introduction and 10 days after their first in-person meeting. Justice Diner held that this timeline, which is considerably shorter than the timeline in the present case, did not reasonably support a conclusion that the marriage was conducted

> in haste. The Applicant thus submits that the Panel's determination regarding the alleged "haste" of this marriage was unreasonable and cannot stand.

[48] The Applicant is quoting the words from para 15(e) of the Decision out of context. The IAD's point is that, in terms of their personal time together, there was insufficient time to establish credibility and acquire sufficient background information to ensure that the Applicant was a compatible match for Ramandeep. The reasons they said they did not require more time was because they were able to rely on other sources. But the Applicant could not show how these other sources would have been able to provide the compatibility assurances they both say were important. It is again the lack of independent checks that renders their personal time together insufficient to ascertain if there was real compatibility. There is nothing unreasonable in the IAD's reasoning and findings on this point.

E. *Other Issues*

[49] The Applicant raises other instances where he feels the IAD was dealing with "Minutiae and Marginalities." I agree with the Applicant that these findings are not sustainable or reasonable:

a) There is no incompatibility between the Applicant saying he is willing to accept his son if the son wants to see him in the future and Ramandeep saying that they want to obtain custody when she arrives in Canada. Seeing the son and seeking custody are different things and/or the son's wishes may well be part of how, why and when the couple will seek custody;

b) The IAD's finding that "romantic talk" is unusual in a marriage that is arranged has no evidence to support it and this couple speak to each other every day. The IAD is playing the expert on romance when it says:

> While romantic interest may develop over time, the earlier conversations between them would not reasonably be such as described.

c) There is no inconsistency between the Applicant's appreciating that Ramandeep was dressed simply and without adornment when he first met her and later photographs and descriptions about going shopping and buying clothes. It is telling to look at the passages in the transcript where this alleged inconsistency is supposed to have occurred:

> A I -- when I -- when I was -- started looking or tell, maybe 20 -- 2009, December 2009 I think was the last time I contacted my ex-wife asking her about – to let me see my child, which she won't budge. And then I stated the criterias [*sic*] I was looking for, that she should be kind-hearted, my future wife should be kind-hearted. She should be in a noble profession and money shouldn't be her -- shouldn't be her first priority. And I would say you can find those in a simple person only. This person living a simple lifestyle would -- would be -- would match all these criterias [*sic*] or the kind of person I was looking for. And I found that in my current wife.
>
> Q And when you're saying that she's a simple person, can you define that more?
>
> A The dress she was wearing, there was no makeup, she was not wearing any jewellery, no flashy shoes or no -- no flashy car they travelled in. That -- and (indiscernible) it's some kind of hair or the dress that -- that you guys are wearing, or that the girls are wearing. Or, I mean, the way she talked. It was – it all (indiscernible) to (indiscernible).
>
> Q So she never wears jewellery and she never has makeup, doesn't wear shiny shoes.
>
> A No, I didn't say that. I said she was not wearing jewellery or shoes when she came to see me first day. She doesn't wear… I -- when we were staying in Delhi we were going… I would ask her to wear something and she would say no, she doesn't want to. She -- she would only do that after -- if and after I request her. It's not safe to wear jewellery in Delhi as well. But even she has – she has three or four set. She would never wear unless I ask her to. I mean don't get me wrong. She does like to dress up but only on special occasions.
>
> PRESIDING MEMBER: I can't help but ask or let you know it seems a little incongruous to talk about "she's simple, she

> doesn't like makeup" and all of that and yet she's taking a beautician course.
>
> A That's not for jewellery but --
>
> PRESIDING MEMBER: I know; that's for makeup.
>
> A She has to do her – she has to dye hair because her hair are going dark and she feels embarrassed.
>
> PRESIDING MEMBER: Some of us understand that.

There is nothing vague or generic or inconsistent about this testimony.

d) Any inconsistencies in the details about Ramandeep's illness following the marriage are reasonably explainable by their having to live apart. Once again, the IAD relies upon generalities of its own making without assessing the conditions under which this couple presently lead their lives:

> It is reasonable to expect that ongoing medical issues for one of the partners in a marriage would be a topic discussed and of concern to both. It is reasonable to expect that they would have greater and more similar knowledge about her condition.

Both explained the honeymoon situation consistently and the difficulties associated with the diagnosis. They also both said that Ramandeep has recurring problems with skin eruptions. The Applicant said that they occur on her head as well as her arms, but Ramandeep said she gets a rash on her arms. This discrepancy is far too microscopic to support an inconsistency in testimony.

[50] The IAD made it clear that its negative decision was based upon cumulative deficiencies. My finding that some of those deficiencies are not supported by the evidence means that the Court cannot say whether the Decision would have been negative if these unreasonable findings had not been made. This means that this matter must go back for reconsideration. See *Jung v Canada (Citizenship and Immigration)*, 2014 FC 275; *Huerta v Canada (Citizenship and Immigration)*, 2008 FC 586 at para 21; *Igbo v Canada (Citizenship and Immigration)*, 2009 FC 305 at para 23.

[51] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is referred back for reconsideration by a differently constituted IAD;

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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