

Federal Court



Cour fédérale

Date: 20160513

Docket: IMM-4470-15

Citation: 2016 FC 540

Ottawa, Ontario, May 13, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

LI JUN YU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada (IAD) to uphold an immigration visa officer's (the Officer) decision. The decision refused the sponsored application for permanent residence in Canada of Min Teng from China, on the grounds that the marriage entered into by

the Applicant and Ms. Teng is not genuine or was entered into for immigration purposes under subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR 2002-227 (Regulations).

II. Background

[1] The Applicant is a 26 year-old male born in Fujjian Province, China. He became a permanent resident in August 1998 and obtained Canadian citizenship in or around 2003.

[2] In October 2009, the Applicant travelled to China with his mother who introduced the Applicant to several different women. One of those women was Min Teng. She married the Applicant in July 2011.

[3] In September 2012, the Applicant submitted a spousal sponsorship application. They were interviewed by the Officer at the Canadian Consulate General in Hong Kong in April 2013. The Applicant's sponsorship application was denied soon after.

[4] On August 31, 2015, the IAD dismissed the Applicant's appeal of the immigration officer's decision to refuse Ms. Teng's sponsorship application.

[5] The IAD found the following notable contradictions and inconsistencies in the couple's testimony:

- a) The Applicant testified that he typed his wife's sponsorship application sponsored spouse questionnaire. The questionnaire states that the couple's mothers were neighbours and that Ms. Teng was born in the same town as the Applicant. However, when cross-examined, the Applicant denied knowing Ms. Teng as a child. He stated that Ms. Teng was raised by her maternal grandparents. He eventually admitted to seeing Ms. Teng in the village as a child, but maintained that he had never met her.
- b) Ms. Teng testified that she had always lived with and had been cared for by her biological parents and that she was never the Applicant's neighbour. These statements were contradicted by the Applicant's mother, who testified that Ms. Teng lived with her adoptive parents.
- c) Ms. Teng added an addendum to her sponsorship application which stated that she met the Applicant for the first time at her aunt's house. This account was contradicted by the Applicant's mother who identified another person's home as the place of the first encounter. This person did not even live in the same village as Ms. Teng's aunt.
- d) The IAD noted that the couple contradicted each other regarding what Ms. Teng did since 2010. Ms. Teng had told the Officer that she stopped attending school in 2010 to stay at home and take care of her grandmother. The Applicant stated his wife was working at a convenience store before her grandmother died.

[6] The IAD also determined that as a neutral assessor, the Officer's CAIP notes were a reliable source regarding Ms. Teng's explanations as to why she brought her parents' DNA test results to the interview. The Officer's CAIPS notes indicate that Ms. Teng obtained a DNA report to prove her relation to her biological parents so that her biological parents could join her in Canada. The Officer interpreted this statement as an indicator that the marriage was entered into primarily for immigration purposes. Ms. Teng and the Applicant denied this version of events. The Applicant claimed that his wife told the Officer that she brought the DNA results to

facilitate a background check of her relatives so that her parents could visit her in Canada. The Applicant denies that Ms. Teng told the Officer that she is interested in sponsoring them. The IAD found that these inconsistent versions of events support its finding that the marriage was entered into primarily for Ms. Teng to obtain status under the *Immigration and Refugee Protection Act, SC 2001 c 27* (the Act).

[7] In addition, the IAD found that it was implausible that the Applicant and Ms. Teng did not talk to each other during the first encounter while sitting in the same room.

[8] As a result of the abovementioned contradictions, inconsistencies, and implausibilities, the IAD upheld the Officer's decision and found that on a balance of probabilities, the marriage is not genuine and the primary reason for Ms. Teng marrying the Applicant was for the purpose of acquiring status in Canada under the Act.

[9] The Applicant argues that the IAD erred by engaging in a microscopic examination of the evidence, and by focusing on negative factors without taking into account the evidence supporting a positive decision. The Applicant also submits that the IAD erred by applying its own cultural presumptions about reasonable behaviour.

III. Issue and Standard of Review

[10] In my view, the issue in this judicial review is to determine whether the IAD committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act, RSC (1985), c F-7*.

[11] When reviewing findings of fact made in the context of assessing if a marriage is genuine, the reasonableness standard applies (*Dudhnath v Canada (Citizenship and Immigration)*, 2009 FC 386, at para 15; *Barm v Canada (Citizenship and Immigration)*, 2008 FC 893 [*Barm*], at para 11; *Rosa v Canada (Citizenship and Immigration)*, 2007 FC 117, at para 23). The IAD's findings must be afforded a significant degree of deference by the reviewing Court since the IAD is in the best position to assess credibility (*Bielecki v Canada (Citizenship and Immigration)*, 2008 FC 442, at para 23).

IV. Analysis

[12] As stated above, it is trite law that credibility findings made by the IAD are to be afforded a significant degree of deference. The IAD is in the best position to assess credibility since it has the opportunity to hear and see the Applicant give evidence in an oral hearing (*Barm*, at para 11). As such, the weight to be assigned to that evidence is also a matter for the IAD to determine (*Sanichara v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1015, at para 20, 276 FTR 190 [*Sanichara*]). As long as the conclusions and inferences drawn by the IAD are reasonably open to it on the record, there is no basis for interfering with its decision (*Sanichara*, at para 20).

[13] The IAD is responsible for deciding the impact of the inconsistencies on the overall credibility of the couple (*Thach v Canada (Citizenship and Immigration)*, 2008 FC 658, at para 22 [*Thach*]). As Justice Lagacé explained in *Thach*:

[30] The IAD had to decide what evidence to accept and believe and what evidence not to accept and disbelieve. This is the choice of any tribunal. The IAD had to analyse, appreciate, and weigh the evidence before him, and this was his role. It is not the role of this Court to go through the same exercise in order to substitute its own conclusions to those of the IAD.

[31] The applicant insists that the IAD erred in ignoring in its decision his evidence. First it is settled law that unless there is clear evidence otherwise, there is a presumption that the tribunal considered all the evidence that was put before it (*Buttar v. Canada (Minister of Citizenship & Immigration)*, 2006 FC 1281 (F.C.), at paragraphs 29-30) [...].

[32] In fact, what the applicant has done in his memorandum and his oral argument was to pinpoint to the attention of this Court many elements of his proof, such as the explanations given to excuse certain inconsistencies in his evidence, in order to reverse the credibility findings. Doing so, he invites more or less this Court, on the basis of certain element of his evidence, to substitute its own conclusion to those of the IAD. This Court will resist this invitation since it is not its role to do so.

[14] The role of the Court on judicial review is to determine whether the decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47 [2008] 1 SCR 190). Thus, where credibility is concerned, a decision to refuse a sponsorship application is unreasonable where “the officer has ignored significant evidence of a positive, genuine relationship by unduly focusing on minor inconsistencies” (*Amayeanvbo v Canada (Citizenship and Immigration)*, 2011 FC 621, at para 45; *Joseph v Canada (Citizenship and Immigration)*, 2011 FC 1515, at para 21). Moreover, where an oral hearing has been held, more deference is accorded to the credibility findings (*Sanichara*, at para 20).

[15] The Applicant relied on *Apaza v Canada (Citizenship and Immigration)*, 2006 FC 313, to support his submissions that the IAD erred by failing to take into account evidence demonstrating the genuineness of the marriage such as the number of trips the Applicant made to China and that the couple cohabited during these trips. The Applicant also relied on *Siev v Canada (Minister of Citizenship and Immigration)*, 2005 FC 736, to argue that the IAD erred by failing to inquire about the couple's sexual history and personal behaviour. While I note that the IAD panel member did inquire about the couple's sexual history and personal behaviour as can be seen from the transcript of the interview found in the record, in my view, the Applicant's submissions merely invite the Court to look at the many elements of proof in order to substitute its own conclusion for that of the IAD. In short, the Applicant is simply requesting the Court to reweigh evidence. This is not the role of the Court. As the Applicant has failed to establish clear evidence that the IAD ignored evidence put to it by the Applicant, I have no choice but to find that the IAD's decision falls within a range of reasonable outcomes defensible in fact and in law.

[16] Moreover, given the many contradictions and inconsistencies, it was reasonably open for the IAD to determine that the marriage is not genuine and was entered into primarily for immigration purposes under the Act. The Applicant, Ms. Teng, and their mothers contradicted each other on several points relating to how the couple had met. The couple also contradicted each other regarding their employment and education history. Moreover, three different accounts of who raised the Applicant's wife were provided to the Officer. Contrary to the Applicant's submissions, the case at bar is distinguishable on the facts from *RKL v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, 228 FTR 43 [*RKL*] and *Amayeanvbo v Canada*

(*Citizenship and Immigration*), 2011 FC 621 in that the inconsistencies in this case are not minor.

[17] In *RKL*, Justice Martineau warned that the Immigration and Refugee Board should not be quick to apply North American logic and reasoning to a claimant's behaviour as "consideration should be given to the claimant's age, cultural background and previous social experiences" (at para 12). At the same time, it is trite law that the burden of proof lies on the party advancing a claim. Since the Applicant submitted no evidence to demonstrate what the cultural norms are for first encounters between potential partners in China, I am not convinced that the IAD committed an error in this respect.

[18] The application for judicial review is denied. No question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The judicial review application denied;
2. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4470-15

STYLE OF CAUSE: LI JUN YU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 21, 2016

JUDGMENT AND REASONS: LEBLANC J.

DATED: MAY 13, 2016

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