

Federal Court



Cour fédérale

Date: 20180215

Docket: IMM-3444-17

Citation: 2018 FC 179

Ottawa, Ontario, February 15, 2018

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

ARIFA Wafa

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review by Arifa Wafa challenges a decision of the Immigration Appeal Division of the Immigration and Refugee Board [Board] which denied her appeal of a refusal to approve a permanent resident visa for her spouse, Ehsanullah Amani Zaheer.

[2] Ms. Wafa is a Canadian citizen and Mr. Zaheer is an Afghan national. They met online in 2009 and were married by proxy on June 2, 2013. They have never met in person and have, by all appearances, never attempted to meet.

[3] Mr. Zaheer's application for a permanent resident visa was initially refused on the basis that his marriage to Ms. Wafa was not genuine because it was carried out for immigration purposes.

[4] Ms. Wafa appealed to the Board. Once again, the outcome was unfavourable. The Board was not persuaded that the marriage was genuine, finding instead that Mr. Zaheer's motives were not *bona fide*. It is from this decision that this application arises.

[5] Mr. Harding, on behalf of the Ms. Wafa, contends that the Board made five material errors in its treatment of the evidence. They are the following:

- (a) The Board misconstrued the evidence about the development of the relationship between Ms. Wafa and Mr. Zaheer, including their motives for marrying;
- (b) The Board unreasonably discounted the evidence concerning the extent of the communication between Ms. Wafa and Mr. Zaheer;
- (c) The Board failed to properly account for the substantial transfers of money from Ms. Wafa to Mr. Zaheer;

- (d) The Board misinterpreted the evidence concerning the marriage ceremony and the later reception; and
- (e) The Board placed an unreasonable emphasis on Mr. Zaheer's failure to take advantage of the opportunity to obtain a permanent visa for the United States.

[6] All of these issues involve the Board's treatment of evidence and the standard of review is, therefore, reasonableness. Indeed, these are the kind of issues for which substantial deference to the decision-maker is required on judicial review. This is also a situation where it is appropriate for the Court to supplement the Board's reasons where additional justification for the decision can be found in the record: see *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at paras 23-24, [2018] SCJ No 2 (QL).

[7] In determining the reasonableness of the Board's decision it is important to understand exactly why it refused Ms. Wafa's appeal. In coming to that decision, the Board made the following key findings:

- (a) Ms. Wafa and Mr. Zaheer had pursued their relationship over a period of eight years by telephone, internet, and correspondence, but failed to adequately explain why no meaningful attempt was ever made to meet in person. Of particular concern was the absence of a plausible explanation for Mr. Zaheer's failure to seek a preauthorized permanent visa to the United States. This led the Board to find "that if their marriage was genuine and they were truly committed to their relationship, then they would have met each other by now." Even after the

sponsorship application was refused, neither Mr. Zaheer nor Ms. Wafa attempted to meet in the United States.

- (b) The parties' excuse for not attempting to meet in the United States "defies common sense" because this obvious step would not interfere with the Canadian application for landing.
- (c) Despite their ongoing communication over many years, Ms. Wafa lacked "the degree of knowledge of [Mr. Zaheer's] living circumstances that could reasonably be expected".
- (d) Mr. Zaheer failed to have any meaningful communication with Ms. Wafa's family.
- (e) The parties failed to explain why they waited for a year after the proxy wedding to apply for a spousal sponsorship.
- (f) The parties failed to justify the lengthy delay between their engagement and their marriage.
- (g) There was a noticeable gap in communication between 2011 and 2016 that was not adequately explained. Ms. Wafa also lacked information about Mr. Zaheer's living arrangements which suggested an absence of continuous or meaningful communication.
- (h) The low key wedding reception and the absence of expected family members raised concerns.
- (i) Mr. Zaheer's immediate professions of love followed shortly after by a marriage proposal were implausible and more in keeping with an immigration motive.

[8] Counsel for Ms. Wafa argues that the Board erred in finding that Mr. Zaheer was motivated to pursue his relationship as a means of coming to Canada. The asserted error arises from Mr. Zaheer's evidence that when he began to pursue Ms. Wafa he did not know where she lived and thought she might be living in Kabul.

[9] This suggested error must be examined in the context of the Board's complete rationale for doubting Mr. Zaheer's motivations. The Board found the following:

I find that the applicant's marriage to the appellant is primarily for the purpose of obtaining a visa to Canada. While it may be consistent with Afghan cultural norms to express interest in marriage at the outset of communication with a woman, I find his testimony that he came across the appellant's Facebook page, fell in love with her at first sight, and then proposed to her after going the first thirty-two years of his life without previously considering or proposing marriage is not credible. I do not find his professions of love at the very early stages of his correspondence with the appellant to be genuine. While there is no evidence that the applicant knew that the appellant lived in Canada until she told him so by way of Skype message on December 13, 2009, I do not accept the applicant's testimony that he had previously believed the appellant was from Kabul. The applicant's email to the appellant on November 19, 2009 indicates that he knew the appellant was not living in Afghanistan and at something of a distance from Afghan customs. The Skype correspondence indicates that the applicant was writing as though he and the appellant were already in a close relationship even before they knew anything about each other's personal circumstances. When taken into consideration together with the applicant's revelation at his visa interview that he was looking for a marriage partner outside of Afghanistan, I find that the applicant had an immigration motive in wooing and ultimately marrying the appellant. I infer from his failure to take steps to secure a visa to the US that he has a strong preference for immigration to Canada.

[10] The findings noted above are all reasonably supported by the evidence. Mr. Zaheer's evidence of an immediate infatuation followed shortly thereafter by a proposal of marriage does

defy common sense and, as the Board also found, his behaviour was more in keeping with an urgent desire to leave Afghanistan. Added to this was Mr. Zaheer's admission during his visa interview that he was looking for a wife "anywhere" outside of Afghanistan. All of this provided ample support for the Board's doubts about Mr. Zaheer's motives for marriage. At the same time, there is nothing in the Board's decision suggesting it had any reservations about Ms. Wafa's good intentions.

[11] The Board accepted that Ms. Wafa's transfer of substantial sums of money to Mr. Zaheer was an indication of good faith. The Board's treatment of the money transfers, although brief, was reasonably supported by evidence. Indeed, these payments said far more about her good faith than his. In any event, this point merely invites the Court to give additional weight to this evidence and that is not the role of the Court on judicial review.

[12] It is very clear that the Board's decision was primarily based on the fact that, between 2009 and 2017, Ms. Wafa and Mr. Zaheer had never met in person and had never made any serious effort to do so. Although Ms. Wafa had medical reasons for not travelling to Afghanistan, Mr. Zaheer was not impeded from travelling. In fact, he had access to the United States and could have come to the Canadian/United States border had he pursued that option. Based on Ms. Wafa's transfers of money, the cost of Mr. Zaheer's travel was not a barrier. The Board reasonably rejected their explanation that they preferred the option of seeking Canadian approval on the following basis:

[11] The appellant and applicant both testified that the counsel who assisted them with their application advised them that they would be unified in Canada within six months and this was the reason that the applicant decided not to follow through with the

process of acquiring his US visa. However, this defies common sense. It was never explained how the applicant's presence or immigration status in the US would cause a delay in his immigration to Canada. Additionally, his immigration to the US would have made it possible for the appellant to visit him there given that she was unwilling to travel to Afghanistan and had medical reasons that restricted her ability to travel. Finally, even if the appellant and applicant were acting on the advice that they would be unified within six months, there had already been a three-year delay from the acceptance of the engagement, and a one-year delay from the proxy marriage to the submission of their application, and it was almost two more years before the applicant was called to his visa office interview. Almost another year passed from the time of the refusal to his hearing. In all that time, there is no evidence that the applicant ever followed through with providing the documentation to obtain his US visa despite being requested to do so several times. I find that if the applicant and appellant were in a genuine marriage, the applicant would have made efforts to get his visa to the US so that he and the appellant could meet in person. It is worth noting that while the appellant has not travelled overseas, she has travelled to Toronto to visit her parents and to California to visit her sister.

[13] I could add to the above that the couple's supposed optimism about Mr. Zaheer's likely quick entry to Canada was belied by the rejection in 2010 of his application for a visitor's visa and by the initial rejection of their spousal application on March 10, 2016 on the basis that their story was not credible. After that point, the couple's failure to meet becomes inexplicable.

[14] There is nothing unreasonable about the Board's treatment of the evidence concerning Mr. Zaheer's failure to pursue a United States visa and to thereby facilitate an in-person meeting. The failure to take such an obvious step in the face of their supposed strong commitment to one another over a period of eight years was, on its own, a sufficient basis to conclude that Mr. Zaheer's motive for marriage was fundamentally immigration-based.

[15] Ms. Wafa complains about the Board's finding that there were unexplained gaps in the documentary record detailing the extent of their communication. She points to evidence that the actual record was much larger and that she had provided only samples to the Board. This is not a valid concern. The Board noted Ms. Wafa's testimony about samples (see para 10 of the Board's decision) but it was still entitled to expect that the samples would be representative of the entire eight-year period of the relationship. Indeed, an applicant who fails to produce the entirety of an available record to the decision-maker does so at the risk of a finding of the sort made here.

[16] Ms. Wafa's criticisms of the Board's findings concerning the wedding ceremony, the subsequent receptions, and Mr. Zaheer's failure to interact with Ms. Wafa's family are also unfounded. Although alternative explanations were offered on these issues, the Board was not obliged to accept them – even if the evidence was uncontested. The Board was entitled to view these matters in the way it did and to draw its own conclusions about the validity of this relationship.

[17] In conclusion, I can find nothing in the Board's reasons that constitutes a reviewable error and the application is, accordingly, dismissed.

[18] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT in IMM-3444-17

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

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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