

Federal Court



Cour fédérale

Date: 20180502

Docket: IMM-2669-17

Citation: 2018 FC 475

Ottawa, Ontario, May 02, 2018

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

AHMED MOHAMED ABDI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns a spousal sponsorship application for a permanent resident visa under the family class.

[2] Ahmed Mohamed Abdi (the “Applicant”) is a Canadian citizen of Somali origin and is self-represented in these proceedings. He met his spouse in January 2012 in Mogadishu, while

visiting his ill father. The couple got together over the course of approximately three weeks, and then continued to explore their relationship by telephone upon the Applicant's return to Canada.

[3] The Applicant's spouse left Somalia in October 2013 to claim asylum in Egypt, and the Applicant visited her in Cairo in January 2014. On this occasion, he proposed marriage and about two months later, they were married. The Applicant applied to sponsor his spouse for a permanent resident visa under the family class, and accordingly she was interviewed at the Canadian Embassy in Cairo. An immigration officer found the marriage to have been entered into "solely to get a privilege under the Canadian Immigration Act," and rejected the application.

[4] The Applicant appealed the immigration officer's decision to the Immigration Appeal Division ("IAD"). The IAD made no adverse credibility findings, but expressed concern about several aspects of the Applicant's testimony, his spouse's testimony, and the documentary evidence. The IAD found that these concerns were such that, on a balance of probabilities, the Applicant's marriage is not genuine. Accordingly, the IAD dismissed the appeal. The Applicant now comes before this Court, requesting that the IAD's decision be quashed.

II. Facts

A. *The Applicant*

[5] The Applicant is a 62 year old citizen of Canada. He was born in Somalia and moved to Canada in 1986. He married his first wife in Somalia in 1988 and sponsored her to come to

Canada. They had two children together, a son and a daughter, who were born in 1990 and 1992 respectively. The Applicant's son has since passed away.

[6] The Applicant stopped living with his first wife in 1993. He had another child, Hamza, with an ex-girlfriend in 2000. In 2006, he divorced his first wife. He married another woman in Somalia in 2006, but that relationship only lasted about a year because she apparently married another man in Somalia. The Applicant had sponsored his second wife to come to Canada, but withdrew the sponsorship application after the breakdown of the marriage.

[7] The Applicant previously ran a convenience store and café, but now works as a taxi driver. He works long days for a modest salary, and lives in a small, two-bedroom apartment in Edmonton.

B. *The Relationship and Marriage*

[8] The Applicant met his current wife, Asli Xasan Cusmaan ("Ms. Cusmaan"), in early January 2012, when he had travelled to Somalia to visit his ill father. She is 40 years old, has completed some primary schooling, and formerly worked at a hospital (cleaning, feeding patients, changing sheets, providing medication) and in a small shop in Somalia. Ms. Cusmaan was a neighbour to the Applicant's father, and visited him regularly along with her siblings. The couple exchanged telephone numbers and they continued to meet at the father's house over the course of the Applicant's stay, which lasted approximately three weeks. Before leaving, the Applicant told Ms. Cusmaan that he wanted to get to know her more.

[9] The Applicant and Ms. Cusmaan continued to explore their relationship after his return to Canada. He called her nightly, from his taxi, during his free time on his shift. In October 2013, Ms. Cusmaan left Somalia and claimed asylum in Cairo, Egypt, where she presently resides.

[10] In January 2014, the Applicant travelled to Cairo to visit Ms. Cusmaan, and stayed with her in her two-bedroom apartment. He proposed marriage on or about January 25, 2014, and Ms. Cusmaan accepted. They were married on March 16, 2014 at a court in Cairo, and went on a day trip to visit the pyramids thereafter. At some point during this visit, the Applicant also travelled to Somalia because his father had passed away.

[11] Since the Applicant returned to Canada, the couple have retained contact by telephone, email, and postcards. The Applicant testified that the couple talk about their frustration with the process of bringing Ms. Cusmaan to Canada, and when the Applicant was still running the convenience store, they discussed how Ms. Cusmaan might work at the store and take English classes. They would also work together to send the Applicant's son, Hamza, to college. The Applicant further explained that, in terms of work, Ms. Cusmaan will do any job she can get if she is able to come to Canada. He also appears to have regularly sent a substantial amount of money to support her: \$350 per month from January 2014 to July 2016, a total of \$10,850.

C. *Immigration Proceedings*

(1) Visa Rejection

[12] The Applicant applied to sponsor his wife for a permanent resident visa as a member of the family class in June 2014. An official from the Canadian Embassy in Cairo interviewed Ms. Cusmaan on February 22, 2015. The official was concerned that Ms. Cusmaan did not appear to know much about her husband, his past, and his children, and put those concerns to her. She answered that in her culture, women do not ask such questions of their husbands. When asked if she had any photos, Ms. Cusmaan produced some. The official noted in the Global Case Management System (GCMS) notes that these photos were “very unconvincing” and that the couple looked “miserable” (GCMS Notes, Certified Tribunal Record (CTR), pp. 113-114). The official concluded that it was not a bona fide relationship, and that the Applicant likely made an arrangement with Ms. Cusmaan’s family to get her into Canada.

[13] The decision to refuse the sponsorship application was rendered by way of a letter dated March 1, 2015. The author of the letter, an immigration officer in the Visa Section of the Canadian Embassy in Cairo, states: “I believe you entered into that marriage solely to get a privilege under the Canadian Immigration Act.”

(2) Immigration Appeal Division

[14] The Applicant appealed the decision to the IAD. The IAD held a hearing over the course of two days: March 16, 2017 and April 6, 2017. The IAD questioned the Applicant, Ms.

Cusmaan, one person who was an official witness on the wedding certificate (Mohamed Ali Ahmed) and one person who was present at the wedding (Abdirashid Jama Mohamud), and each was cross-examined by the Minister's counsel.

[15] The IAD dismissed the appeal by way of a decision dated May 25, 2017 (the "IAD Decision"). The IAD found that the marriage is not genuine and gave the following explanation: "[t]here are several concerns that individually are not fatal. However, taken in their totality, compared to little evidence that indicated they are in a genuine marriage, I find that the marriage is not genuine" (IAD Decision, para. 25).

[16] In its review of the evidence, the IAD found the Applicant was "relatively forthright" but vague, observing that he offered few details of the couple's initial conversations in Somalia, as well as their telephone conversations about their future plans. The IAD further expressed concerns that while the Applicant was asked many questions about the trip to Cairo in 2014, he did not mention that during that trip, he also spent a portion of his time in Somalia due to his father's passing.

[17] With respect to Ms. Cusmaan's testimony, the IAD observed that questions had to be asked repeatedly and, while acknowledging that she is not well-educated, the IAD found that Ms. Cusmaan gave long answers that circumvented the questions. The IAD further found that Ms. Cusmaan's answers were vague about where they planned to settle together, did not know how long the Applicant was in Somalia in 2012, and did not know how long he was in Cairo before he left for Somalia to visit his father in 2014. The IAD was most troubled by the fact that she did

not know about the Applicant's father's death, despite knowing him for over 10 years before the couple met. The IAD also took issue with Ms. Cusmaan's lack of knowledge about the Applicant's work situation; notably, she was unaware that he had previously worked at a convenience store and café.

[18] Further, the IAD found the couple's testimony to be contradictory with respect to their discussion about marriage; while the Applicant testified that they spoke about marriage prior to his trip to Cairo, Ms. Cusmaan testified that they did not speak about marriage until the time of the proposal. In terms of future plans, the IAD indicated that they could not provide many concrete details. With respect to children, the IAD noted that their testimony was contradictory because the Applicant does not want children while Ms. Cusmaan does, and the IAD further expressed the view that this issue is normally discussed and resolved in genuine couples.

[19] With respect to the documentary evidence, the IAD questioned why the Applicant's evidence of money transfers included the period from January 2014 to July 2016 when he was, in fact, in Africa from January 2014 to March 2014. The IAD also questioned the emails sent between the couple, because the Applicant testified that Ms. Cusmaan typed emails to him on a laptop with the help of Abdirashid Jama Mohamud, while Abdirashid Jama Mohamud himself testified that he assisted Ms. Cusmaan at an internet café near her home.

[20] Finally, the IAD was concerned by the fact that the Applicant has not returned to Egypt to visit Ms. Cusmaan since the marriage, and further concluded that because the Applicant's

father died in January 2014, it is possible that the Applicant's true motivation for going to Africa at that time was to see his father, rather than Ms. Cusmaan.

III. Issues

[21] The sole issue before the Court is whether the IAD Decision was reasonable in deeming that the Applicant's marriage is not genuine.

IV. Analysis

A. *Standard of Review*

[22] As the Supreme Court of Canada explained in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 62, where the appropriate standard of review is established in jurisprudence, a full analysis of the standard is unnecessary. It is well-established in the jurisprudence of this Court that an assessment of the genuineness of a marriage is a question of mixed fact and law and thus is reviewable on a standard of reasonableness: *Dalumay v. Canada (Citizenship and Immigration)*, 2012 FC 1179 at para. 19. As such, I shall adopt this standard in the case at bar.

B. *Was the IAD Decision reasonable in finding that the Applicant's marriage is not genuine?*

[23] The Applicant argues that cultural differences, the language barrier, custom, and level of education were not taken into account when the IAD rendered its decision. He further claims that the IAD did not account for some of his documentary evidence, including copies of long distance calling cards and the remittance receipt for the financial support that he provided to his spouse

from January 2014 to July 2016. The Applicant asserts that the sponsorship should not be denied on the basis that the couple does not yet have many concrete plans, or because the couple has not yet reached an agreement on the question of children. The Applicant further explains that he was unable to return to Egypt because he has been financially supporting his wife and his son, and that this should not be used to deny his application.

[24] The Respondent argues that the IAD specifically considered Ms. Cusmaan's education level, explaining that the questions that were asked of her were not complicated but that she was nevertheless unable to answer. Moreover, the IAD specifically asked if the Somali interpretation was adequate, and instructed the Applicant to inform her if there was any problem with it. With respect to the documentary evidence (ie. the calling cards and remittance documentation), the Respondent submits that the IAD is under no obligation to mention every piece of evidence, and notes that the IAD is presumed to have considered the entire record.

[25] The Respondent furthermore contends that the IAD's findings were grounded in the evidence. The Respondent submits that the following facts were reasonably discerned on the basis of the record:

- A. Some of the Applicant's answers were vague, notably concerning the circumstances surrounding his meeting Ms. Cusmaan and the couple's plans for the future.
- B. The Applicant did not mention the fact that he left Cairo to visit Somalia in 2014.
- C. Various problems with Ms. Cusmaan's testimony, including:
 - i. She seemed to circumvent answering simple questions.

- ii. She did not know how long her husband stayed in Somalia in 2012, and would not estimate the length of the visit.
- iii. She did not know how long the Applicant spent in Cairo in 2014 before leaving for Somalia, nor would she estimate it.
- iv. She did not know that the Applicant had owned and managed a convenience store for one year.
- v. She did not know about the circumstances surrounding the Applicant's father's death.

D. Contradictory narratives between the couple's testimony about:

- i. The couple's discussion of marriage, namely whether they had discussed marriage prior to the proposal in January 2014.
- ii. The couple's intention to have children.
- iii. Ms. Cusmaan's communication with the Applicant's son, Hamza.
- iv. The way in which Ms. Cusmaan emailed the Applicant.

E. There was no evidence of communication between the Applicant and Ms. Cusmaan before October 2013.

F. The receipt showing monthly remittance transfers might be unreliable as it shows transfers from January 2014 to July 2016, when the Applicant was in Africa for three of those months (January 2014 to March 2014).

G. The fact that the Applicant has not returned to Egypt since the marriage.

[26] As such, the Respondent submits that the Applicant is effectively asking this Court to reweigh the evidence. It argues that the IAD carefully considered the entirety of the Applicant's

evidence after the oral hearing, and reached a reasonable conclusion on subject matter that is well within its area of expertise.

[27] I disagree with the Respondent and take issue with several of the IAD's findings which ostensibly led to the conclusion that the Applicant's marriage is not genuine. Rather than list those concerns exhaustively, I shall expand upon only the most serious of them.

(1) Vagueness

[28] As mentioned above, the IAD complained that the Applicant's answers were vague with respect to his future plans should his spouse be permitted to join him in Canada. Contrary to the IAD's conclusion, I find that the Applicant's answers were not vague in this regard. In fact, the IAD specifically had him break down the issue of his "future plans" during the hearing:

Q. Okay, let's break that down; okay? Let's break that down a bit.

A. Okay.

Q. She wants to come here and help you and help you what?

A. Yes, she wants to find a job to work.

Q. So what kind of job does she want?

A. Meanwhile go to the school and learn more English.

Q. What kind of job does she – what does she think she's going to get?

A. Any job she's fit to do, basically; cleaning, whatever she can.

Q. Have you talked about specific jobs that are available or what she might do?

A. I told her depending on your skill or your language communication there's a lot of what people they do when she asking me when they come to Canada, for instance, newcomers, I

told her some of them, guys, they do different jobs. For instance, I told her women, African, they do cleaning, for instance, I told her, cleaning in the places.

Q. Okay, so do you intend that she will go to school to learn English?

A. Of course if she want to learn English, yes. That's the main purpose, main goal.

Q. Do you know where she would go? Do you have any idea? Have you looked into it?

A. She would have come here. I know where I send her. I know where she goes -- people -- because I work with sometimes with the newcomers myself so they got new mates wherever they go.

Q. So where do they go?

A. Wilmette (phonetic) Centre, newcomers. That's one place or something Sacred Heart, their school in Edmonton called Sacred Heart. Newcomers also they go there.

(sic)

[Transcript of Hearing, CTR pp. 250-251].

[29] In my view, this discussion demonstrates a highly developed sense of the Applicant's future plans with his spouse: he has indicated the language training that she would seek, where she would obtain that training, and some jobs that she might be able to do upon arrival in Canada. In reading the IAD's reasons, I cannot imagine what further details the IAD was expecting. Moreover, the Applicant cogently addressed the issue in his reply submissions before the IAD:

My future plan, the first priority is my wife to join me. Then I'll talk my future. What should I talk future, I don't -- I living in uncertainty (sic).

[Transcript of Hearing, CTR p. 397].

[30] This is illustrative of a larger problem, wherein sponsorship applicants are asked about detailed plans for their family members' arrival in Canada when, in fact, they have no certainty about whether their application will be granted. Recalling that the focus of the inquiry is supposed to be on the genuineness of the marriage, it must be recognized that even genuine couples may not be able to provide concrete details about their future plans in Canada because their plans are necessarily dependent on the outcome of the sponsorship application. In any event, in my view this couple appears to have clear plans about what Ms. Cusmaan will do should she be granted permanent residence in Canada.

(2) Misapprehension / Mischaracterization of the Evidence

[31] In her decision, the IAD complained that Ms. Cusmaan "gave lengthy answers that circumvented the question until the question was repeated several times" (IAD Decision, para. 13). I have reviewed the transcript of the hearing in search of the IAD's foundation for this claim; the result yielded that Ms. Cusmaan's longest answer was five lines of transcribed text, and occurs when she was providing the lengthy names of those who were present at her wedding. As a matter of fact, the vast majority of Ms. Cusmaan's answers were one or two sentences long, and by no means did she circumvent questions in a manner that necessitated repetition; if anything, the questions appear to have been repeated due to a lack of mutual comprehension, issues with interpretation, and technical difficulties.

[32] The IAD also complained that Ms. Cusmaan would not estimate the duration of the Applicant's stay in Somalia in January 2012. Again, while it is true that Ms. Cusmaan initially testified that she could not recall the duration of the Applicant's stay in Somalia in January 2012

– an event, it must be recalled, which occurred approximately 5 years prior to the hearing – she eventually estimated that the duration of his stay was about two weeks.

[33] A misapprehension of oral testimony can be fatal to a decision: *Gur v. Canada (Citizenship and Immigration)*, 2012 FC 992; *Hosini v. Canada (Citizenship and Immigration)*, 2014 FC 1007. However, in the case at hand, the IAD did not make an explicit finding as to how the allegations of Ms. Cusmaan’s long-winded answers and her alleged refusal to estimate the duration of the Applicant’s 2012 visit to Somalia impacted the overall decision; instead, the IAD frames the reasons in terms of an overall assessment of the marriage:

When all of the evidence is considered, I find that the marriage is not genuine. There are several concerns that individually are not fatal. However, taken in their totality, compared to little evidence that indicated they are in a genuine marriage, I find that the marriage is not genuine.

[Emphasis added]

[IAD Decision, para. 25].

[34] On the basis of the reasoning above, it is impossible for this Court to know the extent to which the IAD’s mischaracterization or misapprehension of the testimony impacted the outcome in this case. I conclude that while this error alone is an insufficient basis upon which to interfere with the IAD Decision, it speaks to the overall reasonableness of the decision under review.

(3) Contradictory Testimony

[35] I am not of the view that the “contradictions” highlighted by the IAD cast doubt on the genuineness of the Applicant’s marriage. In my view, some of the inconsistencies pointed out by

the IAD are of an exceptionally trivial quality. For example, the IAD found that there was contradictory evidence about how Ms. Cusmaan communicated with the Applicant's children, and how she sent emails to the Applicant in view of her limited technological proficiency. In my view, these alleged contradictions are of very limited use in determining whether the marriage is genuine. While the decision-maker is owed deference in assigning weight to the evidence, it is equally incumbent upon the IAD to provide a transparent and intelligible line of analysis between that evidence and a given conclusion. As above, based on the reasons before me, it is impossible for this Court to know what weight the IAD placed on these purported contradictions when deciding the central issue – that is, the genuineness of the marriage. As above, this error alone is insufficient to overturn the IAD Decision but will nevertheless be taken into account in assessing its overall reasonableness.

[36] Moreover, some of the alleged inconsistencies are reconcilable and, in my view, ought not to prejudice the Applicant. For example, the IAD put the alleged inconsistency concerning the couple's perspective on children to the Applicant during the hearing, to which he provided an explanation: he and his wife have differing views on the matter. The IAD member appears to be of the opinion that the issue of children ought to have already been "resolved" by a genuine couple; after all, she raised this issue during the hearing, and twice in her written reasons. In oral argument, the Respondent's counsel submitted that this was a key factor for the IAD in arriving at its decision.

[37] In my view, a couple's differing views on the issue of having children is not a particularly helpful measure to gauge the genuineness of a marriage. The IAD member may well

be of the opinion that this issue is “usually” resolved between genuine couples, but that notion lacks both cultural sensitivity and an appreciation for the diversity of human relationships. A conversation about children might be commonplace between Canadian couples today, but other cultures have different ideas about family planning. Some, as the Applicant asserts is his view, leave this question to fate. Holding such a perspective should not be taken as evidence that a marriage is not genuine; thus, having relied upon this as a central factor in deeming the Applicant’s marriage is not genuine, I find that the IAD committed a reviewable error.

(4) The Totality of the Evidence

[38] Contrary to the Respondent’s assertion, I am of the view that the IAD did not consider the totality of the evidence presented in this case. The Respondent rightfully points out that a decision-maker need not make mention of each piece of evidence, and is presumed to have considered the entire record. However, it is equally trite law that the “burden of explanation increases with the relevance of the evidence in question to the disputed facts”: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 1998 FC CanLII 8667 (FC) at para. 17.

[39] In the case before me, the remittance receipt is of high probative value. It indicates that the Applicant has sent his wife a total of \$10,850, which represents a substantial portion of the income he earns as a taxi driver. The IAD appears to have recognized the importance of this evidence as well, and indeed makes mention of it in the IAD Decision:

The respondent submits that the receipt voucher the appellant provided is not reliable proof of money sent to the applicant from the appellant. The receipt indicates monthly funds sent to the applicant between January 2014 and July 2016. Because the appellant was in Africa from January to March 2014, the receipt

calls into question why money was sent from Canada to the applicant and from whom.

[Citations omitted]

[IAD Decision, para. 18].

The passage above reveals that the IAD has in no way met its burden of explanation with respect to this key piece of evidence. Here, the IAD is questioning whether the Applicant is financially supporting his spouse, simply because he was in Africa when a portion of the funds were transferred. It goes without saying that modern technology is such that the Applicant need not be present in Canada to send money from his Canadian accounts to his spouse in Egypt. Moreover, the receipt clearly indicates the Applicant's name as the sender of the funds, and Ms. Cusmaan's name as the recipient of the funds, and the telephone numbers on the receipt match the telephone records that the Applicant submitted to prove the couple's history of telephone communication. Regrettably, those telephone records and calling cards went unaddressed by the IAD, and thus I am left to wonder whether they were given due consideration given their corroborative nature. I find that the IAD thereby made its decision without regard to evidence that contradicted its findings. I furthermore find it is likely that a different conclusion as to the genuineness of the marriage would have been reached by the IAD had the totality of the evidence been considered. This constitutes a reviewable error and must be corrected upon redetermination.

(5) Conclusion

[40] In view of the multitude of problems I have described above, the decision before me cannot stand. The IAD reached conclusions about the vagueness of the Applicant's future plans where, in fact, they were well-developed, and furthermore mischaracterized or misapprehended

some of the evidence. While these factors alone may not have been crucial to the IAD's overall evaluation about the genuineness of the marriage – it is impossible for this Court to know based on the reasons provided – I find that the IAD's treatment of purportedly contradictory evidence and its failure to meaningfully consider the totality of the evidence is such that the IAD Decision cannot stand.

V. Obiter

[41] I would be remiss not to mention two separate concerns that I have with the treatment that this Applicant has received in his request to sponsor his spouse as a permanent resident to Canada.

[42] First, the undue suspicion with which the IAD and the Canadian Embassy official treated this Applicant merits mention here. Aside from questioning the “reliability” of the Applicant's evidence of monetary transfers as discussed above, the IAD unreasonably assigned motives to the Applicant that have no basis in the evidence when she raised the possibility that he “...has not gone to Africa since [January 2014] because his real interest was seeing his father, not [Ms. Cusmaan]” (IAD Decision, para. 20). The IAD cited no evidence upon which this conclusion could logically be drawn.

[43] Similarly, the official who interviewed Ms. Cusmaan in Cairo suspected that the Applicant likely “made an arrangement with [Ms. Cusmaan's] family to get her into Canada” (GCSM Notes, CTR p. 114). Again, is a bald assertion that had no foundation in the evidence before him or her; it is nothing more than pure speculation and prejudice. The Applicant raised

this in his submissions during the IAD hearing, but it went unaddressed. As these conclusions have no basis in the evidence, one is left to wonder: what has the Applicant done to make him deserving of these suspicions and aspersions? Such behaviour is unacceptable.

[44] Second, I take great exception to the language used by the official who interviewed Ms. Cusmaan at the Canadian Embassy in Cairo. The notes of the interview contain the following exchanges:

Q. How old is your husband?

A. He was born in 1956.

Q. He is then 58 years old so almost 20 years older than you?

A. Yes.

Q. It does not bother you?

A. No it's not important.

[...]

Q. Your husband is 56 years old and already has 3 children. He wants to have more children?

A. She hesitates. I want to have children.

Q. But you yourself are 37 years old? Don't you think it's late to have children? (*sic*)

A. No answer.

[GCMS Notes, CTR p. 113].

The official's questions about the Applicant and Ms. Cusmaan's difference in age are wholly inappropriate and the official had no business asking them. I am not sure what should "bother" Ms. Cusmaan about the fact that the Applicant is several years older than her, but the comment

insinuates that two apparently consenting adults – who happen to be several years apart in age – are deserving of scrutiny or scorn when they enter into marriage. I think it is uncontroversial to assert that in modern Canadian society, couples are to be accepted regardless of differences in race, gender, social status or other differences. A difference in age between two consenting adults is no exception. Regrettably, the IAD doubled-down on the intolerant comments of the embassy official when she asked the Applicant: “[d]id you ever discuss with your wife why she would be interested in a man who is 22 years older than her?” (Transcript of Hearing, CTR p. 248). I am appalled by this conduct, which has no place in an IAD hearing.

[45] With respect to the issue of children, as I have noted above, the fact that an adult couple may have differing opinions on this question – regardless of age or prior children – has nothing to do with an assessment of the genuineness of a marriage. That decision is not only personal, but may take years for a couple to resolve. Indeed, some couples never fully resolve it. I hasten to add that questioning a woman about her ability or desire to have children for any reason – let alone, on account of her age – is wholly inappropriate and unhelpful in determining the genuineness of a marriage.

VI. Certification

[46] During the hearing, I asked the parties whether there was any question for certification. The Applicant wished to submit such a question, but had not prepared one in advance. In light of his circumstances as a self-represented litigant, I invited him to submit one in writing. The Applicant submitted the following question: “was the decision under appeal unreasonable and does it warrant reversal?”

[47] The Respondent argues that the proposed question does not meet the requirements for certification as set out in s. 74(d) of the *Immigration and Refugee Protection Act*, SC 2001 c 27. The Respondent submits that, as a matter of established law, a question must be 1) dispositive of the appeal, and 2) transcend the interest of the immediate parties to the litigation, and contemplate broad issues of significance or general importance. The question must also arise, and have been addressed, in my decision in order to qualify for certification.

[48] I agree with the Respondent. The Applicant's question does not transcend the immediate parties to this litigation, but rather pertains exclusively to the facts of this case. As such, no question shall be certified.

JUDGMENT in IMM-2669-17

THIS COURT'S JUDGMENT is that:

1. The decision under review is set aside and the matter returned back for redetermination by a differently constituted panel.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2669-17

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APPEARANCES:

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(ON HIS OWN BEHALF)

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