Federal Court  Cour fédérale

**Date: 20210423**

**Docket: IMM-7177-19**

**Citation: 2021 FC 355**

**Ottawa, Ontario, April 23, 2021**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**Jasdeep PARMAR**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] Mr. Jasdeep Parmar seeks judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada [the IAD], dismissing his appeal.

[2] The IAD determined that Mr. Parmar had not established that subsection 4(1) of the *Immigration and Refugee Protection Regulations* SOR/2002-227 [the Regulations] did not apply. The IAD found that the refusal of the officer of the Canadian High Commission in India was

valid in law and that Mr. Parmar's wife, Mrs. Kamaljit Kaur, did not qualify as a member of the family class. The IAD therefore dismissed the appeal.

[3] For the reasons exposed hereafter, the Application will be dismissed.

## II. Context

[4] In 2008, Mr. Parmar, a Canadian citizen by birth and a resident of Canada, was first married to a citizen of India, in an arranged marriage. He sponsored his first wife, but her application for permanent residence was initially denied. In 2012, the IAD allowed his appeal, although shortly thereafter, Mr. Parmar withdrew his sponsorship, and the spouses divorced. The 2012 IAD decision is included in the Certified Tribunal Record [the CTR].

[5] On January 27, 2016, Mr. Parmar met Mrs. Kamaljit Kaur through his mother's sister-in-law, who is also Mrs. Kaur's mother's cousin. On February 10, 2016, Mr. Parmar and Mrs. Kaur, a citizen of India, were married in India, in an arranged marriage. In July 2016, the spouses filed their respective sponsorship and permanent resident applications, under the family class.

[6] On February 21, 2017, an officer of the Canadian High Commission in India noted concerns in regards to Mrs. Kaur's application for permanent residence, and on July 20, 2017, the officer interviewed Mrs. Kaur. During the interview, the officer expressed concerns that the marriage was not in accordance with prevalent norms in the culture the couple belongs to, the Sikh faith and tradition. The officer noted that arranged marriages in the spouses' region are based on the compatibility of the pair, while the spouses showed unexplained incompatibility in

some aspects. The officer expressed concern as to the genuineness of the relationship and cited five reasons for her concerns, providing Mrs. Kaur an opportunity to address each one.

[7] By letter dated July 26, 2017, the Immigration Section of the Canadian High Commission in India informed Mrs. Kaur that she did not meet the requirements for immigration to Canada. The Immigration Section was not satisfied that Mrs. Kaur's marriage to her sponsor is genuine or that it was not entered primarily for the purpose of acquiring permanent residence in Canada. As a result, Mrs. Kaur was not considered a member of the family class. On the same day, an immigration officer of the Canadian High Commission in India informed Mr. Parmar that Mrs. Kaur's application for an immigrant visa was refused.

[8] Mr. Parmar appealed the Immigration Section's decision to the IAD, pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act* (SC 2001, c 27 [the Immigration Act]).

## III. The IAD's Decision

[9] On August 12, 2019, the IAD held its hearing, where Mr. Parmar, Mrs. Kaur, and five of their family members testified. Mr. Parmar partly testified in the Punjabi language and his knowledge of the language was not a concern for the IAD (para 28 of the decision).

[10] The IAD noted that it was guided by the factors set out in *Chavez v Canada (Citizenship and Immigration)* (2005 CarswellNat 7250 [*Chavez*]) and listed factors that are included.

[11] The IAD noted that the marriage was an arranged marriage per Sikh customs and traditions, and accepted that it occurred within 13 days after the spouses first met. However, the IAD found that there were significant areas of concerns about the marriage, which were not overcome by the testimonies.

[12] The IAD examined some of the factors it cited from *Chavez*, namely compatibility, communication, knowledge of each other, financial support and visits, and ongoing communication. In regards to compatibility, the IAD stressed that, in the Sikh tradition, arranged marriages are based on the compatibility of the spouses, and that this cultural norm was not contradicted.

[13] The IAD noted that the spouses are compatible in terms of ethnic and religious background. However, it noted that (1) they have a 10-year age difference; (2) he is a divorcee, while it is her first marriage; (3) he has 4 years of college education, and she has 10 years of schooling; and (4) Mrs. Kaur was not aware, even at the time of the hearing, of Mr. Parmar's medical condition.

[14] The IAD reviewed Mr. Parmar and Mrs. Kaur's testimonies and concluded they did not shed any light on the reasons why the families thought the pair was a good match for this traditional Sikh arranged marriage.

[15] The IAD then reviewed the family's testimonies and noted inconsistencies between Mr. Parmar's and his mother's testimonies regarding when his mother first spoke to his wife and how

the match was explained. Ultimately, based on the evidence and the testimony provided, the IAD found the reasons given for determining that Mr. Parmar and Mrs. Kaur would be suitable potential spouses in the context of a Sikh arranged marriage to be generic and superficial, considering the incompatibilities noted.

[16] The IAD then addressed Mr. Parmar's medical condition, as outlined in the IAD's 2012 decision regarding his first sponsorship. According to the evidence, Mr. Parmar suffers from "B-6 responsive seizures" controlled, at least in 2012, with B6 supplements, condition which lead to significant intellectual impairment. The IAD outlined that Mrs. Kaur was not aware of this issue, even at the time of the hearing, as she understood he took vitamin B6 for lack of vitamin, as did her mother.

[17] The IAD noted that Mr. Parmar's counsel argued that his mental capacity was not a concern in the first appeal, in 2012, and that the doctrine of issue estoppel applied in this appeal with regards to Mr. Parmar's mental capacity. The IAD found that issue estoppel did not apply. The criterion of the same issue having been decided is not met, as the prior proceedings concerned the *bona fides* of his first marriage and this one, that of his second marriage. The IAD confirmed that Mrs. Kaur's knowledge of Mr. Parmar's condition was a relevant consideration in a context where compatibility is important, and that she was not aware of it.

[18] The IAD also found that the spouses discussed in their first meeting that they would live in Canada.

[19] As no satisfactory explanation was given for their incompatibilities, the IAD found that these factors are not indicative of an intent for this to be a *bona fides* spousal.

[20] In regards to the spouses' knowledge of each another, the IAD noted that the spouses' testimony did not support their assertion that they spoke on a daily basis and did not point to a mutual knowledge. The IAD also noted that their testimonies were inconsistent on their attempts to have a child, as Mrs. Kaur clearly indicated that she had no intention to have a child before arriving in Canada, while Mr. Parmar and his mother confirmed the couple was trying to conceive. This negatively affected their credibility as to the genuineness of their marriage.

[21] In regards to financial support, the IAD gave limited weight to the documentary evidence of money transfers as evidence of the genuineness of the marriage, as Mr. Parmar could not provide specifications as to when and why the transfers occurred, and as his mother was making the transfers (per his testimony).

[22] In regards to ongoing communication, the IAD noted the evidence of Mr. Parmar visiting his wife in India and communicating with her by telephone, and found these elements positive indications of a genuine spousal relationship, but found this factor insufficient to counterbalance its negative above findings.

[23] Ultimately, the IAD dismissed Mr. Parmar's appeal. As stated above, the IAD determined that Mr. Parmar had not established that subsection 4(1) of the Regulations did not apply. The IAD found that the refusal of the officer of the Canadian High Commission in India was valid in

law and that Mr. Parmar's wife, Mrs. Kamaljit Kaur, did not qualify as a member of the family class. The IAD therefore dismissed the appeal.

## IV. Parties' Submissions

[24] Mr. Parmar raises three issues: whether the IAD (1) breached principles of procedural fairness by failing to consider and analyse relevant evidence (*Cepeda-Guttierez v Canada (MCI)* 1998 FCJ No 1425 [*Cepeda-Guttierez*]) or drew erroneous conclusions without regard to the evidence; (2) committed reviewable errors in its microscopic analysis of the evidence; and (3) made a reasonable decision.

[25] At the hearing, Mr. Parmar confirmed that the IAD based its decision on only one of the two prongs of the test set out in Section 4 of the Regulations, i.e. the genuineness of the marriage (subsection 4(1)(b)). He confirmed the formulation or the application of the legal test was thus not at issue.

[26] In his memorandum, Mr. Parmar reviews the factors suggested in *Chavez* to assess how and if the IAD examined them.

[27] On the compatibility of the spouses, Mr. Parmar submits that the factor was the main one in the refusal of his appeal and that a reviewable error in its application would therefore vitiate the IAD's decision. Mr. Parmar submits that the age difference between him and his wife is 8 years and 10 months, not 10 years as the IAD states, and that the IAD did not explain why this factor contradicted their otherwise compatible religious and ethnic backgrounds. On the IAD's

rejection of testimonial explanations regarding Mr. Parmar's status as a divorcee, Mr. Parmar notes that testimonies are presumed to be truthful (*Yotheeswaran v Canada (Citizenship and Immigration)*, 2012 FC 1236 at para 4). He argues that the IAD doubted the witnesses' testimony without a valid reason and without a finding of lack of credibility, which is a reviewable error in law. Mr. Parmar submits that the testimonial evidence regarding the marriage and the reasons the spouse got married was consistent, and that the IAD illegally discounted explanations regarding their purported incompatibilities.

[28] Regarding the development of the relationship, Mr. Parmar argues that the IAD erred by not considering and not giving weight to the factor, as it acknowledged the relevant sequence of events without making negative credibility findings.

[29] Regarding the intent of the parties in the marriage, Mr. Parmar argues that the IAD ignored the parties' intent to live together after the marriage, without making negative credibility findings. Mr. Parmar also submits that his and his wife's testimonies on their intent to have children were consistent, save for the fact that he did not know that she wanted to wait until moving to Canada to start a family. Mr. Parmar submits that the IAD's finding on this factor is unreasonable.

[30] On the communication between the spouses, Mr. Parmar submits that the documentary evidence shows extensive telephone communications between the spouses.

[31] On financial support, Mr. Parmar concedes that the IAD's decision to afford limited weight to the documentary evidence, fell within the range of reasonable possibilities.

[32] On the spouses' knowledge of each other, Mr. Parmar points to facts which were not mentioned by the IAD, such as the spouses' family background and lifestyles. Mr. Parmar submits that the IAD limited its analysis to two questions to Mr. Parmar's wife regarding what she had in common with her husband and liked about him, and to questions Mr. Parmar regarding what he liked about his spouse, and asking him to tell the tribunal about his spouse. Mr. Parmar submits that this was unreasonable or incorrect, given the other facts he mentions and his wife's demeanour at the hearing (which was reserved, not vague). Mr. Parmar submits that the IAD failed to consider the spouses' backgrounds and previous exposure to testifying in Court. He argues that the IAD's analysis was microscopic (citing *Chen v Canada (Citizenship and Immigration)*, 2012 FC 510 at para 68). Finally, Mr. Parmar submits that the IAD ignored the fact that he withdrew his first wife's sponsorship application, which helped maintain the integrity of the immigration system. Mr. Parmar argues that this should have lent credibility to his intentions. Mr. Parmar therefore submits that the IAD's finding on his credibility is unreasonable.

[33] On the knowledge, involvement, and contact of the spouses' families, Mr. Parmar submits that all witnesses testified that the spouses' respective families were extensively involved in arranging, developing, and maintaining the relationship. This was supported by documentary evidence. The IAD therefore erred in failing to afford weight to this factor and

conducting a microscopic analysis. Mr. Parmar argues that the IAD thereby breached procedural fairness.

[34] On visits of between the spouses, Mr. Parmar does not appear to contradict the IAD's finding.

[35] Overall, Mr. Parmar submits that the IAD's decision is flawed by reviewable errors in law justifying the Court's intervention, and that the decision should be quashed.

[36] The Minister responds that the IAD's findings and decision were reasonable on the evidence and that they are correct in law. The Minister submits that Mr. Parmar simply disagrees with the conclusion and factual findings of the IAD in assessing the evidence, and asks the Court to re-weigh the evidence, which is beyond the scope of judicial review.

[37] The Minister submits that (1) it was certainly open to the IAD to draw a negative inference from the generic and superficial testimony; (2) it was open to the IAD to take into consideration the fact that neither Mrs. Kaur nor her family had full knowledge of Mr. Parmar's medical condition, even at the time of the hearing, (3) it was open to the IAD to draw a negative inference regarding the genuineness marriage from the conflicting testimonies in regards to their attempt to have a child; (4) the IAD is entitled to examine both the positive and negative factors and attribute them the weight it deems appropriate; (5) given the inconsistencies in the evidence and the vagueness of the testimonies on crucial elements regarding the money transfers, it was open to the IAD to draw a negative inference and question the genuineness of the marriage.

[38] The Minister also stresses that the IAD's analysis was undertaken with consideration of the cultural context of arranged marriages and the Sikh tradition. Overall, the Minister submits that the IAD's decision is reasonable.

## V. Decision

[39] The parties agree that *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] sets out the framework for determining the applicable standard of review for administrative decisions. The starting point is a presumption that a standard of reasonableness applies, a presumption that can be rebutted in certain situations, none of which applies in this case. Therefore, the IAD's decision is reviewable on a standard of reasonableness.

[40] Mr. Parmar's allegation of breach of procedural fairness, citing *Cepeda-Guttierez*, seems misplaced, as his argument rather relates to the IAD's assessment of the evidence, not to a procedural issue. He does not submit that the standard of review pertaining to a breach of procedural fairness applies, which is indicative.

[41] For a decision to be reasonable, it must be based on an internally coherent and rational chain of analysis, and it must be justified in relation to the facts and the law (*Vavilov* at para 85). It must also bear "the hallmarks of reasonableness – justification, transparency and intelligibility" (*Vavilov* at para 99).

[42] In *Vavilov*, the Supreme Court stated that: "It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a

reviewing court will not interfere with its factual findings. The reviewing court must refrain from ‘reweighing and reassessing the evidence considered by the decision maker” (at para 125; see also *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Canada (Citizenship and Immigration) v Abdo*, 2007 FCA 64 at para 13). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[43] According to section 12 of the Immigration Act, the selection criterion applicable to a foreign national who wishes to immigrate to Canada as a member of the “family class” is their spousal relationship with a Canadian citizen or permanent resident. For this spousal status to be valid for the purposes of the Act and in accordance with section 4 of the Regulations, the marriage between the spouses must be genuine and not entered into for the purpose of acquiring a status or privilege under the Act.

[44] In *Canada (Citizenship and Immigration) v Moise*, 2017 FC 1004, the Court outlined the burden of the applicants:

> [15] The burden on the respondent is to demonstrate, on a balance of probabilities, that her marriage is genuine and that it was not entered into primarily for the purpose of acquiring a status. Indeed, a marriage is disqualified if either of the conditions set out in paragraphs 4(1)(a) and (b) is not met (Mahabir v. Canada (Citizenship and Immigration), 2015 FC 546 and Singh v. Canada (Citizenship and Immigration), 2014 FC 1077). In other words, the respondent must meet both conditions. A marriage entered into for the purpose of acquiring a status or privilege will be flawed even if it subsequently becomes genuine. As well, a marriage that is validly entered into can become flawed for immigration purposes if it loses its genuineness.
>
> [16] On its face, the provision sets forth two different times when evaluations must be conducted. Regarding the genuineness of the marriage, the Regulations use the present tense, meaning that the genuineness of the marriage is evaluated at the time of the

> decision. On the other hand, the evaluation of the intent with which the marriage was entered into, i.e. primarily to acquire a status or a privilege, is in the past. The English reads “was entered” while the French reads “visait”; the evaluation is therefore conducted at the time of the marriage.

[45] It is clear, contrary to what Mr. Parmar implied at the hearing, that the burden lied with Mr. Parmar and Mrs. Kaur to demonstrate, on a balance of probabilities, that their marriage is genuine and that it was not entered into primarily for the purpose of acquiring a status. The burden is not on the IAD to demonstrate that it is not genuine or was entered into primarily for the purpose of acquiring a status.

[46] I have carefully reviewed the record and the IAD decision, and Mr. Parmar has not convinced me that the Court’s intervention is warranted.

[47] The Court notes that Mr. Parmar submitted no authorities to support his argument that the IAD needed to examine all the factors outlined in the *Chavez* decision. To the contrary, the factors set out in *Chavez* are neither exhaustive nor determinative. The IAD can weigh additional factors and conduct its own analysis, guided by these factors (see e.g. *Top v Canada (Citizenship and Immigration)*, 2015 FC 736 at para 18; *Wang v Canada (Citizenship and Immigration)*, 2019 FC 978 at para 22; *Phan v Canada (Citizenship and Immigration)*, 2019 FC 923 at para 30).

[48] The IAD’s assertion that compatibility is an important factor in a Sikh arranged marriage remained uncontradicted before the IAD, and was thus not at play. It was consequently reasonable for the IAD to assess it thoroughly. Likewise, based on the record, it was not

unreasonable for the IAD to conclude the testimonies were vague, and superficial, and the contradictions noted by the IAD are substantiated in the record.

[49] I agree with the Minister that Mr. Parmar, given the nature of his arguments, is essentially asking the Court to reassess and reweigh the evidence to arrive at a different outcome that is favourable to him and his spouse. As mentioned earlier, that is not the role of this Court (*Vavilov* at para 125). It is reasonable for the IAD to conclude that the spouses have not met their burden.

[50] I am satisfied the decision is based on an internally coherent and rational chain of analysis, is justified in relation to the facts and the law and bears "the hallmarks of reasonableness – justification, transparency and intelligibility".

## VI. Conclusion

[51] For the foregoing reasons, the application for judicial review will be dismissed.

**JUDGMENT in IMM-7177-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed;

2. No question is certified.

"Martine St-Louis"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7177-19 |
| **STYLE OF CAUSE:** | JASDEEP PARMAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUÉBEC – BY VIDEOCONFERENCE ZOOM |
| **DATE OF HEARING:** | APRIL 12, 2021 |
| **JUDGMENT AND REASONS:** | ST-LOUIS J. |
| **DATED:** | APRIL 23, 2021 |

**APPEARANCES:**

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| Me Andrea Shahin | FOR THE RESPONDENT |

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