Federal Court  Cour fédérale

Date: 20210510

Docket: IMM-7295-19

Citation: 2021 FC 420

Ottawa, Ontario, May 10, 2021

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

YAN YANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[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] dated November 8, 2019, which dismissed the Applicant's appeal from a decision refusing her husband's application for permanent residence under the family class [the Decision].

[2] As explained in greater detail below, this application is dismissed, because I have considered the Applicant's arguments and find nothing unreasonable in the Decision.

II. **Background**

[3] The Applicant, Yan Yang, was born in China. She married her first husband in January 1998. They have a son who was born in April 1999. The Applicant and her first husband were divorced in December 2004. The Applicant married her second husband in September 2005. He sponsored her to become a permanent resident in Canada, and she landed in Canada in July 2006. They separated in or around February 2007 and were divorced in November 2008. The Applicant continued to reside in Canada after her second divorce.

[4] The Applicant then met her first husband and their son for a vacation in Hong Kong in January 2008. In February 2009, the Applicant and her first husband purchased a house together in Heshan City, Guangdon. According to the Applicant, it was around this time that they resumed an intimate relationship. She sponsored her son for permanent residency in Canada in 2012. The Applicant and her first husband remarried in January 2017.

[5] The Applicant applied to sponsor her first husband for permanent residency in June 2017. This application was refused, because a visa officer determined that the relationship fell within s 4.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], established under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. That provision states:

New relationship	Reprise de la relation
4.1 For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the foreign national has begun a new conjugal relationship with that person after a previous marriage, common-law partnership or conjugal partnership with that person was dissolved primarily so that the foreign national, another foreign national or the sponsor could acquire any status or privilege under the Act.	**4.1** Pour l'application du présent règlement, l'étranger n'est pas considéré comme l'époux, le conjoint de fait ou le partenaire conjugal d'une personne s'il s'est engagé dans une nouvelle relation conjugale avec cette personne après qu'un mariage antérieur ou une relation de conjoints de fait ou de partenaires conjugaux antérieure avec celle-ci a été dissous principalement en vue de lui permettre ou de permettre à un autre étranger ou au répondant d'acquérir un statut ou un privilège aux termes de la Loi.

[6] The Applicant appealed the refusal to the IAD, but her appeal was dismissed on November 8, 2019, in the Decision that is the subject of this application for judicial review.

III. **IAD Decision**

[7] The IAD conducted a hearing *de novo*, at which the Applicant and her first husband testified. The IAD first considered the evidence surrounding the breakdown of the Applicant's first marriage. It found that inconsistencies in the Applicant's and first husband's testimony about when they began living separately, and evidence that the Applicant was registered as living at the same residence as him in Heshan City, Guangdon as of August 24, 2012, undermined the credibility of the Applicant's allegation that their first marriage genuinely broke down and a separation in fact took place.

[8] The IAD also found that it is more likely than not that the Applicant's marriage to her second husband was a marriage of convenience, entered into primarily to obtain status in Canada and perhaps to give her child the opportunity for a Canadian education. The IAD based this conclusion on the evidence that the Applicant's relationship with her second husband, who had a different cultural and linguistic background, developed very quickly into marriage and then broke down very quickly. Additionally, the IAD found that the evidence that the Applicant remained in Canada after her second marriage ended, despite being separated from her 7-year-old son and living a subsistence existence, indicated that the marriage was one of convenience.

[9] The IAD acknowledged that the Applicant and her first husband did not re-marry until 2017, but it found that there were strong indicia that they resumed a conjugal relationship before the Applicant was divorced from her second husband.

[10] In summary, the IAD found it more likely than not that the Applicant's first marriage was dissolved primarily so that she could acquire status and privilege under IRPA through marriage to her second husband, a marriage which broke down very quickly. Although they delayed the resumption of their marriage, the Applicant and her first husband resumed having a conjugal relationship before the end of the Applicant's second marriage. The IAD concluded that these circumstances placed the Applicant within s 4.1 of the Regulations, such that her first husband cannot be considered a spouse, common-law partner or a conjugal partner of the Applicant and is not eligible to be sponsored to Canada by the Applicant.

IV. **Issue and Standard of Review**

[11] The Applicant states that the sole issue for the Court's consideration is the reasonableness of the Decision. As is inherent in this articulation of the issue, the standard of review applicable to the Applicant's arguments challenging the Decision is reasonableness.

V. **Analysis**

[12] First, the Applicant argues that this Decision is unreasonable, because it fails to consider key facts that contradict the result at which the IAD arrived. Specifically, the Applicant submits the IAD overlooked the substantial period of time that passed between the breakdown of her second marriage and her subsequent sponsorship of her son and first husband. She separated from her second husband in February 2007 but did not sponsor her son until 5 years later, in 2012, and did not attempt to sponsor her first husband until 5 years after that, in 2017. The Applicant argues that these delays call into question the IAD's findings that the Applicant's divorce from her first husband, and then her marriage to and divorce from her second husband, were motivated primarily by acquiring immigration status.

[13] The Applicant also notes the testimony in the hearing before the IAD to the effect that, at the time the Applicant and her first husband resumed their relationship, he was not interested in immigrating to Canada. Similarly, the Applicant notes the evidence that the delay in her sponsorship of her son resulted from her first husband's initial reluctance to consent to their son moving to Canada. She submits that the IAD's findings, as to the motivations for her marital transitions, are inconsistent with this evidence.

[14] The Applicant takes particular issue with the IAD's conclusion that she was motivated by wanting to obtain a Canadian education for her son. She submits that this finding is inconsistent with the evidence of her first husband's initial resistance to her son immigrating to Canada and the length of time that passed before she sponsored him.

[15] As the Respondent submits, the difficulty with the Applicant's arguments is that the Decision clearly demonstrates that the IAD did take into account the evidence and facts upon which her arguments rely. With respect to the Applicant's sponsorship of her first husband, the Decision expressly notes that they took their time remarrying and applying to sponsor him. The IAD acknowledges that obtaining status in Canada for the first husband was not an immediate priority. However, the IAD's conclusion, that s 4.1 of the Regulations was engaged, turned on the Applicant's motivation to achieve immigration status for herself, not for her husband. The IAD did not overlook the delay in sponsoring her husband, and the fact of that delay does not undermine the logic of the IAD's reasoning that the first marriage was dissolved primarily so that the Applicant could remarry and acquire status under IRPA.

[16] Turning to the Applicant's sponsorship of her son, again the fact this did not occur until 2012 is identified in the Decision. I also note that the IAD's analysis does not turn on a conclusion that the Applicant's primary motivation was to obtain a Canadian education for her son. The Applicant's argument relies on a line in the Decision where the IAD concluded that the Applicant's evidence suggested she was anxious to have her child educated in Canada. However, in the next paragraph, the IAD states its conclusion that "…it is more likely than not that her marriage to [her second husband] was a marriage of convenience, entered into primarily to

obtain status in Canada and perhaps to give her child the opportunity for a Canadian education" [my emphasis]. In the conclusion to the Decision, the IAD finds it "…more likely than not that the appellant's first marriage was dissolved primarily so that the appellant could acquire status and privilege under the Act …". As such, the analysis and finding underlying the result in the Decision focus on the Applicant's status, not that of her son.

[17] Also, as the Respondent submits, the evidence before the IAD is consistent with its statement that the Applicant may have been motivated by giving her son a Canadian education. The Applicant testified that, when she married her second husband, she thought that her son would be immigrating to Canada with her. It was only when her first husband learned that her second marriage would be overseas that he objected to her taking their child out of the country. This testimony explains the delay in sponsoring her son.

[18] I have also considered the testimony emphasized by the Applicant to the effect that, after she found out her son could not join her, she decided to immigrate to Canada anyway because she liked her second husband and thought that her son could eventually join her. However, I find nothing unreasonable in the IAD concluding, based on all the evidence cited above, that the Applicant's motivations might have included obtaining a Canadian education for her son but that her primary motivation was achieving immigration status for herself.

[19] Next, the Applicant argues that the Decision is not internally rational. This portion of the argument focuses on the IAD's conclusion that her second marriage was a marriage of convenience. The IAD based its conclusion on the fact that the Applicant entered and left the

marriage so quickly, the couple's significant cultural and linguistic differences, and the fact that she chose to remain in Canada after the dissolution of the marriage notwithstanding harsh living conditions. She submits that the IAD erred by failing to accept her explanation as to why the marriage broke down, i.e., that she was being compelled to have children and be a full-time homemaker against her will, and that there were difficulties associated with living with her second husband's son. She also explained that she did not return to China when the marriage broke down, because she was embarrassed at having two failed marriages and had concerns about difficulty finding employment.

[20] The Applicant submits that, as the IAD did not expressly find her explanation credible, her testimony must be taken as true. If find little merit to this submission. The Decision demonstrates that the IAD considered the Applicant's explanation and rejected it. In doing so, it acknowledged there could be some shame involved but found it was not believable that the risk of embarrassment would be an insurmountable barrier to returning to China, in the context of the Applicant living in a basement and working as a dishwasher in an unfamiliar country, while having a 7-year-old son and other family in China. The IAD also found it was not believable that she would be unemployable at age 36, with extensive experience in early childhood education. The IAD clearly and expressly rejected the credibility of the Applicant's explanations.

[21] Alternatively, the Applicant argues that the IAD's reasons for rejecting her explanation constitute an unreasonable implausibility analysis. There is jurisprudence to the effect that evidence can be rejected as implausible only in the clearest of cases (see *Valtchev v Canada (Minister of Citizenship and Immigration),* [2001] FCJ No 1131 at para 9 (FCTD)). However, in

the present case, the IAD's analysis relies not only on its conclusion that the embarrassment faced by the Applicant would not prevail over the other factors cited. The IAD also notes that, when asked what she thought about her second husband talking about marriage, the Applicant testified that her son was 6 years old and it was better to get an education in Canada as soon as possible. I find nothing unreasonable in the IAD's analysis and conclusions on this issue.

[22] Finally, the Applicant takes issue with the IAD's reliance on the fact that her household registration (or *hukuo*) in China still showed her and her first husband residing at the same address in Hesha City as of August 24, 2012. She observes that the register noted the Applicant as a "non-relative" and argues it was unreasonable for the IAD to rely on this evidence to question whether her first marriage genuinely broke down such that she and her first husband were separated as alleged.

[23] However, the IAD expressly notes that the *hukuo* identified the Applicant as a non-relative and that she immigrated to Canada in 2014. The IAD did not rely solely on the Applicant's continued inclusion in the *hukuo* as its basis for questioning the separation. It also drew a negative inference from the inability of the Applicant and her husband to provide consistent evidence of when they began living separately, both under the same roof and at different properties. I find no reviewable error in this portion of the IAD's analysis.

[24] Having considered the Applicant's arguments, I find nothing unreasonable in the Decision. As such, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-7295-19

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7295-19
STYLE OF CAUSE:	YAN YANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE VIA TORONTO
DATE OF HEARING:	APRIL 27, 2021
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	MAY 10, 2021

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