

Federal Court



Cour fédérale

Date: 20220316

Docket: IMM-2771-21

Citation: 2022 FC 357

Ottawa, Ontario, March 16, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

BAMIDELE PETER OJEABURU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Bamidele Peter Ojeaburu, seeks judicial review of a decision of the Immigration Appeal Division (IAD), dated March 30, 2021, dismissing the appeal of his spousal sponsorship application. For the reasons that follow, this judicial review is dismissed as the decision of the IAD is reasonable.

I. Factual Background

[2] In March 2011, the Applicant obtained permanent resident status in Canada through spousal sponsorship. The Applicant was sponsored by his wife, Ms. Merilles, who he met in April 2004 and married in October 2005. The Applicant and Ms. Merilles separated four months after he landed in Canada in July 2011. They divorced in April 2013.

[3] In June 2018, the Applicant applied to sponsor his current wife, Gloria Eromo Eichie [Ms. Eichie], who is a citizen of Nigeria. They met by phone in June 2014, met in person in Dubai in August 2015, and married in South Africa in March 2016. The Applicant submitted an application to sponsor Ms. Eichie as his spouse under the family class category.

[4] In 2009, prior to being sponsored by Mr. Ojeaburu, Ms. Eichie entered the United Kingdom (UK) on a student visa. In 2011, while a student in London, Ms. Eichie twice applied for a Canadian student visa, but both applications were refused. After her UK student visa expired in June 2012, Ms. Eichie remained in the UK. In 2013, she attempted to travel to Canada from London Heathrow Airport by using a false passport. She was charged and convicted of having a false identity document and was sentenced to 12 months' imprisonment. Following the completion of her sentence in December 2013, she was deported from the UK back to Nigeria.

[5] After reviewing the spousal sponsorship application and conducting an interview with the Applicant and Ms. Eichie, the Visa Officer was not satisfied that they were in a genuine marriage. The Officer's concerns were outlined in a procedural fairness letter as follows:

- Ms. Eichie and Mr. Ojeaburu did not hold a traditional marriage ceremony in addition to their civil ceremony held in South Africa. The couple gave conflicting reasons for why it had not taken place. Namely, when asked why a traditional ceremony was not held, Mr. Ojeaburu stated that it was due to financial constraints. The Visa Officer then pointed out that in addition to travelling to Nigeria to meet Ms. Eichie's, Mr. Ojeaburu and Ms. Eichie travelled to Dubai twice and South Africa twice. The Visa Officer asked if they could afford to go on such trips, then why not hold a traditional ceremony that Mr. Eichie's family could attend? Mr. Ojeaburu replied simply that "We are adults and that is what we chose to do".
- Neither Ms. Eichie's nor Mr. Ojeaburu's family members were present at their wedding. It was not clear why they decided to marry in South Africa.
- The records of text messages did not show conversations of substance and were of low probative value.

[6] A refusal letter was sent to the Applicant on October 9, 2019. The Applicant appealed to the IAD.

II. IAD Decision Under Review

[7] The IAD acknowledged that undue focus should not be placed on immigration history. However, the IAD noted that Ms. Eichie had overstayed her UK student visa and remained in the UK without authorization. The IAD also considered her 2013 arrest in London for using a false passport to attempt to travel to Canada. Although she claimed she used a false passport because she intended to make a refugee claim in Canada, the IAD noted that she did not make an asylum claim in the UK despite having been there since 2009.

[8] The IAD further considered that Ms. Eichie applied to Canada for a study permit on two occasions in 2011 while she was still on a valid study visa in the UK. The IAD member found that Ms. Eichie's actions demonstrated her willingness to enter Canada at all costs.

[9] The IAD was concerned with the genuineness of the Applicant's first marriage to Ms. Merilles. The IAD determined that the union bore the hallmarks of a marriage of convenience as the relationship was established quickly, and the Applicant and Ms. Merilles separated just four months after he landed in Canada as a permanent resident. When asked why they separated, the Applicant replied that he purchased a laptop, which angered Ms. Merilles and this led to their breakup. The IAD found the Applicant's explanation for the breakdown of his marriage to Ms. Merilles was questionable.

[10] With respect to the genuineness of the Applicant's current marriage, the IAD was concerned with the lack of communication records or any other evidence between the Applicant

and Ms. Eichie from the time they were introduced in 2014 to 2015. Moreover, the IAD noted that the chat and call records from 2015 were of little substance and lacked detail.

[11] The IAD noted that the couple provided conflicting explanations for not holding a traditional ceremony. The IAD reasoned that if financial constraints bore on the Applicant's inability to hold a traditional ceremony since 2016, it was unclear why the couple indicated in their 2018 application form that they planned to hold the traditional ceremony soon. The couple again stated their intention to hold the ceremony at the visa interview in 2019. Yet, by the time of the IAD hearing in 2021, the ceremony had still not been held. The IAD also noted that no family members attended the civil ceremony held in South Africa.

[12] The IAD member found that the Applicant's and Ms. Eichie's travels post-marriage and the evidence that Ms. Eichie suffered miscarriages weighed positively in favor of the genuineness of the marriage. However, the IAD noted that while the couple testified that the first miscarriage happened in April or May 2016, no further evidence was provided to substantiate this. Moreover, the Applicant submitted a medical note dated July 12, 2019, stating that Ms. Eichie "just had" a miscarriage, with no details as to exactly when this occurred, or any other details surrounding the event.

[13] The IAD determined that the Applicant failed to address the concerns of the Visa Officer in the appeal and that he failed to discharge the onus of establishing, on a balance of probabilities, that his marriage to Ms. Eichie was genuine and not entered into for the purposes of immigration.

III. Issues

[14] The Applicant raises a number of issues which I will address as follows:

- A. Did the IAD independently assess the evidence?
- B. Did the IAD put undue emphasis on the events prior to the marriage?
- C. Did the IAD put unreasonable weight on the absence of a traditional marriage ceremony and the lack of evidence of the development of the relationship?

IV. Standard of Review

[15] The parties agree that the standard of review is reasonableness. As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], in conducting a review on the reasonableness standard, “the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (at para 99).

[16] Further, “[t]he reviewing court must refrain from ‘reweighing and reassessing the evidence considered by the decision maker’” (*Vavilov* at para 125).

V. Analysis

A. *Did the IAD Independently Assess the Evidence?*

[17] The Applicant argues that the IAD did not independently review the evidence, but rather, looked for evidence that simply bolstered the original decision of the Visa Officer. The Applicant refers to portions of the IAD decision that reference the Officer's concerns as being an indication that the IAD failed to properly consider the evidence.

[18] On appeal, the role of the IAD is "to give dispassionate, careful, and impartial consideration to the evidence adduced before it" (*Hundal v Canada (Minister of Citizenship and Immigration)*, 2003 FC 884).

[19] In my view, in considering the appeal, the IAD properly noted the findings of the Officer, and then went on to consider the testimony and documentary evidence from the parties. This is the proper approach and I disagree with the Applicant's submissions on this issue.

B. *Did the IAD put Undue Emphasis on the Events Prior to the Marriage?*

[20] The Applicant argues that his previous marriage to Ms. Merilles has no bearing on the genuineness of his marriage to Ms. Eichie. He argues that it was unreasonable for the Officer and the IAD to assess the first marriage in the context of whether his existing marriage is genuine.

[21] A similar argument was made in *Fang v Canada (Minister of Citizenship and Immigration)*, 2020 FC 851 where the court held:

27. Mr. Fang submits that the IAD's finding that his first marriage was not genuine is not reasonable. He questions the materiality of his contradictory evidence as to when he met his first wife, the accuracy of the panel's conclusions on the hasty nature of the relationship, his first wife's suitability vis-à-vis his mother, and the spouses' Canadian living arrangements. Mr. Fang also submits that the IAD erred in failing to consider the fact that his first marriage had never been investigated.

28. The IAD acknowledged that Mr. Fang's first marriage had not been investigated but stated that he nonetheless bore the onus of satisfying the panel that Ms. Chen was not a person described in section 4.1 of the Regulations. The IAD made no error in this regard or in stating that evidence relating to Mr. Fang's first marriage was essential in assessing the application of section 4.1. The fact that the IAD did not consider the absence of an investigation as a positive factor is not a reviewable error.

[22] Likewise, in this case, considering that the Applicant obtained status in Canada through his first marriage, this was a relevant consideration for the Officer and the IAD. The IAD questioned the Applicant about the breakdown of his first marriage. He claimed that the marriage ended because his wife was upset that he purchased a laptop. This explanation was found to be implausible. In any event, the IAD noted that the Applicant's first marriage and its genuineness was not determinative of the appeal. Rather, it was an issue that went to his credibility.

[23] The Applicant also argues that Ms. Eichie's immigration history should not be used to question the genuineness of their marriage, and that positive weight should be assigned to her immigration history post-December 2013, when she made two trips to the United Arab Emirates and two trips to South Africa in compliance with visa requirements. This submission is without

merit. Her immigration history is relevant and the weighing of these factors are solely within the discretion of the IAD and properly assessed within the full context of the application.

[24] The Applicant further argues that the IAD failed to properly consider that Ms. Eichie's intention was to travel to Canada to claim refugee status.

[25] This argument is also without merit. Although Ms. Eichie mentioned her desire to claim asylum in Canada to the UK authorities, she did not claim asylum in the UK. She also went on four international trips with the Applicant after her deportation from the UK, each time re-availing herself to Nigeria. Moreover, nothing in her interview with the Visa Officer in Accra, Ghana, suggests that she intended to claim asylum. When the Visa Officer asked Ms. Eichie about the purpose of her attempted visit to Canada in 2013, leading up to her arrest at London Heathrow Airport, she responded:

I had gone to the UK in 2009 and overstayed. It was frustrating because I couldn't go out. A lady I knew said that she would send me someone's passport and I could go to Canada to claim asylum. I have always liked Canada and I tried to go before under the student program but was refused. So she sent me the passport and even on the way to the airport I was very nervous because this isn't my person. The lady at the airport could tell that something was wrong. She said the photo does not look like me and that she would be calling the police. That is how I was deported from the UK.

C. *Did the IAD Put Unreasonable Weight on the Absence of a Traditional Marriage Ceremony and Lack of Evidence of the Development of the Relationship?*

[26] The Applicant argues that the Officer and the IAD put undue emphasis on the absence of the traditional wedding ceremony. The Applicant also argues it was unreasonable for the IAD to

conclude that there was little evidence of their relationship from when they met until 2015, as neither the Visa Officer nor the IAD made adverse credibility findings against the couple.

[27] The issue of the holding a traditional wedding ceremony was a topic raised by the Applicant and not the Officer or the IAD. However, the IAD noted conflicting explanations as to why a traditional ceremony was not held. The Applicant and his spouse offered conflicting explanations for why they did not hold a traditional wedding in Nigeria such that Ms. Eichie's family could attend. Ms. Eichie claimed that it would be a financial burden to hold the ceremony in Nigeria, while the Applicant stated "I don't like Nigeria."

[28] With respect to the lack of evidence on the development of the relationship, the onus is on the Applicant to provide sufficient evidence to support their assertions. The weighing of evidence is within the expertise of the IAD. It is not the role of this Court to reweigh evidence.

[29] Given that insufficient evidence was offered by the Applicant, and considering the inconsistencies in the testimony, and Ms. Eichie's previous attempts to travel to Canada – including by fraudulent means – in my view the decision of the IAD is reasonable.

[30] This judicial review is dismissed.

[31] Neither party proposed a certified question and no question is certified.

JUDGMENT IN IMM-2771-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance was proposed and none arises.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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