Federal Court  Cour fédérale

**Date: 20220909**

**Docket: IMM-6631-20**

**Citation: 2022 FC 1273**

**Ottawa, Ontario, September 9, 2022**

**PRESENT: The Hon Mr. Justice Henry S. Brown**

**BETWEEN:**

**KIRUBEL MEKONNE ABEBE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Nature of the Matter

[1] The Applicant seeks judicial review of a decision Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada dated December 7, 2020 [Decision]. The IAD confirmed Visa Officer's decision that rejected the Applicant's request to sponsor his spouse in Ethiopia for permanent residence subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

## II. Background Facts

[2] The Applicant was born in Addis Ababa, Ethiopia. He arrived in Canada in 2007. He obtained permanent residence in Canada in November 2012 and became a citizen in 2017. He was previously married in Canada in 2010. His then-wife applied to sponsor him but her application was denied because the immigration officer did not believe the marriage was genuine. The couple separated in 2012. No children resulted from the marriage and a divorce was finalized in June 2018.

[3] In January 2019, the Applicant went to Ethiopia and married his current spouse [the Applicant's wife]. The Applicant's wife was also born in Addis Ababa, Ethiopia, and has never traveled outside the country. She was not married previously and has no children.

[4] The Applicant returned to Canada 6 days after the wedding and the Applicant applied for sponsorship in February 2019. The Applicant has not returned to Ethiopia since January 2019. The Applicant is an Orthodox Christian. His wife is of the Muslim faith.

[5] The Applicant and his wife knew each other as children in Ethiopia when the Applicant would visit his family. They were re-acquainted in August 2018 through their fathers who considered the possibility of an arranged marriage. The fathers are long-time friends and business partners. The Applicant testified he was pleased with the suggestion, because he remembered her from childhood and knew her family. There was some apprehension at first, but

it quickly subsided as they kept in touch through social media and reminisced about their childhood days. The Applicant proposed marriage over the phone in September 2018.

[6] After communicating on the phone for a few months, the Applicant traveled to Ethiopia on January 4, 2019. Arrangements were made for a non-formal non-traditional civil wedding on January 14, 2019. The ceremony was small, consisting of approximately five people, followed by a reception with about 25 guests. The couple spent time together and bought each other gifts until the Applicant departed Ethiopia a couple days later.

[7] The Applicant returned to Canada on January 20, 2019. He has not met with his wife in person since. The couple continues to communicate with each other 2-3 times a day for up to an hour. The Applicant says they discuss current affaires, politics in Ethiopia, the weather and have flirtatious conversations.

[8] A visa officer refused the application for sponsorship in November 2019, citing subsection 4(1) of the *IRPR*. An appeal was taken to the IAD, from whose Decision this judicial review arises.

[9] The Applicant's wife refused to appear at the IAD hearing to give evidence. The Applicant says this is because she suffered negative psychological affects following the refusal of her earlier application. No medical evidence was filed to support of this assertion.

[10] Her brother appeared as a witness at the hearing along with the Applicant. Her brother is married to the Applicant's sister and lives in Canada.

## III. Decision under review

[11] The IAD found that the Applicant has not proven on a balance of probabilities the marriage is genuine and that it was not entered into primarily for acquiring status or privilege under the *IRPA*. The requirements are conjunctive.

[12] The IAD said that "genuineness of relationships may be assessed by reviewing a number of factors, such as the length of the parties' relationships prior to their marriage, their age difference, their former marital or civil status, their respective financial situation and employment, their family background, their knowledge of one another's histories, their language and their respective interest". No issue is taken with this framework.

[13] Having reviewed the evidence the IAD concluded "the totality of the indicia does not weigh positively in favour of the Appellant". The IAD concluded the evidence from the Applicant and the witness was not sufficiently credible, trustworthy or reliable enough to overcome his concerns as well as the immigration officer's concerns.

[14] Notably, the visa officer (who heard oral evidence from both the wife and the Applicant at the earlier proceeding) raised concerns that:

A. The wife was unable to provide details on information discussed during lengthy discussions with the Applicant;

B. The wife lack details of her spouse's life in Canada;

C. The wife lack specifics about the applicant's financial situation; and

D. The wife would return to what she committed to memory when presented with those concerns by the visa officer

[15] The IAD recognizes this was an arranged marriage according to Ethiopian cultural norms. However, the IAD said even so, it would expect a larger degree of knowledge of one another given that they communicate multiple hours per week and know that the marriage is under scrutiny. These concerns were also not satisfied on appeal even if they had the chance to do so because the Applicant's wife did not testify.

[16] As noted, the Applicant claims his wife did not testify because of negative psychological affects she suffered after the immigration interview and the refusal by the visa officer. They claim the COVID-19 pandemic made it harder to provide documentation from a healthcare professional.

[17] There was no medical evidence to support the wife's decision not to give evidence. The IAD member drew a negative inference from this lack of corroborating evidence because ample time has passed, and because she could have provided at least a letter in support from herself or family members if she could not attend the hearing, as both the Applicant's father and her father did. This negatively impacted the credibility of the evidence provided.

[18] The IAD also drew a negative inference from the fact the Applicant's wife wasn't aware of the circumstances of the failure of his previous marriage, because this knowledge would be

relevant to someone considering whether to accept a marriage proposal or not. The Applicant's wife was also not aware that the Applicant was involved in a group sponsorship for her brother.

[19] The IAD concluded there is little credible and trustworthy evidence that the couple intend to live and share a life together in Canada.

## IV. Issues

[20] The issue in this case is whether the IAD made a reasonable decision when concluding the Applicant and his wife's marriage is not genuine and was entered to primarily for the purpose of immigration.

## V. Standard of Review

[21] The parties agree as do I that the standard of review applicable in this case is reasonableness. In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the]

> conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "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" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[22] *Vavilov* makes it clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". Notably in this case, no such exceptional circumstances were advanced. The Supreme Court of Canada instructs:

> [125] 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": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.

[Emphasis added]

[23] I should add the onus is on the Applicant to prove, on a balance of probabilities, that his spouse is not excluded under para 4(1) of the *IRPR*. This Court owes respectful deference to the IAD in its assessment of the evidence as trier of fact: *Vavilov*; *Kusi v Canada (Citizenship and Immigration)*, 2021 FC 68 at para 9; *Canada (Citizenship and Immigration) v Munoz Pena*, 2020 FC 719 at para 29.

## VI. Relevant legislation

[24] Section 4(1) of the *IRPR* states:

| **Bad faith** | **Mauvaise foi** |
|---|---|
| **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 marriage, common-law partnership or conjugal partnership | **4 (1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas: |
| **(a)** was entered into primarily for the purpose of acquiring any status or privilege under the Act; or | **a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi; |
| **(b)** is not genuine. | **b)** n'est pas authentique. |

## VII. Analysis

[25] The Applicant's position consists largely of two arguments: 1) that he has provided sufficient evidence that should not have been discounted because his wife did not testify; and 2) that the IAD erred in applying Western North American standards to a traditional arranged Ethiopian marriage.

[26] First, the Applicant submits the main issue identified by the panel is the lack of sufficient evidence convincing the panel that the marriage is genuine. The Applicant argues he provided sufficient, consistent, straight forward and credible evidence explaining the concerns of the immigration officer. The Applicant submits his credible and non-contradicted evidence may not be discounted without sufficient reason solely because his spouse did not testify.

[27] The Applicant also argues he provided corroborative evidence proving the genuineness of the marriage, including evidence of communication over several months and corroboration of how they met and married from his father, father in law and brother in law. The panel did not raise concerns about the credibility of the Applicant's testimony or point out any contradiction or inconsistency. The Applicant also adds his testimony and his spouse's interview are consistent with each other. The panel also says in the decision the Applicant gave reasonable answers to questions.

[28] I find no merit in these arguments, all of which in my view ask this Court to engage in reweighing and reassessing the same evidence and likely the same arguments considered,

assessed, weighed and rejected by and before the IAD. As noted above, that is not the role of this Court on judicial review. These are all matters of evidence, the weight of evidence, inferences that may be drawn, and the circumstances of this particular case.

[29] That is sufficient to dispose of this point. However, on the central point of the Applicant's wife not testifying, the jurisprudence of this Court – which binds the IAD and which the IAD was entitled to apply – confirms the IAD may draw a negative inference from the absence of testimony from a spouse: *Waqas v Canada*, 2020 FC 152 at para 19, citing Justice Shore in *Ma v Canada (Citizenship and Immigration)*, 2010 FC 509:

> [2] Reasonableness dictates that in the case of the Immigration and Refugee Board (and all its divisions), although the rules of evidence in its regard are relaxed, nevertheless, <u>when evidence is available, or could be made available but not produced, or when a person can testify, is given the opportunity to testify, but does not testify, then an adverse inference can be drawn.</u>
>
> [Emphasis added]

[30] The Applicant also submits his testimony is presumed truthful citing *Maldonado v Canada (Minister of Employment & Immigration),* [1980] 2 F.C. 302 (FCA) at para 5 and *Barring v Canada (Citizenship and Immigration)*, 2019 CanLII 55242 (CA IRB) at para 31. The Applicant relies on one case from the IAD the application of this rule in the visa context; I find it of no assistance noting the Applicant cited to no authority from the Federal Courts to support his claim. The Respondent says this rule only applies in the refugee context, which with respect is where the cited jurisprudence lies. That said, even if he is correct, in my view there was a valid reason to doubt the Applicant's evidence namely the refusal of the Applicant's wife to give any

evidence in support. Further, the presumption of truthfulness does not give rise to a presumption such evidence is entitled to conclusive weight.

[31] Indeed, jurisprudence cited by the Applicant himself namely *Adu v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 114 states "the 'presumption' that a claimant's sworn testimony is true is always rebuttable, and, in appropriate circumstances, may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention." The same may be said of the failure to produce a material witness where one would normally expect such witness, as was the case of the Applicant's wife in this case.

[32] As to the Applicant's contention the IAD erred in imposing Western standards to a traditional arranged Ethiopian marriage, I find no merit. The Applicant says the IAD erred when requiring extensive financial disclosure and knowledge of details about the life of the Applicant, including details of his previous marriage, because these are standards the parties to the marriage do not consider important or as relevant. He submits the genuineness of their marriage and details of communication about each other's lives, financial disclosure, his former marriage and haste of the marriage should not be viewed from a North American perspective, but rather through Ethiopian cultural norms and socioeconomic conditions. The Applicant argues the level of details and information shared between him and his spouse as well as the short period of courtship is normal in his culture and that the panel imposes a western standard of disclosure of information to a traditionally arranged Ethiopian marriage.

[33] I agree applying North American standards to a different culture may constitute a reviewable error in the context of a particular case: *Nadasapillai v. Canada (Citizenship and Immigration)*, 2015 FC 72 at para 19; *Padda v. Canada (Citizenship and Immigration)*, 2018 FC 708 at para 14.

[34] However, in my respectful view the IAD did not impose North American standards. I say this because it specifically acknowledged the marriage was arranged according to Ethiopian tradition, and then reasonably found the couple demonstrated only limited knowledge of each other despite frequent communication and their knowledge of the scrutiny by immigration officials. The onus was on the Applicant to provide sufficient evidence addressing his spouse's lack of familiarity with his finances, occupation or plans to sponsor her in Canada and failed to do so.

[35] In addition, the spouse failed to give any account of these matters herself. She did not address the concerns of the visa officer, nor the concerns of the IAD, because she did not testify orally or in writing. I agree with the Respondent that the concerns the IAD had reasonably outweighed the fact the Applicant alone had provided from his knowledge (but not hers) "some reasonable answers to questions asked of him".

[36] In my opinion, it is also inaccurate in terms of constraining law to say the Applicant's uncontradicted evidence may not be discounted by the IAD and that "if there is no evidence that contradicts his testimony, it is unreasonable to reject the appeal". Rather, in this respect, constraining law determines the IAD is "entitled to make reasonable findings based on

implausibilities, common sense and rationality, and is entitled to reject uncontradicted evidence if not consistent with the probabilities affecting the case as a whole": *Abdul v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 260 at para 15. This is exactly what the IAD reasonably did in this case as it was entitled to do.

## VIII. Conclusion

[37] In my view, for the reasons above, the Decision reached is reasonable as required by *Vavilov* in that it is justified, transparent and intelligible. Therefore this application will be dismissed.

## IX. Certified Question

[38] Neither party proposed a question of general importance, and none arises.

**JUDGMENT in IMM-6631-20**

**THIS COURT'S JUDGMENT is that** this application is dismissed, no question of general importance is certified, and there is no Order as to costs.

"Henry S. Brown"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-6631-20 |
| **STYLE OF CAUSE:** | KIRUBEL MEKONNE ABEBE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY WAY OF VIDEOCONFERENCE |
| **DATE OF HEARING:** | SEPTEMBER 7, 2022 |
| **JUDGMENT AND REASONS:** | BROWN J. |
| **DATED:** | SEPTEMBER 9, 2022 |

**APPEARANCES:**

| | |
|---|---|
| Daniel Tilahun Kebede | FOR THE APPLICANT |
| Nick Continelli | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Law Office of Daniel Kebede<br>Barrister & Solicitor<br>Toronto, Ontario | FOR THE APPLICANT |
| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |