Federal Court  Cour fédérale

Date: 20240709

Docket: IMM-8122-23

Citation: 2024 FC 1072

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 9, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

FADOUA BENELBARGUIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant is seeking judicial review of a decision by the Immigration Appeal Division [IAD] dated June 14, 2023, dismissing the appeal from a visa officer's refusal of the sponsorship application for the applicant's spouse [Decision]. In rendering its decision, the IAD

found that the spouse did not meet the requirements of section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR).

[2] The Court finds that the Decision is not unreasonable with respect to the analysis of the marriage for the purposes of the IRPR and the manner in which a police report was considered by the IAD. For the following reasons, the application for judicial review is dismissed.

II. Facts

[3] Before the IAD, the applicant appealed the refusal of her spouse's application for permanent residence in the family class. The applicant became a Canadian citizen in 2010. She married her spouse in 2017. Her spouse was in Canada on a study permit a few years before the marriage. In 2019, they had a daughter.

[4] The IAD concluded that the intention of the applicant and her spouse at the time of their marriage was to enable him to acquire an immigration status. Under subsection 4(1) of the IRPR, he was not a member of the family class. The IAD determined that the intention at the time of the marriage was to enable the spouse to acquire immigration status on several grounds, such as the spouses' conflicting and unclear testimony on several key events in their relationship and the circumstances leading to the marriage; statements made by the applicant to the police in November 2019; and, at the time of the wedding in October 2019, the spouse held a precarious immigration status.

III. Issue and standard of review

[5] The two issues in this judicial review are the following:

1. Did the IAD render an unreasonable decision by erring in its application of section 4 of the IRPR?
2. Did the IAD render an unreasonable decision by considering statements in a police report even though the applicant's spouse was acquitted?

[6] The parties agree that the standard of reasonableness applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 10, 25 [*Vavilov*]). I am of the same view that the standard of reasonableness is the appropriate standard of review in this case.

[7] I am aware of the effects of the Decision that is the subject of this judicial review. However, in a judicial review, the Court must determine whether a decision bears the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be described as unreasonable if the administrative decision maker has misinterpreted the evidence on record (*Vavilov* at paras 125, 126). The burden is on the party challenging the decision to show that it is unreasonable. That party must satisfy the Court that the shortcoming or flaw relied upon is sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

IV. Analysis

[8] The parties agree that subsection 4(1) of the IRPR requires the applicant to demonstrate on a balance of probabilities that the marriage is genuine and was not entered into primarily for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA].

[9] The applicant alleges that the IAD confused the analysis of the "genuineness" test with the "intent" test, as it had referred to both tests at the same time. As a result, the applicant submits that the IAD did not understand that the tests under section 4 of the IRPR are distinct and disjunctive tests. She also submits that the IAD erred in considering the statements in the 2019 police report, two years after the marriage and, furthermore, because the spouse was acquitted.

A. *Analysis of IRPR, subsection 4(1) not unreasonable*

[10] At the hearing, the applicant highlighted the headings and subheadings in the IAD's reasons in the Decision and the use of the phrase "the genuineness of their intent to marry" to substantiate that the IAD merged the tests set out in section 4 of the IRPR. The applicant also submits that the IAD confused the time aspect in its analysis of the purpose (or intent) test, relying on a police report about an incident that occurred two years after the marriage.

[11] First, I note that the Decision in fact considered the two tests set out in section 4 of the IRPR distinctly and disjunctively. On the one hand, the analysis of the genuineness of marriage

(4(1)(b) of the IRPR) was dealt with in one section. On the other hand, the IAD conducted a distinct analysis of the intention behind the marriage in another section (4(1)(a) of the IRPR).

[12] I acknowledge that the use of the phrase "the genuineness of their intent to marry" in the analysis of the intent of the marriage under paragraph 4(1)(a) of the IRPR is a regrettable choice of words. However, the applicant's interpretation requires that I read the words in isolation, which I must not do in a judicial review. Moreover, written reasons must not be assessed against a standard of perfection (*Vavilov* at para 91).

[13] In *Idrizi v Canada (Citizenship and Immigration)*, 2019 FC 1187 [*Idrizi*], the Court states that, "despite the fact that the amended provision separates the primary purpose and genuineness tests and treats each as sufficient in and of itself to warrant a finding that a person is not considered a spouse, there can still be a close connection between the two in a given case" (*Idrizi* at para 29). The analysis of each element is distinct, meaning that the conclusion on one element does not depend on the conclusion on the other.

[14] The Court clarified that the evidence relevant to the analysis of one test under section 4 of the IRPR can also be relevant to the assessment of the other. There may be some overlapping evidence between primary purpose and genuineness, even given the differences in their temporal focus points. It is therefore clear that evidence which postdates the time of marriage and speaks to the genuineness of the marriage (or lack thereof) can be relevant to the assessment of primary purpose (*Lawrence v Canada (Citizenship and Immigration)*, 2017 FC 369 at para 14–15).

[15] In reading the Decision as a whole, I am of the view that there was no confusion on the part of the IAD with respect to the tests required by the IRPR. It was reasonable for the IAD to consider facts that occurred after the marriage, including those set out in the police report (*Huynh v Canada (Citizenship and Immigration)*, 2013 FC 748, at para 15; *Kaur Gill v Canada (Citizenship and Immigration)*, 2012 FC 1522, at paras 32, 33).

[16] The applicant submits that the IAD's finding that the marriage was entered into primarily to acquire an immigration status could not be intelligible given that the IAD had determined that the marriage was genuine.

[17] I disagree with the applicant. In this case, the IAD recognized that the tests under section 4 of the IRPR are distinctive, and that having determined that the marriage was genuine would not necessarily result in a determination that the intent of the marriage was not immigration. This finding is consistent with jurisprudence.

[18] In *Zhou v Canada (Citizenship and Immigration)*, 2020 FC 633, at paragraph 43 [*Zhou*] Norris J explained the disjunctive test. A finding on either element of subsection 4(1) of the IRPR is sufficient to exclude the individual from the definition of a spouse. The onus is on the applicant to demonstrate that (1) her marriage was not entered into primarily to acquire a status or privilege under IRPA and (2) her marriage was genuine (*Zhou* at para 43).

[19] In *Trieu v Canada (Citizenship and Immigration)*, 2017 FC 925 [*Trieu*], a similar issue was before the Federal Court, including whether the IAD erred in law by conflating and confusing the

two tests when applying subsection 4(1) of the IRPR. Kane J clarified that "[e]ven if a relationship is currently genuine, this would not be sufficient to establish that the marriage was not entered into for an immigration purpose. Both parts of the test must be established" (*Trieu* at para 34).

[20] The IAD properly analyzed section 4 of the IRPR, considering the tests to be distinct and disjunctive. It was therefore not unreasonable for the IAD to conclude that the marriage did not meet the requirements of section 4 of the IRPR.

B. *Reference to police report not unreasonable*

[21] The applicant then challenges the fact that the IAD relied on a police report dated November 24, 2019, two years after the marriage. Moreover, since the police report relates to allegations for which her husband was acquitted, the IAD should not have relied on that evidence for the purposes of its analysis of subsection 4(1) of the IRPR.

[22] Both parties referred to *Canada (Citizenship and Immigration) v Solmaz*, 2020 FCA 126 [*Solmaz FCA*]. In the Federal Court decision in *Solmaz v Canada (Citizenship and Immigration)*, 2019 FC 736 [*Solmaz*], Bell J found it necessary to certify a question on the use of "the facts underlying criminal allegations for which the inadmissible individual was not convicted" (*Solmaz* at para 34). The response by the Federal Court of Appeal was that such evidence was admissible insofar as it was not used to make a determination concerning an individual's criminality (*Solmaz FCA*). The Federal Court of Appeal cited the general rule set out in *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 [*Sittampalam*] at paragraph 50, that "[t]he jurisprudence of this Court indicates that evidence surrounding withdrawn or dismissed

charges can be taken into consideration at an immigration hearing. However, such charges cannot be used, in and of themselves, as evidence of an individual's criminality".

[23] The IAD considered the police report in its analysis of the intent of the marriage. In 2019, when the police went to the couple's home, the applicant provided statements to the police officers. The applicant states that the IAD erred in considering the police report, as the facts were related to the unproven allegations and were dismissed because the husband was acquitted. The applicant had also denied the reliability of her statements, which she described as false statements.

[24] In this case, the IAD correctly explained that jurisprudence did not preclude it from considering information underlying criminal charges that were withdrawn or for which the individual was acquitted. The IAD referred to Leblanc JA's explanation in *Solmaz FCA* clarifying that the conditions governing the use of evidence underlying charges that have been withdrawn, rejected or contemplated are that this evidence cannot, in and of itself, establish the criminality of the inadmissible person, and that it must be credible and trustworthy (*Solmaz FCA* at para 85).

[25] The IAD also clarified that the panel's goal was not to establish the spouse's criminality in relation to charges of assault of which he was acquitted. The goal was to consider credible and trustworthy information to analyze the tests in the context of the sponsorship. The IAD subsequently concluded that it could use the information contained in the documentary evidence, including the police reports, if it found it to be credible and trustworthy. The IAD considered not only the statements in the police report but also the testimony from the applicant and the spouse

concerning the statements to determine whether the police report was credible and trustworthy. It undertook the analysis as required by jurisprudence.

[26] In *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 [*Pascal*], McHaffie J summarized the principle that the decision maker must assess the contents of a police report and reach a conclusion that the police report is "credible or trustworthy", rather than ignoring the question of its credibility or simply making an assumption to that effect. If such an assessment is made, the Court and the [Federal] Court of Appeal have accepted that it may be reasonable to rely on police reports, even where the facts described in them are not separately corroborated by testimony of officers or witnesses (Pascal at para 29).

[27] I therefore find no error with the IAD's analysis of the police report or the statements contained in it. The IAD undertook an analysis of the credibility and trustworthiness of the police report. The applicant and the spouse also had the opportunity to explain. The IAD provided reasons to determine that their explanations during their testimony were unsatisfactory and the IAD explained why.

[28] It was open to the IAD to give more weight to the police report since it provided reasons explaining why it assigned more credibility to the police reports than the testimony of the spouses. In conducting its own assessment of the evidence, the IAD determined that the spouses' testimony could not satisfy it that all the information in the police report was false. In determining that the police report was more credible than the other evidence, the IAD considered the contents of the

police report and highlighted the contradictions it contained. The IAD also had the opportunity to question the spouses. I find no error in the IAD's analysis of the police report.

[29] Whether a marriage was entered into primarily for the purposes of immigration or is genuine is a highly factual inquiry, and decision makers are entitled to deference from reviewing courts. This is particularly the case when the decision maker has the benefit of having questioned the spouses in person (*Idrizi* at para 21). Consequently, if the reasons explain why the evidence in the police report was more persuasive than the other evidence, the Court should not substitute its own response, as the assessment of the evidence falls under the IAD's expertise.

[30] I am of the view that the IAD reasonably considered the police report and determined that the evidence was credible and trustworthy in the circumstances of this case, which it could do as part of its discretion. Credibility determinations are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.

[31] In this case, the Decision is based on a reasonable analysis of subsection 4(1) of the IRPR. I note that the IAD considered the applicant's statements in the police report among various other pieces of evidence, such as the spouse's testimony before the IAD and the spouse's precarious immigration status at the time of marriage, to assess his reasons for marrying the applicant.

V. Conclusion

[32] In light of everything, the Decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker. The IAD did not commit an error that could require the intervention of this Court, and for the above reasons, the application for judicial review is dismissed.

[33] The parties confirmed that there were no questions for certification, and I agree that there are none in the circumstances.

JUDGMENT in IMM-8122-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Phuong T.V. Ngo"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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