Date: 20090415

Docket: IMM-3162-08

Citation: 2009 FC 380

Ottawa, Ontario, April 15, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

HODA HUSSEIN HAZIMEH

Respondent

REASONS FOR JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision by the Immigration and Refugee Board, Appeal Division (IAD) dated July 24, 2008 (Decision) which allowed the appeal of the Respondent from a decision of a visa officer who had refused her husband's application for permanent residence.

BACKGROUND

[2] The Respondent is originally from Lebanon and is now a Canadian citizen. On August 20, 1992, she married Mr. Ali Hammoud in Lebanon. She then came to Canada in October 1993 on Mr. Hammoud's sponsorship.

[3] Approximately one month after her arrival, on November 5, 1993, the Respondent underwent a religious "talaq" divorce in Ontario before a Representative of the Supreme Shiite Islamic Council. At the time of the ceremony, the Respondent had been a citizen of Canada for less than a month and was not eligible to obtain a legal divorce in Ontario. As a result of the divorce ceremony, the Respondent obtained a certificate signed and sealed by Sayyed Abbas on November 5, 1993 which stated as follows:

> The divorce of the abovementioned couple was made irrevocable before me pursuant to religious and legal forms. The spouse has abstained from the half of the due dower of non copulation. The withdrawal has been accepted and the divorce was approved.

[4] On May 13, 1999, the Respondent registered the divorce with the Jaafari Religious Court of Saida in Lebanon. The registration documents indicated the "divorce date" to be November 5, 1993.

[5] On August 22, 1999, the Respondent married Hafez Farhat in Lebanon. She then returned to Canada and petitioned the Ontario Superior Court for a divorce from her first husband Mr. Hammoud. The divorce was granted by the Superior Court and took effect on July 12, 2001. On or

about August 27, 2001, the Respondent filed her first sponsorship application for her second husband as a member of the family class. The application was refused on June 26, 2002.

[6] The Respondent applied to sponsor her husband a second time on October 27, 2005. On May 22, 2006, this application was also refused. The visa officer found that the Respondent's divorce was not valid under Canadian law because it had purportedly taken place in Lebanon, while neither the Respondent nor her first husband were ordinarily resident in Lebanon for the year prior to the commencement of divorce proceedings. The Officer found that their divorce did not meet the requirements of subsection 22(1) of the *Divorce Act*, 1985, c. 3 (2nd Supp.). Hence, the Respondent was still married to her first husband when she married her second husband so that her second husband could not be part of the family class.

DECISION UNDER REVIEW

[7] The IAD reviewed the issue of whether the divorce of the Respondent registered in Lebanon in May 1999 was valid under Canadian law. If it was not, then the Respondent would still be married to her first husband for the purpose of Canadian law so that her second husband would be excluded from membership in the family class. The IAD ruled that the Respondent had divorced her first husband as of May 1999, so that her marriage to her second husband in August 1999 was legally valid.

[8] The IAD considered sections of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 (Regulations) and the *Divorce Act* and cited *Amin v. Canada (Citizenship and Immigration)*, [2008] FC 168 (*Amin*), for the following:

> **20** I would add that, for the purpose of applying domestic law, I have serious reservations about the appropriateness of recognizing extra-judicial divorces of the sort in issue here. The obvious intent of section 22(1) of the *Divorce Act* was to require that some form of adjudicative or official oversight be present before Canada will recognize a foreign divorce. This requirement would be fulfilled by the process dictated by the Muslin Family Law Ordinance (1961): see *Quazi*, above, at page 917 (All E.R.), page 825 (A.C.); and *Chaudhary*, above, at page 1025. The obvious purpose of such oversight is to address important public policy issues which can arise out of the domestic recognition of informal or religiously-based divorces. Many of those concerns were identified in the following passage from *Chaudhary*, above, at pages 1031 and 1032:
>
> > The essentials of the bare talaq are, as I understand it, merely the private recital of verbal formula in front of witnesses who may or may not have been specially assembled by the husband for the purpose and whose only qualification is that, presumably, they can see and hear. It may be, as it was in this case, pronounced in the temple. It may be, as it was here, reinforced by a written document containing such information, accurate or inaccurate, as the husband cares to insert in it. But what brings about the divorce is the pronouncement before witnesses and that alone. Thus in its essential elements it lacks any formality other than ritual performance; it lacks any necessary element of publicity; it lacks the invocation of the assistance or involvement of any organ of, or recognised by, the state in any capacity at all, even it merely that of registering or recording what has been done. Thus, though the public consequences are very different, the essential procedure differs very little from any other private act such as the execution of a will and is akin to the purely consensual type of divorce recognised in

> some states of the Far East (see eg *Ratanachai v Ratanachai* (1960) Times, 4 June, *Varanand v Varanand* (1964) 108 SJ 693 and Lee v Lau [1964] 2 All ER 248, [1967] P 14).
>
> In my judgment, and looking at the 1971 Act alone, such an act cannot properly be described as a 'proceeding" in any ordinary sense of the word, still less a 'proceeding' in what must, for the reasons given above, be the restrictive sense of the word as used in the Act.
> ...
>
> However, even if I am wrong in the view that I take on this point, I agree entirely with the judge's decision on the second point, namely that to recognise the bare talaq divorce in the instant case as effective here would be manifestly contrary to public policy.
> [Per Oliver LJ]

[9] The IAD concluded that the talaq ceremony had no legal import in Canadian law. Only formal recognition of the divorce by a foreign tribunal, or other state authority, having jurisdiction in such matters is relevant when assessing whether a foreign divorce may be recognized in Canada. The IAD concluded that the Respondent's divorce had not been heard and determined in Ontario, but in Lebanon where the evidence established that it was legally valid, thus making it applicable and recognizable in Canada under section 22 of the *Divorce Act.*

[10] The IAD also looked at the scope of section 22(3) of the *Divorce Act* and whether the "real and substantial connection" test was a common law rule in Canada and applicable to the case at hand. The IAD held that the "real and substantial connection" test was applicable and was determinative of the issue of recognition of the registration of the divorce with the Jaafari Religious Court of Saida.

[11] The final issue the IAD considered was whether there was a "real and substantial connection" to Lebanon. It was held that there was a real and substantial connection between the Respondent and her home country of Lebanon, so it was reasonable for the Respondent to have registered her divorce with the authorities in Lebanon.

[12] Since the Respondent's first marriage had ended in a valid divorce in Canada, her subsequent marriage was legally valid and the refusal to approve the Respondent's husband's application for landing was not in accordance with Canadian law.

ISSUES

[13] The Applicant raises the following issues and objections to the IAD Decision:

1) The Respondent did not undergo a divorce in Lebanon and accordingly there is no "foreign divorce" which is potentially recognizable under the *Divorce Act* for the purposes of Canadian law. The IAD erred in law by failing to so find; and
2) The IAD erred in law in finding that the Respondent had a real and substantial connection to Lebanon such that s. 22(3) of the *Divorce Act* could operate to permit recognition of a divorce granted by Lebanon.

STATUTORY PROVISIONS

[14] The following provisions of the Regulations are applicable in these proceedings:

2. "marriage" , in respect of a marriage that took place outside Canada, means a marriage that is valid both under the laws of the jurisdiction where it took place and under Canadian law.	2. «mariage» S'agissant d'un mariage contracté à l'extérieur du Canada, mariage valide à la fois en vertu des lois du lieu où il a été contracté et des lois canadiennes.
117(9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if	**117(9)** Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :
…	…
(*c*) the foreign national is the sponsor's spouse and	*c*) l'époux du répondant, si, selon le cas :
(i) the sponsor or the foreign national was, at the time of their marriage, the spouse of another person, or	(i) le répondant ou cet époux étaient, au moment de leur mariage, l'époux d'un tiers,

[15] The following provisions of the *Divorce Act* are applicable in these proceedings:

22. (1) A divorce granted, on or after the coming into force of this Act, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so shall be recognized for all purposes of determining the marital status in Canada of any person, if either former spouse was ordinarily resident in that country or subdivision for at least one year immediately preceding the commencement of proceedings for the divorce.	**22.** (1) Un divorce prononcé à compter de l'entrée en vigueur de la présente loi, conformément à la loi d'un pays étranger ou d'une de ses subdivisions, par un tribunal ou une autre autorité compétente est reconnu aux fins de déterminer l'état matrimonial au Canada d'une personne donnée, à condition que l'un des ex-époux ait résidé habituellement dans ce pays ou cette subdivision pendant au moins l'année précédant l'introduction de l'instance.

…	…
(3) Nothing in this section abrogates or derogates from any other rule of law respecting the recognition of divorces granted otherwise than under this Act.	(3) Le présent article n'a pas pour effet de porter atteinte aux autres règles de droit relatives à la reconnaissance des divorces dont le prononcé ne découle pas de l'application de la présente loi.

STANDARD OF REVIEW

[16] The Respondent relies upon *Ismaeli v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 573 at paragraph 19 for the following:

> The onus on the applicant to refute the Board's findings is a heavy one. The applicant must be in a position to show that the conclusions reached were perverse or capricious or so unreasonable that the Court is duty-bound to set the decision aside.

[17] *Sivasamboo v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 741 held that the IRB is a specialized body dealing with a highly complex factual and regulatory context in which its decisions are made (paragraph 18). A supervisory court should only intervene with the findings and conclusions of fact of a specialized tribunal when it is shown to be a manifest or palpable error that is clearly patently unreasonable (paragraph 22).

[18] *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 1 citing *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 held at paragraph 20 that for legal questions of general importance in decisions of the IRB the appropriate standard is correctness.

[19] The Court in *Dunsmuir v. New Brunswick* [2008] SCC 9 held that when applying the correctness standard in respect of jurisdictional and some other questions of law, a reviewing court should not show deference to the decision maker's reasoning process; it should rather undertake its own analysis of the question and decide whether it agrees with the determination of the decision maker; if not, the court should substitute its own view and provide the correct answer.

[20] The issues raised by the Applicant involve questions of law, and in light of the case law before me, I find the appropriate standard of review is correctness.

ARGUMENT

The Applicant

Evidence Shows that Talaq Divorce Merely Registered in Lebanon

[21] The Applicant submits that the evidence shows that the Respondent did not get divorced in Lebanon. Her talaq divorce occurred in Canada. The registration and recognition of a divorce by Lebanon is not a divorce granted by Lebanon. Therefore, the Applicant submits that the IAD erred by failing to appreciate this distinction.

[22] The Applicant says that the Respondent's own evidence confirms that the Lebanese proceeding was a mere recognition of a divorce performed in Canada. The legal opinion from a lawyer in Lebanon, which was entered as an exhibit at the IAD hearing, stated as follows:

1) The Respondent was divorced from Mr. Hammoud, according to the certificate issued by the Jaafari Religious Court on November 4, 1993 at Canada;
2) The Respondent hasn't been the wife of Mr. Hammoud since November 5, 1993;
3) The said divorce was registered before the Jaafari Religious Court of Saida on May 13, 1999.

[23] The Applicant submits that the evidence before the IAD showed that the divorce took place in Canada and was merely registered and recognized by Lebanon so that the Respondent could marry again in Lebanon. As well, the Respondent's divorce is not a foreign divorce but is a legal nullity because it is a talaq divorce under Sharia law. Only the Ontario Superior court has jurisdiction to grant divorces in the province of Ontario. The Applicant contends that the Respondent was not divorced in either 1993 or 1999 for the purposes of Canadian law and her 1999 marriage to her second husband was invalid.

IAD Erroneously Concluded Divorce Considered in Lebanon

[24] The Applicant submits that the IAD erred in law in coming to the conclusion that a foreign divorce had taken place, either by ignoring the evidence before it or in finding that the registration of the talaq divorce in Lebanon constituted a "foreign divorce" for the purposes of the *Divorce Act.*

[25] The IAD relied heavily on the decision of the Federal Court in *Amin.* However, the Applicant submits that *Amin* concerned a talaq divorce pronounced in Pakistan but not registered

with civil authorities, as required by the Muslim Family Law Ordinance. So the respondent in that case was seeking to have the divorce recognized as a foreign divorce that was not effective until it was registered. The Applicant points out that those are not the facts of this case and that, in fact, the Pakistani Muslim Family Law Ordinance has no application to the current matter which concerns a talaq divorce in Canada (Canada does not recognize Sharia law), as well as the registration of that divorce in a different jurisdiction. Therefore, the IAD's reliance on *Amin* was an error in law.

[26] The Applicant submits that the IAD further erred in law by finding that the geographical location of the talaq was not relevant. The Applicant contends that geographic location is relevant to the question before the IAD because a talaq divorce has no legal effect in Canada but may have legal effect in jurisdictions which operate under Sharia law. A talaq divorce performed in Canada is a nullity in Canada.

[27] The Applicant further states that the IAD's statement to the effect that if the Lebanese courts recognize the talaq it "should not matter" where it occurred is confusing and imports a value judgment, instead of a judgement upon the law, into its Decision. The IAD's description of the talaq as being "recognized" by Lebanon is not consistent with its conclusion that the divorce was heard and determined in Lebanon. There is a distinction between determining a divorce and merely recognizing a divorce already determined.

[28] The Applicant also submits that the evidence shows that the Lebanese court rubber-stamped the talaq divorce. It was only registered to give it legal effect in Lebanon in order to free the Respondent to re-marry for a second time in Lebanon.

Ontario Superior Court Divorce

[29] The Applicant says that the IAD erred in law by failing to reconcile the Respondent's position on the appeal and the panel member's finding concerning the 2001 divorce granted to the Respondent by the Ontario Superior Court. The Applicant contends that the Respondent's conduct in seeking a divorce from the Superior Court is cogent evidence that the Respondent knew that the talaq divorce, which she registered in Lebanon, was not legal in Canada. It was also evidence that it was not a "foreign divorce" capable of being recognized in Canada.

[30] The IAD Decision contains no mention of the divorce granted by the Ontario Superior Court, which was a significant piece of evidence that should have been addressed in the reasons. This omission implies that the IAD ignored it and thus committed a reviewable error that requires the intervention of the Court.

No Real and Substantial Connection to Lebanon

[31] The Applicant finally submits (in written submissions at least) that, in the event that the Respondent's talaq divorce is a Lebanese divorce and constitutes a foreign divorce, it cannot be

recognized for the purposes of Canadian law because the Respondent did not have a real and substantial connection to Lebanon.

[32] The Applicant did not rely upon this ground at the hearing of this application.

The Respondent

[33] The Respondent submits that the IAD's Decision is well-founded in fact and law. It is also supported by the evidence and is not unreasonable. While the Applicant may not agree with the conclusions of the IAD, the Applicant has failed to demonstrate that the IAD's assessment is perverse, capricious or made without regard to the evidence or constitutes an error in law. The Court must defer to the special expertise of the IAD and not interfere with its findings, unless there is a perverse or capricious error or an express error in law.

Ontario Divorce

[34] The Respondent submits that since the Lebanese divorce is a legal divorce and properly registered it can be recognized under Canadian law. The subsequent Ontario divorce is irrelevant and does not change the legality of the Lebanese divorce if it meets the requirements of Lebanese law and Canadian law.

[35] The Respondent says that an annulment or a divorce is all that is required, and since the Respondent's marriage ended on November 5, 1993, the Ontario divorce which the Respondent obtained is irrelevant. The annulment/divorce in Lebanon ended the marriage on a religious basis on November 5, 1993. The copy of the Lebanese divorce states that it was "legalized in Beirut on Jan. 2, 2003." Therefore, the failure to consider the Ontario divorce by the IAD was a minor omission that did not affect the outcome of the case.

Islamic Divorce

[36] The Respondent submits that the religious divorce, by itself, was not recognized by Canadian law. However, the Lebanese Courts considered the matter and issued their Divorce Order with reasons and a Divorce Certificate on May 13, 1999. A third Lebanese Divorce document was signed by Sheik Hassan Kharoubi, Head Clerk, and Sheikh Ali Srour Jaafari, Religious Judge of Saida.

[37] While Canada does not recognize religious divorces, the Respondent's divorce in this case was recognized under Lebanese law and registered, making the divorce legal under Lebanese civil law and recognized as a legal civil divorce in that jurisdiction. Therefore, it should be recognized in Canada.

[38] The Respondent also submits that the reasons for rejecting the Islamic divorce in *Chaudhary v. Chaudhary*, [1984] 3 All E.R. 1017 (Brit. C.A.) are easily distinguishable from this case, as there

was only a "bare religious element" involved in *Chaudhary*. Here there was a review and ratification of the divorce, a Divorce Order and a Divorce Certificate.

[39] The Respondent cites the British decision of *El Fadl v. El Fadl*, [2000] 1 F.L.R. 175 (U.K.) (*El Fadl*), which is mentioned in Jeremy Morley's article, *Non-Recognition of Japanese Consent Divorces in the U.K.*, where the Court recognized a Muslim divorce in Lebanon due to the fact that it had been obtained by means of a "proceeding because of the role played by the Sharia Court":

> Although the Sharia Court has no judicial decision to make whether there is to be divorce or no, what occurred before it with the assembly of the court, judge and clerk, and the duty to resort into the register, having taken formal declarations, is properly described as 'proceedings' and the local law explicitly requires such proceedings as an integral part of the divorce process.

[40] The Respondent submits that the *El Fadl* decision confirms that where a Lebanese Court recognizes a divorce by "means of a proceeding" the divorce should be recognized. The Respondent says that it was clear in this instance that court proceedings had taken place and that this was not a "mere registration" of a previously granted Sharia religious divorce. Therefore, the Lebanese divorce should be recognized under Canadian law as a legal foreign divorce.

[41] The Respondent also points out that both parties to the divorce had proxy representatives at the proceeding and both parties consented to the divorce. There is no evidence of fraud, as both parties participated in the proceedings, had proper notice and consented to the divorce. There were no abuses of process or other concerns about the divorce from either party.

[42] The Respondent stresses that the IAD had already considered and decided a case with almost identical facts (except that it dealt with Sharia law from Pakistan rather then Sharia law from Lebanon). In *Bhatti v. Canada (Minister of Citizenship and Immigration),* [2003] I.A.D.D. No. 519 the IAD held as follows:

> 14. There are three preliminary points about the present day approach to the recognition of foreign divorces. The first is that while historically, the Canadian approach to divorce was quite restrictive, the increased mobility of people caused Canada and other countries to re-examine their laws and policies in the latter half of the 20th century. As noted by one writer:
>
> > In Canada...the present position vis-à-vis domestic divorces and foreign divorces is such that the recognition of foreign divorces is conducted in a more liberal and extensive fashion than the assumption of jurisdiction to grant domestic divorces.
>
> 15. Secondly, under common law jurisdictions, the question of recognizing a foreign divorce is jurisdictional and not concerned with the grounds on which the divorce is granted. Absent evidence of fraud, a denial of natural justice or a concern with public policy, Canadian courts will not look into the grounds of the divorce.
>
> 16 . Third, the common law rule of "domicile" in determining recognition of foreign divorces has been expanded to include consideration of a "real and substantial connection" between the petitioner and the granting jurisdiction. Domicile is a construct of the common law. At common law everyone has a domicile at every point in his life and while one can have more than one residence at any one time, one can only have one domicile.
>
> 17. One's domicile of origin is determined at birth and while one can acquire another domicile, the domicile of origin has a very strong hold on the individual. The presumption against a change of domicile of origin requires cogent evidence on a balance of probabilities to dislodge it. Castel observes that this enduring aspect of the concept of domicile of origin often leads to absurd consequences and should be rejected. Nevertheless, a person can acquire a domicile of choice when the person establishes a residence in a country with a fixed and settled intention to remain

> there permanently. At common-law the residence need not be for any particular duration and residence is not a necessary element to maintain domicile once it exists. The most important factor in determining the domicile of choice is one's intention. The required intention involves the idea of permanence.
>
> 18. In 1967 the House of Lords in the United Kingdom reviewed the whole subject of recognition of foreign divorces and while concluding that domicile should remain the primary basis of recognition of foreign divorces, introduced a new concept. A person's divorce in a foreign jurisdiction could also be recognized if the person could demonstrate a "real and substantial connection" to the granting jurisdiction. This concept was later adopted by Canadian courts. McLeod observes that:
>
> > To attempt to define "real and substantial" categorically is an almost impossible task which in the end removes the inherent flexibility of the rule. The purpose of the rule is to do justice to the parties without impairing the basic policy guidelines of the forum. This can be achieved whenever the parties can show that there was valid reason for resorting to the courts of the foreign country other than simply forum shopping.

[43] The IAD also made a similar finding in relation to a Sharia divorce in Pakistan in *Amjad v. Canada (Minister of Citizenship and Immigration*, [2005] I.A.D.D. No. 21 in which the following finding occurs at paragraph 23:

> **23.** The panel finds that the documents tendered to prove the registration of the divorce with Pakistani authorities have enough problems on their face and in their origins that the panel is unable to conclude that the divorce was registered as the appellant has recounted. Nevertheless, the panel finds that the Talaq given by the appellant to his first wife, is sufficient to be recognized as a valid foreign divorce under the applicable Canadian legislation, because the appellant had a real and substantial connection to Pakistan when he obtained the Talaq. Therefore, the refusal is found to be not valid in law. The panel finds that the appellant was legally divorced from his first wife and was eligible to marry the applicant when he did. The appeal is allowed.

[44] The Respondent also relies upon the Supreme Court of Canada case of *Schwebel v. Ungar*, [1965] S.C.R. 148, which was cited in *Amin*, and which involved a Jewish religious divorce that took place in Italy. The domicile of both parties was Hungary. The Jewish religious divorce was recognized by the State of Israel and deemed legal by the Supreme Court of Canada. The Respondent also notes the Supreme Court of Canada case of *Bruker v. Marcovitz* 2007 SCC 54 also recognized a Jewish religious divorce.

Real and Substantial Connection

[45] Finally, the Respondent submits that the *Divorce Act* recognizes that other means exist for recognition of foreign divorces, particularly in the form of section 22(3) of the *Divorce Act.* The divorce law that is relevant is Lebanese law and whether one of the parties has a "real and substantial connection" to Lebanon. The Respondent points out that both parties in the present case were born in Lebanon and were Lebanese citizens and duly registered in Lebanon. In addition, both were married in Lebanon and had a "real and substantial" connection to Lebanon. Hence, they were legally entitled to get divorced in Lebanon. The Respondent cites *Indyka v. Indyka*, [1969] 1 A.C. 33.

[46] The Respondent submits that the IAD's reasons are reasonable and based on fact. It was open for the IAD to make a finding that the Respondent had a "real and substantial connection" to Lebanon. The Lebanese divorce was legal and so Canada is required to recognize legal foreign

divorces “if there is a real and substantial connection to the granting jurisdiction.” In the view of the Lebanese lawyer, the Respondent had not been the wife of Mr. Hammoud since November 5, 1993.

[47] The Respondent cites the Supreme Court of Canada decision of *Powell v. Cockburn*, [1977] 2 S.C.R. 218 which discusses the validity of foreign divorces as follows:

> The grounds upon which a decree of divorce granted by one State can be impeached in another state are, properly, few in number. The weight of authority seems to recognize, however, that if the granting state takes jurisdiction on the basis of facts which, if the truth were known, would not give it jurisdiction the decree may be set aside. Fraud going to the merits may be just as distasteful as fraud going to jurisdiction, but for reasons of comity and practical difficulties, in the past we have refused to inquire into the former. Even within the limited area of what might be termed jurisdictional fraud there should be great reluctance to make a finding of fraud for obvious reasons.

[48] The Respondent concludes by stating that a rejection of the spousal sponsorship in this case on the basis that the Lebanese divorce did not comply with section 22(1) of the *Divorce Act* would be wrong in law. The IAD accepted that the Respondent had “a real and substantial connection” to Lebanon and this was a reasonable finding, since there was no law to overturn the determination.

ANALYSIS

[49] At the hearing of this matter in Toronto on February 11, 2009, the Applicant notified the Court that the Minister did not intend to advance the “real and substantial connection issue.” Consequently, this application raises a single issue: Did the IAD err in law by concluding that the Respondent had secured a “foreign divorce” under section 22(1) of the *Divorce Act*?

[50] The Applicant says that the IAD failed to appreciate the distinction between a talaq divorce that was merely recognized in Lebanon and a divorce actually granted by Lebanon under Lebanese law in accordance with legal proceedings in that country. In other words, the Minister's position is that mere recognition of the Respondent's talaq divorce that took place in Canada does not meet the requirements under section 22 of the *Divorce Act*.

[51] The Minister also says that there was no evidence before the IAD to support a conclusion that the Respondent had been granted a divorce in Lebanon and that, in fact, the available evidence makes it quite clear that the talaq divorce which the Respondent went through in Canada was simply registered in Lebanon so that she could re-marry in Lebanon. In other words, what the IAD had before it was a talaq divorce recognized by Lebanon, not a Lebanese divorce that can qualify as a "foreign divorce" under the *Divorce Act*.

[52] The Minister says this amounts to an erroneous finding of fact by the IAD that renders its Decision untenable.

[53] The Respondent's position is, essentially, that the talaq religious divorce that she went through in Canada was formally recognized by a Lebanese Court and by the Government of Lebanon and, in the process, became a "foreign divorce" for the purposes of the *Divorce Act*, thus rendering the IAD's Decision entirely reasonable and correct.

[54] There is no dispute that the Respondent went through a religious talaq divorce in Ontario on November 5, 1993 before Mr. Sayyed Nabil Abbas, a Representative of the Supreme Shiite Islamic Council in Canada. The problem arises over what occurred when this talaq divorce was dealt with in Lebanon. There are only three documents in the record that throw any light on the issue.

[55] First of all, there is a certificate issued by the Jaafari Religious Court of the Republic of Lebanon showing a divorce date of 05/11/1993, but which merely stamps the talaq divorce conducted by Sayyed Nabil Abbas in Toronto.

[56] There is also a Divorce Certificate issued in response to the Respondent's request to be delivered of such a certificate by the Honourable Jaafari Religious Judge of Saida in Lebanon on the basis of a "divorce certificate … registered before your court on May 13, 1999… ."

[57] So it seems clear that the Respondent obtained a "divorce certificate" in 1999 based upon the talaq divorce she had gone through in Toronto in 1993. This certificate is signed and sealed by Sheikh Ali Srour, the Jaafari Religious Judge of Saida.

[58] The petitioner for the certificate is HAFEZ ALI FARHAT who is the husband of Hoda Hazimeh and the request is for the certificate:

> To be returned to the petitioner with the certificate that the divorce of HODA HUSSEIN HAZIMEH and ALI KHALIL HAMMOND has been irrevocable on November 5, 1993 before Sayyed Nabil Abbas, the representative of the Supreme Shiite Islamic Council in Canada. The said divorce was registered before the Jaafari Religious Court of Saida on May 13, 1999, basis #483, register #456.

[59] So this makes it clear that the talaq divorce was “irrevocable” on November 5, 1993 when it took place in Toronto and that it was simply registered in Lebanon on May 13, 1999.

[60] These documents provide no indication concerning the legal effect of registration but they do suggest that the state of Lebanon recognized a talaq divorce that took place in Canada on November 5, 1993.

[61] The Respondent says that the fact of registration in Lebanon on May 13, 1999 rendered the divorce a Lebanese foreign divorce for the purposes of section 2 of Canada’s *Divorce Act*. But there is no evidence regarding this consequence. On its face, the documentation suggests that Lebanon has recognized a talaq divorce that took place in Canada in 1993. That would mean that the Respondent, under Lebanese law, is free to re-marry in Lebanon. But it does not necessarily mean that she has obtained a Lebanese divorce for purposes of Canadian law.

[62] The Respondent herself provided the IAD with a legal opinion from Mr. Hussein Sobhi Kovkomaz, an Appeal Attorney-At-Law in Saida. He says that the certificate No. 106 dated April 5, 2006 issued by the Jaafari Religious Court of Saida verifies that the Respondent:

> …travelled to Canada on Otober 13, 1993 where she was divorced from Mr. Ali Hammond, according to the certificate issued by the Jaafari Religious Court on November 5, 1993 at Canada and before the representative of the Higher Shiite Islamic Council, Mr. (Sayyed) NABIL ABBAS. The said divorce is final and immediately effective as of the date it had taken place in (sic). Consequently, Mrs. HODA HAZIME hasn’t been the wife of Mr. ALI HAMMOND since November 5, 1993 pursuant to the Islamic Shari’s (rulings) and the Lebanese laws in effect.

[63] As I read this opinion, it makes it clear that, as far as Lebanese law is concerned, the Respondent was divorced in Canada in 1993 under the talaq divorce. Lebanon has simply confirmed that divorce and recognized it for the purpose of Lebanese law. I have no evidence before me to suggest that the talaq divorce that took place in Canada has somehow become a Lebanese divorce. It remains a talaq divorce that took place in Canada and has been registered and recognized in Lebanon. That talaq divorce, recognized by Lebanon, is not a divorce that Canada recognizes.

[64] The IAD addressed this problem by referring to Justice Barnes' decision in *Amin* and concluded as follows:

> **18** The problem with the *Bhatti* decision is that it does not clearly indicate whether the talaq divorce in issue there had been registered in accordance with the Muslin Family Law Ordinance (1961). On one reading, the decision suggests that statutory compliance had been met in that case as can be seen from the following passage:
>
> > 7. In support of his position, the appellant provided a letter from lawyer in Pakistan, a Statutory Declaration and opinion letters from two family law lawyers in Toronto. The divorce deed executed in June 1996 is an extra-judicial divorce in that it is a talaq or a divorce under Muslin law. The letter from Samina Khan, who is a lawyer practicing before the High Court in Islamabad and who acted for the appellant with respect to his 1996 divorce, states that divorce in Pakistan is governed by the Muslim Family Law Ordinance, 1961. The Muslim Family Law Ordinance, 1961 recognizes the talaq form of divorce. In the lawyer's view, the appellant's divorce deed met the substantive and procedural requirements of the law.[Footnotes omitted]
>
> **19** There are statements in the *Bhatti*, above, decision which are difficult to accept. For instance, the Board interpreted section 22(1) of the *Divorce Act*, R.S.C. 1985 c. 3 (2nd. Supp.), requiring that a

> foreign divorce be granted "by a tribunal or other authority having jurisdiction", as being met by an extra-judicial divorce such as the Muslim talaq. As far as I can tell from the record before me and from relevant legal authorities, the pronouncement of talaq is nothing more than a unilateral declaration of divorce made by the husband, usually in the presence of witnesses, and sometimes recorded in a private divorce deed. Such a process is clearly insufficient to fulfill the requirements of section 22(1) of the Divorce Act and, to the extent that the *Bhatti* decision suggests otherwise, it is, with respect, wrong: see *Chaudhary v. Chaudhary*, [1984] 3 All E.R. 1017 (Brit. C.A.).

[65] So the issue comes down to whether Lebanon's mere recognition of a talaq divorce that took place in Canada and that has no legal effect in Canada created a foreign divorce that is recognized in Canada. In *Amin*, I think that Justice Barnes presented the real basis of his decision in the passage cited by the IAD and which is referred to in paragraph 8 above. I note that in *Bevkovits v. Grinberg*, [1995] 1 FLR 477 a Jewish Get written in London, England under Jewish ecclesiastical law and delivered to the wife at the Robbinical Court in Israel was held to be effective as an Israeli divorce but was not entitled to recognition in England.

[66] In my view, what is missing in the present case is a "divorce granted" pursuant to a law other than Canadian law by an authority having jurisdiction to do so.

[67] The recognition and registration of a talaq divorce that took place in Canada cannot, in my view, produce a divorce granted pursuant to a law other than Canadian law. If simple registration in Lebanon would suffice, then it would turn a talaq divorce that Canada does not recognize into a divorce that Canada must recognize.

[68] In my view, then, the Applicant is correct. There was no evidence before the IAD, or the IAD misconstrued the evidence before it when it found that the divorce in this case was not heard and determined in Ontario but in Lebanon.

[69] This matter should be remitted to the IAD for reconsideration in accordance with these reasons.

[70] Counsel are requested to serve and file any submissions with respect to certification of a question of general importance within seven days of receipt of these Reasons for Judgment. Each party will have a further period of three days to serve and file any reply to the submission of the opposite party. Following that, a Judgment will be issued.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3162-08
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	APPLICANT
	- and -
	HODA HUSSEIN HAZIMEH
	RESPONDENT
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	FEBRUARY 11, 2009
REASONS FOR :	HON. MR. JUSTICE RUSSELL
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