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2009 CanLII 73868 (I.R.B.)

Reasons and Decision – Motifs et décision Sponsorship Appeal

Appellant(s)

Appelant(s)

Candace Anne TAYLORSON

Respondent

Intimé

**Minister of Citizenship and Immigration
Ministre de la Citoyenneté et de l'Immigration**

Date(s) of Hearing

Date(s) de l'audience

January 15, 2009

Place of Hearing

Lieu de l'audience

Winnipeg, Manitoba

Date of decision

Date de la décision

January 15, 2009

Reasons signed on : February 13, 2009

Panel

Tribunal

M^c Carol Hilling

Appellant's Counsel

Conseil de l'appelant(s)

R. Reis Pagtakhan
Barrister & Solicitor

Minister's Counsel

Conseil de l'intimé

Leonard Offrowich
Barrister & Solicitor

Oral Reasons for Decision

[1] These are my oral reasons in the appeal by **Candace Anne TAYLORSON** (the appellant) from the refusal of the application for permanent residence in Canada as a member of the family class made by **Madjid MOHAMMADI** (the applicant), her husband. You will receive a written copy of these oral reasons, but I always reserve the right to make any syntax or grammar corrections or to add references if I think it is necessary.

[2] In a sponsorship case, the *Immigration Appeal Division* (IAD) assesses the genuineness of a relationship. Your burden is to establish that, on a balance of probabilities, your marriage to your husband is genuine or that it was not entered into primarily for immigration purposes. In order to do that, the IAD looks at a number of factors, such as the intentions of the parties to the marriage, the way the relationship started, how it developed, the knowledge that both spouses have of each other's daily lives, but also each other's families, the contacts they have with each other and with each other's families, the plans that they have for the future. There may be other factors, but those are generally the factors that we look at.

[3] On the basis of the testimony that I have heard today and the evidence I have on record, I am satisfied that you have established that, on a balance of probabilities, your marriage is genuine. I am also satisfied that it was not entered into primarily for immigration purposes and I will give you my reasons.

[4] First of all, I found that both, you and your husband, gave very credible testimony. Your testimony was also consistent. You were consistent among each other, but your testimonies were consistent with the documentary evidence. It was testimony that is indicative of a genuine relationship. I believe that all of the concerns of the visa officer were answered. In the Computer Assisted Immigration Processing System (CAIPS) notes, the visa officer did indicate that the problems were not with your intentions, the problems were with the applicant's intentions, but I do agree with your counsel that there may have been some factual errors and that some of the conclusions that the visa officer came to were based either on wrong information or on misinterpretation of information that was available, so I believe that a reasonable explanation was given to address the concerns.

[5] There is a linguistic difference, but it does not appear to be a major obstacle. It would not be very fair to judge the applicant on the basis of his testimony in the context of this hearing, because it is very stressful, so obviously I am sure -- he was doing all right, but I am sure he does even better when he is not in the stressful situation of giving testimony.

[6] I am satisfied that the religious difference is not a significant one in your case. In addition to both your testimony and your husband's testimony that you are not religious people yourselves, the applicant did explain to my satisfaction that, although his parents practise their religion, they do not necessarily expect their children to practise it as faithfully as they do, so your testimony that your family-in-law accepts you, even though you are not Muslim, is quite credible.

[7] I do not see any significant social differences between the two of you. There was a reasonable explanation given for the fact that phone calls appear to be one way and that may be one instance where the information available was misinterpreted. Another instance where the information available was misinterpreted at the visa office is the emails, which do indicate that it is not a one-way process.

[8] I do not think I am going to go over every single detail. I will just add that your explanation as to why you were married in Thailand, rather than being married in Iran, is also a credible explanation. You have to be Muslim in order for the marriage to be valid in Iran, which is a major obstacle if you do not want to change your religion.

[9] You have indicated that you have plans for the future, which include disagreements about the names to be given to the children. That is also indicative of a genuine relationship and even though he does not seem to be willing to admit that he eats peanuts in bed, I am satisfied that your marriage is not a marriage of convenience and that his intention is, indeed, to come to Canada in order to live with you and start a family with you.

[10] I am satisfied that the concerns of the visa officer that the applicant was willing to emigrate from Iran at any cost are not founded. At least there is no evidence in the record to suggest that this is, indeed, the case. I did note that when the applicant was with the appellant in Korea, he was there legally. He still had a visa. He was not deported from Korea. He left of his own initiative and the only reason he overstayed and did not leave right away when the visa expired was because the appellant

did not want him to go and asked him to stay a while longer, so I do not find that there is any indication that the applicant was wilfully in disregard of immigration rules and I do not find any indication that he wanted to leave Iran at any cost.

Conclusion

[11] So for all of these reasons, your appeal is allowed.

NOTICE OF DECISION

The appeal is **allowed**. The officer's decision to refuse a permanent resident visa is set aside, and the officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

Carol Hilling

M^c Carol Hilling

February 13, 2009

Date

/ml

NOTE - Judicial review - Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.