



[2021] 4 F.C.R. D-10

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Permanent Residents

Judicial review of Immigration and Refugee Board, Immigration Appeal Division's (IAD) decision denying applicant's sponsorship appeal — IAD finding that *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 4.1 titled "New Relationship", precluding applicant's sponsorship of his wife in family class — Applicant asserting that his relationship with his wife not new, has been ongoing, uninterrupted since 1997 despite intervening marriage of convenience — Applicant, citizen of Jamaica, permanent resident of Canada since 2017 — Applicant's mother moved to Canada in 1990 — In 1997, applicant meeting woman who later became his second wife (Mrs. Clarke) — At time, Mrs. Clarke had two children — In 1998, couple moved in together; in 1999, their son was born — In 2005, applicant entering marriage of convenience with woman in Canada (First Wife) willing to sponsor applicant to live in Canada — Applicant married First Wife, came to Canada as permanent resident in 2007 — Applicant not having children with First Wife — Later, applicant brought son to live with him in Canada — Applicant never lived with First Wife but lived with his mother until finding an apartment for himself, his son — In 2008, applicant divorced his First Wife, married Mrs. Clarke in Jamaica in 2009 — In 2010, when applicant applied to sponsor Mrs. Clarke for permanent residence, application triggered investigation by immigration officials into nature of his marriage to his First Wife — This led to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 44 inadmissibility report that was issued against applicant in 2011 for misrepresentation — As result, applicant lost his permanent resident status — Applicant's son not losing his permanent resident status; both continued to live together in Toronto — After living in Canada without status, applicant submitted application for permanent residence on humanitarian and compassionate grounds — Application was successful, applicant regained his permanent resident status in 2017 — He then applied to sponsor Mrs. Clarke as his spouse for second time — In 2018, after interviewing Mrs. Clarke, visa officer in Jamaica found their marriage not genuine; refused application under Regulations, s. 4(1) — Applicant appealed decision to IAD — IAD finding that marriage between applicant, Mrs. Clarke genuine — Concerning merits of appeal with regard to Regulations, s. 4.1, IAD concluded that applicant had onus to prove, on balance of probabilities, that he, Mrs. Clarke not dissolving their relationship so that he could acquire permanent resident status in Canada — IAD found that applicant not discharging this burden — IAD finding that Mrs. Clarke could not be considered for spousal sponsorship due to application of Regulations, s. 4.1 — Whether IAD's decision reasonable — Facts of present matter unique — Case turning primarily on interpretation of Regulations, s. 4.1 — Relationship between applicant, Mrs. Clarke dissolved by applicant's marriage to his First Wife — As result, marriage between applicant, Mrs. Clarke new relationship within meaning of Regulations s. 4.1 — Section 4.1 contemplating what has occurred in present matter: "informal" continuation of initial relationship after spouse has gained status in Canada — IAD found this to be purpose of Regulations, s. 4.1 — IAD had little case law to rely on since little case law involving same or similar facts — *Fang v. Canada (Citizenship and Immigration)*, 2020 FC 851 establishing that Regulations s. 4.1 preventing couple from appearing to dissolve existing relationship to permit one spouse to obtain immigration status in Canada, for example through non-genuine relationship with Canadian citizen (or permanent resident), only to subsequently resurrect initial relationship — Applicant bearing onus of establishing that Mrs. Clarke not person described in

s. 4.1 — *Fang* also stating that s. 4.1 premised on three conjunctive elements to determine whether applicant caught by provision — Three prongs being: Applicant, Mrs. Clarke had previous marriage, common-law partnership or conjugal partnership; previous marriage, common-law partnership, or conjugal relationship was dissolved primarily so that applicant or Mrs. Clarke could acquire immigration status or privilege in Canada; applicant, Mrs. Clarke subsequently began new conjugal relationship — All three prongs of tests satisfied in present matter — On first prong, evidence clear that applicant, Mrs. Clarke in common-law partnership since about 1998 — IAD determining that relationship continued until 2007 when applicant came to Canada, married First Wife — On second prong applicant submitted that relationship with Mrs. Clarke not breaking down or dissolving but persisting to this day — Applicant also acknowledged that his marriage to his First Wife not genuine — Finally, with respect to third prong, “new” relating to fact or circumstance that marriage to applicant’s First Wife having effect of ending or dissolving relationship between applicant, Mrs. Clarke — Was therefore reasonable for IAD, on record before it, to determine that relationship between applicant, Mrs. Clarke became “new” within meaning of Regulations, s. 4.1 due to applicant’s marriage to his First Wife, subsequent divorce — Although IAD’s analysis brief, IAD’s interpretation of Regulations, s. 4.1 reasonable — Was consistent with objective of Act, which is to protect integrity of immigration system — Therefore, Regulations, s. 4.1 applying to circumstances of present case — In conclusion, IAD’s decision reasonable — IAD adequately considered all evidence; reached decision that fell within range of reasonable outcomes — Decision transparent, intelligible, justified — Application dismissed.

CLARKE V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-2018-20, 2022 FC 12, Favel J., reasons for judgment dated January 6, 2022, 15pp.)