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**Atwal v. Canada (Minister of Citizenship and Immigration)**

**Harjinder Kaur Atwal, appellant, and  
Minister of Citizenship and Immigration, respondent**

[1999] I.A.D.D. No. 2576

No. V98-01144

Immigration and Refugee Board of Canada  
Immigration Appeal Division  
Edmonton, Alberta

**Panel: Peter Carver**

Heard: October 4, 1999.  
Decision: October 21, 1999.

**Appearances:**

B. Mohan, for the appellant.  
S. Rapaj, for the respondent.

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**1** Harjinder Kaur ATWAL (the "appellant") appeals from the refusal of a sponsored application for permanent residence made by her spouse, Rajinder Singh ATWAL (the "applicant"), from India. The application was refused because, in the opinion of a visa officer, the applicant entered into marriage with the appellant primarily for the purpose of gaining admission to Canada as a member of the family class, and not with the intention of residing permanently with her. By virtue of section 4(3) of the Immigration Regulations, 1978 (the "Regulations"), this would render the applicant ineligible for sponsorship as not being a member of the family class.

**2** I have decided that the appeal should be allowed. The reasons for this decision are as follows.

BACKGROUND

**3** The appellant testified in person at the hearing. The applicant testified by telephone from India. Their evidence, together with information contained in the record filed in this matter, discloses the following background.

**4** The appellant was born in India on March 18, 1964, and so is now 35 years of age. She is one of five siblings, four of whom are sisters. One of the appellant's sisters, Mehar Kaur, married Navtej Singh Atwal in India in 1990. Mr. Atwal then sponsored his wife to immigrate to Canada. Mehar Kaur later sponsored an application for permanent residence by her parents, accompanied by the appellant and her brother Jasvir Singh. The appellant and her family members were granted landing in this country on October 20, 1994. The appellant's other two sisters are married and live in India. The appellant's father died in August 1997. She presently shares a rented apartment in Edmonton, Alberta with Mehar Kaur, Navtej Singh and their two children.

**5** The applicant was born in India on January 8, 1970. He is presently 29 years of age. The appellant said that she first met the applicant at the time of Mehar Kaur's marriage in 1990. He is the nephew of Navtej Singh's father. In other words, the applicant and Navtej Singh are cousins. The appellant and applicant described their subsequent contact, and the discussions which led to the arrangement of their marriage in different ways, a subject discussed below. They both agreed, however, that Navtej Singh was involved in the arrangement, acting as a middle person between their respective parents. They testified that the marriage was arranged in late 1996. Neither the appellant nor the applicant were previously married.

**6** The appellant travelled to India for her marriage at the end of January 1997. She said that her parents and brother Jasvir Singh had gone a month earlier, partly in order to find a spouse for Jasvir Singh. The appellant met the applicant for the first time on this trip on February 4, 1997. The marriage took place on February 12, 1997 in the appellant's ancestral village of Rasulpur. The next day, they attended Jasvir Singh's marriage. The appellant stayed for five more days in India before returning to Canada, spending the whole of that time in the applicant's home village of Pharala.

**7** The appellant testified that she returned to India for a two-month visit with her husband between mid-October and mid-December 1998. On this visit, they travelled to a number of gurdwaras and tourist spots, including a mountainous region. The appellant submitted into evidence 170 photographs of her and the applicant taken on this trip.<sup>1</sup>

## ANALYSIS

**8** The visa officer cited a number of reasons in support of her decision to refuse the application.<sup>2</sup> Two of these reasons related to the applicant's age. The visa officer believed that the appellant and applicant were incompatible, in that she is six years older than is he. The visa officer was also concerned that the appellant and applicant were not married until after the appellant came to Canada in 1994, rather than before she immigrated. Other concerns cited by the visa officer include the fact that the appellant remained in India for only one week following the marriage and neither she nor the applicant had taken photographs during that week, and that the applicant did not know several

things about the appellant at his interview on November 27, 1997, including her address in Canada or her hobbies. The visa officer questioned whether the appellant and applicant had maintained close communications with each other since the marriage, given that he only produced five letters she had written to him. Finally, the visa officer noted that it seemed odd the appellant and applicant could not be identified in photographs of Jasvir Singh's wedding on February 13, 1997, which she obtained from his wife's immigration file.

**9** On the latter point, the photographs referred to by the visa officer appear not to have been included in the record in this matter. Both the appellant and applicant testified that they attended Jasvir Singh's marriage, as he did theirs. The appellant pointed her brother out in one photograph of her wedding. She said she could not be sure if she and the applicant appeared in her brother's wedding photographs, but said they certainly appear in the video taken at his wedding. On another point, I would note that the only question which the visa officer asked concerning the appellant which the applicant was unable to answer dealt with her street address in Edmonton. I do not find these two concerns of the visa officer to be of great weight.

**10** The appellant addressed a number of the other concerns in her testimony. She said that she was not concerned about the age difference between the applicant and herself. She said she had not married earlier in life because she did not find other prospective husbands suitable. One reason that she and her family were prepared to have her marry the applicant is that, due to her sister's marriage to Navtej Singh, they knew and liked his family. The appellant explained that she stayed in India for only three weeks at the time of her marriage because she had not been employed at her job with at Quality Fine Foods bakery in Edmonton for a long time, and she could not get more than three weeks of holidays. She said that she had not taken photographs during the one week she and the applicant lived together after the wedding because her brother Jasvir Singh borrowed the camera she had brought to India. I find all of these explanations plausible, and not contradicted by other evidence.

**11** The appellant and applicant both testified that the wedding was a large affair, attended by approximately 200-250 people from the appellant's side, and 50 from his. Her parents and her two married sisters who live in India attended the wedding. Mehar Kaur did not come from Canada for the marriage because, the appellant testified, her young son was hospitalized with leukemia. The photographs of the wedding tend to confirm that it was well attended. The appellant brought videos taken of her wedding to be introduced into evidence, should those prove helpful. In the end, they were not entered into evidence or viewed, but I note their availability. The visa officer did not comment on the size of the wedding, other than to note "Marriage photos appear O.K."<sup>3</sup>

**12** I found the appellant to be a credible witness, who appeared straightforward and forthcoming in giving her evidence. While reserved, I found her answers to be spontaneous, and found her to display genuine emotion about her marriage. I was impressed at one point during cross-examination when she was asked to name the applicant's four siblings, give their ages, and the names of their spouses and children. With little hesitation, she proceeded to give all this information, which

included the names of ten children. The applicant later confirmed this information. This evidence contributed to my overall impression that the appellant takes her marriage to the applicant seriously, and believes it to be genuine. Counsel for the respondent acknowledged in submissions that the appellant has likely acted in good faith in marrying the applicant. This is, in fact, my finding.

**13** I consequently find that the appellant is not herself involved in a scheme to bring the applicant to Canada through marriage, without having the intention of living permanently with him. As counsel for the respondent submitted, this finding is not sufficient for the appellant to succeed. The determinative issues in this case concern the applicant's intentions. It is possible that while the appellant is acting in good faith, the applicant may not be. I would say, however, that where it is found that an appellant sincerely believes her marriage to be genuine, her ability to assess her husband's intentions is a relevant consideration. In this case, I found the appellant to be a mature individual, who appears to have taken a significant role in deciding to enter into this, her first marriage. When asked why she believes that the applicant has made a lifetime commitment to her, she answered that he is nice, she trusts him, and that his family "would not deceive us." I give her judgment in this regard some weight.

**14** As stated, two of the visa officer's main concerns related to the ages of the appellant and the applicant. Like the appellant, he testified that the fact she is six years older than him did not pose a difficulty for him. He had first met her in 1990. He said he found her shy and pretty, and liked her.

**15** The visa officer also questioned why the marriage between the appellant and applicant occurred only after she had immigrated to Canada in 1994, and not in the first four years after they met at the marriage of Navtej Singh and Mehar Kaur in 1990. Counsel for the respondent submitted that this raises a doubt about whether the appellant's residence in Canada was, in fact, her most attractive feature for the applicant and his family.

**16** The applicant testified that it was his priority, and presumably his family's, to see his older sisters married before him. The last two sisters were married in 1991 and 1992. They presently live in India with their own families. He added that he was not interested in marrying before 1996. This does not seem implausible. The applicant was still only 24 when the appellant left India in 1994. The strongest argument against the inference that the applicant waited to marry the appellant until she had immigrated is that their marriage was arranged two years after she became a permanent resident of Canada. As counsel for the appellant submitted, if the marriage had long been planned to gain the applicant's admission to Canada, it is difficult to understand why it would not have occurred much earlier than February 1997.

**17** The main concern I have with respect to the applicant's credibility, and his bona fides with regard to this marriage, arose in the course of his testimony. The appellant testified that she saw the applicant several times on family occasions between 1990 and 1994. She said they did not talk, but he was part of the coming and going that occurred between the two families. The appellant further testified that she understood the marriage to have been arranged after the applicant's father asked

Navtej Singh to see if the appellant's family would be interested in the match. The applicant gave testimony varying from the appellant's on both these points. In cross-examination, he said that he had not seen the appellant between 1990 and February 1997. He also said that he himself initiated the marriage arrangements. He said that the thought of marrying the appellant just came to him, and then he spoke with Navtej Singh and asked him to arrange the marriage.

**18** The applicant's evidence on these points seems unlikely to be true. For one thing, he described the marriage arrangements substantially differently at his interview with the visa officer:<sup>4</sup>

Q: A: Then what happened? Then, in November 1996, Navtej Singh asked my parents to get me married to Harjinder Kaur.

Q: Did he give any reasons for wanting you to be married to Harjinder Kaur?

A: No. He just said get him married to Harjinder Kaur.

....

Q: A: Why do they have to agree? Because they love Navtej Singh and if he says something they have to agree.

**19** I find it much more likely that this version, which roughly accords with the appellant's understanding that Navtej Singh and the applicant's father initiated the process, is correct, than is the applicant's evidence at the hearing. Counsel for the appellant acknowledged that it seemed the applicant was trying to bolster his own role in the arrangements, perhaps as part of trying to show just how interested he was in marrying the appellant. This is my conclusion as well. It is troubling, because it suggests the applicant is willing to shade his evidence to show his case to better advantage.

**20** Nevertheless, I am not prepared, for this reason alone, to find that the applicant is not credible, or that his stated intentions with respect to the marriage are untrustworthy. There were positive aspects to his testimony. Like the appellant, he too displayed a degree of spontaneity in his testimony which lends it credibility. When asked in cross-examination what he likes about the appellant, he said that she fits in well with his family, and that it's fun when she is with them. When asked to cite any special memory from his trips with the appellant on her visit in the fall of 1998, he said that the mountainous region they visited is famous for the monkeys that live there, and one of them took an ice cream cone out of his hand. The applicant corroborated the appellant's evidence that he occasionally visits her two sisters who live in India. He was able to name their husbands and seven children. The applicant testified, as did the appellant, that if the appeal did not succeed, she

would return to live with him in India.

**21** I also give weight to the documentary material submitted into evidence by the appellant. This includes telephone bills from her residence showing many calls placed to numbers in India which she identified as being for the public telephones where she most frequently reaches the applicant.<sup>5</sup> Also included in this material are 36 letters purportedly written by the applicant to the appellant in 1998.<sup>6</sup> These letters are lengthy, and often personal. Counsel for the respondent asked the appellant why the letters start only in April 1998, just before the applicant was notified of the refusal. The appellant said they had been writing to each other all along, but she did not make a point of saving her husband's letters until his application was refused. I accept her evidence in this regard. It is to be noted that the applicant did not come empty-handed to his interview, but brought five letters sent to him by the appellant. Counsel for the respondent submitted that certain of the letters appeared "too good", citing the fact that the applicant occasionally refers to their intimate life. It is, of course, possible that evidence of this kind can be manufactured. Where an applicant has shown himself capable of shading evidence, this may be a greater concern. However, evidence that looks good may very well do so because it is genuine. My review of the letters, in the context of the evidence taken as a whole, leads me to find that they represent genuine ongoing communication between the appellant and the applicant.

## CONCLUSION

**22** The applicant testified that he intends to live with the appellant for the rest of his life, and that he did not marry her for the purpose of gaining admission to Canada. I accept his evidence in this regard as credible and trustworthy.

**23** The appeal with respect to the applicant Ravinder Singh ATWAL is hereby allowed, as he is determined to be a member of the family class.

## ORDER

**24** The Appeal Division orders that the appeal be allowed because the refusal to approve the application for landing made by Ravinder Singh ATWAL is not in accordance with the law.

"Peter Carver"

Dated at Vancouver, B.C. this 21 day of October, 1999.

You have the right under ss. 82.1(1) of the Immigration Act to apply for a judicial review of this decision, with leave of a judge of the Federal Court - Trial Division. You may wish to consult with counsel immediately as your time for applying for leave is limited under that section.

qp/e/nc/qlplh

1 Contained in Exhibit A-1.

2 Refusal letter, April 17, 1998, Record, pp. 28-31.

3 CAIPS notes, Record, p. 34.

4 Record, pp. 34-35.

5 Exhibit A-1, Documents.

6 Exhibit A-1, Documents.