

Case Name:

Bhardwaj v. Canada (Minister of Citizenship and Immigration)

**Indu Bala Bhardwaj, appellant, and
Minister of Citizenship and Immigration, respondent**

[2007] I.A.D.D. No. 1316

No. VA5-01370

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

Panel: Erwin Nest

Heard: June 14, 2007.

Decision: July 10, 2007.

(37 paras.)

Appearances:

Appellant's Counsel: Brij Mohan, Barrister & Solicitor.

Minister's Counsel: Garry Reimer.

Sponsorship

Reasons for Decision

1 This is the appeal by Indu Bala BHARDWAJ (the "appellant") from the refusal to approve the permanent resident visa application for her spouse Pardeep Kumar BHARDWAJ (the "applicant") from India. The visa officer found that the applicant is a person caught by the exclusionary provision of section 4 of the *Immigration and Refugee Protection Regulations, 2002* (the "*Regulations*").¹

2 The test is two-pronged, that is, in order for a foreign national to be caught by section 4 of the *Regulations*, the preponderance of reliable evidence must demonstrate that the marriage is not genuine and was entered primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act* (the "Act").² In order to succeed on appeal, the onus is on an appellant who needs only to establish one of the prongs of the test has not been met.

3 The application was refused because in the visa officer's view the marriage between the appellant and applicant is not genuine and was entered into primarily for the purpose of the applicant acquiring any status or privilege under the *Act*.

4 In coming to this conclusion, the visa officer took the following factors into consideration:

- though parties to an arranged marriage, the appellant and applicant are incompatible in terms of age, in that the female appellant is six years older than the male applicant and in terms of marital status, the appellant is divorced while the applicant was never married before;
- according to the visa officer, the photographs of the marriage look staged and are devoid of a sense of comfort and intimacy between the couple;
- the applicant provided vague answers at the interview, raising issues of credibility;
- the appellant did not appeal the refusal of the applicant's first application for a permanent visa in November 2004. The applicant filed second application in March 2005 without providing new information;
- the officer felt that the relationship with the appellant was started, established, and developed primarily to further the applicant's interest in coming to Canada.

BACKGROUND

5 By way of background, the appellant is a 39 year-old permanent resident of Canada originally from India. She was married to her first husband in 1987, however the marriage did not last and the divorce was finalized in 1990 in India.³ The applicant is a 33-year-old citizen of India. He has one sister and one brother, both married, living in India. The applicant lives with mother, married brother and his family in the village Nangal Chorán.⁴ His father is deceased. According to the information provided in the sponsor spouse questionnaire, the appellant and applicant were introduced by a person responsible for arranging marriages, Kapil AGNIHOTRI, the younger brother of the appellant's father who is married to the sister of the applicant's father, during the couple's first meeting in person on December 12, 2003.⁵ They were married on December 14, 2003 in India.⁶

6 The applicant testified that he and the appellant stayed at his home for four months until the appellant left India with her parents on April 29, 2004.⁷

7 The appellant again traveled to India in April 2005 to attend the interview with the visa officer, and remained in India until her return to Canada on June 7, 2005. She confirmed that she and the applicant co-habited in his home, and took photographs of their time together.⁸

8 The appellant and applicant testified that since their marriage they have been communicating regularly through telephone calls.⁹

DECISION

9 Based on the evidence before me, I conclude that the appellant has not met the onus upon her. Therefore, the appeal is dismissed. **ANALYSIS**

10 I have considered all the testimony adduced at the *de novo* hearing, the contents of the Record, the appellant's disclosure and oral submissions of counsel for the appellant and the Minister's counsel.

11 The appellant and her father Vidya Rattan AGNIHOTRI testified in person in the hearing. The applicant testified by phone from India.

12 At the outset of the hearing the appellant's counsel advised the Panel that the appellant is being treated for a seizure disorder and she gets slow sometimes when she finds herself in a stressful situations. In the 2007 medical opinion the appellant's physician stated that the appellant's "seizures are relatively well controlled and are improving from my initial meeting with her November 20, 2002."¹⁰ By the end of the appellant's testimony at hearing, the appellant's counsel submitted that she had difficulty in communicating. My impression of the appellant's testimony is that she had difficulty in remembering dates and particulars of her travels to India, including time spent together with the applicant following each visit. In addition, she provided wrong information about the couple's ages claiming that she is 35 and the applicant 33 year old respectively. At the beginning of the hearing she was actively seeking reassurance from her mother in answering her counsel's questions, however after her mother was asked to leave she proceeded to answer questions put to her while taking pauses of varied duration. I agree with the appellant's counsel assessment that the appellant had some difficulties in communicating, however I am satisfied that following clarifications she understood questions put to her and was able to provide cogent answers. I note absence of any evidence to suggest that the appellant's medical condition affects her ability to recall dates or answer questions. After observing the appellant during the hearing I find that she understood the nature of the procedures.

13 The difficulty in this case is that while the appellant's and the applicant's testimony was consistent with respect to some aspects of the origin of their relationship it was inconsistent with information provided previously to immigration officials, and contained a number of discrepancies concerning key areas of knowledge between the spouses. Moreover, the appellant and the applicant contradicted their own testimony, therefore raising the issues of credibility.

14 As noted above, the visa officer had a number of grounds for refusing the application including the age difference, and incompatibility in term of marital status but there were other weaknesses in the appellant's case such as the inadequacy of evidence of on-going contact and the applicant's lack of information about significant areas of the appellant's life. At the *de novo* appeal, I find that these defects were not remedied and new inadequacies were revealed.

15 For example, there was contradictory evidence as to the evolution of the relationship. The appellant testified that the couple's families knew each other and maintained contact for 18-20 years since the marriage between immediate members of their respective families. She confirmed that the marriage talks were conducted between her family and the applicant and she did not talk to the applicant during their first meeting in person prior to the marriage in December 2003. The appellant testified that the applicant was informed about her age and medical condition by the family before the marriage.

16 The applicant testified that he knew the appellant in India while she was still married to her first husband and he began to have feelings for her six months after her divorce. The applicant told the Panel that he wanted to marry the appellant six years before her immigration to Canada in 2002. However, according to him, he did not act on his intent to marry the appellant because he was unemployed at that time and was not ready yet for the responsibility because he wanted to settle first. I note that in the application for permanent residency, he stated that he was continuously employed since 1992, as a self employed businessman and as a salesman until March 2005.¹¹ No adequate explanation was provided by the applicant to explain this inconsistency.

17 The applicant claimed that he first talked to the middleperson in 2001 or 2002 about his intent to marry the appellant and subsequently was encouraged by him to talk directly to her parents. The applicant testified that the appellant's mother called him from Canada on a cell phone and talked to him about the age incompatibilities between the couple. He claimed that he often talked to the applicant during his visits to the middleperson's house and the couple had discussions on every topic while sitting together.

18 The appellant's father testified that he was in Canada when he was informed by the middleperson about suitability of the applicant as a marriage candidate for his daughter. He confirmed that he talked to the middleperson about the applicant two months before the appellant went to India for the marriage, accompanied by her parents. He recalled that he talked to the applicant about the couple's age incompatibilities on the phone from Canada. When asked about the contact with the applicant before his immigration to Canada, the appellant's father testified that he saw the applicant once or twice when his mother used to bring him to visit in his house in India. He told the Panel that he met the applicant in 1993 or 1994 at a social occasion in India and he described their relationship as between distant relatives. He confirmed that no issues pertaining to the marriage between the appellant and the applicant were discussed at this meeting as he did not consider the applicant a suitable match for his daughter at that time. The appellant's father testified that he agreed to the marriage between the appellant and the applicant because he fully relied on and

trusted the middleperson and his wife in recommending the match to applicant in 2003.

19 I note that the sponsored spouse questionnaire states that the marriage proposal to the couple's respective families was made by the middleperson and his wife on December 2, 2003 at their house in the village Barain Kalan.¹² I find that the witnesses did not provide reasonable explanation at the hearing for the inconsistencies regarding the time and circumstances of the couple's first introduction, the extent and the nature of the contact between the appellant and the applicant before the marriage and the history of the applicant's efforts to marry the appellant before her immigration to Canada. I find the discrepancies in the witnesses' explanations, point to the lack of credibility of the appellant and the applicant.

20 The applicant provided no reasonable explanation for his attraction to the appellant shortly after her divorce, despite the fact that she was older and had medical issues. He testified that he liked the appellant because she was quiet and innocent. Pressed by the Minister's counsel to describe her qualities, he denied that the appellant has difficulty in expressing herself. Pressed by the Member to describe the appellant's activities outside her home the applicant stated the appellant can perform house chores but she can not live independently of her family support. The appellant and the applicant provided consistent testimony confirming that the appellant does not go shopping or take walks independently and she only goes by herself to visit her brother who lives in a house nearby. When the appellant was asked to describe the applicant's leisure activities the appellant testified that he does farming, which is the applicant's current employment. I find that much evidence in this case, including most of the testimony of the appellant and the applicant in significant areas regarding their initial encounters and overall development of the relationship, lacks cogency. I find that there has been no progression in the relationship of the parties, which is inconsistent with what one might expect in a genuine spousal relationship.

21 Given that the appellant has a medical condition which requires taking medication on a regular basis, and she is dependent on her family for her livelihood as she works part time as a babysitter to her brother's two young children with the assistance of her mother I find not satisfactory the applicant's degree of knowledge of the nature of care he will need to provide to the appellant if allowed to be reunited with her in Canada. The applicant testified that in the event the appeal is dismissed the appellant will come to live with him in India. I find the applicant's explanations with respect to the arrangements for the appellant's care while he is at work in Canada or India and she stays at home inadequate. I note that the applicant's claim of the appellant's return to India to live with him permanently was not corroborated by the appellant's or her father's testimonies. I find the evidence of the appellant's father's successful appeal of the refusal to sponsor the appellant in 2000¹³ supportive of the conclusion that the appellant's parents want her to live in Canada, where most of her family live and where they can continue to provide her support and assistance.

22 Given the couple's alleged residency together for a four-months period after their marriage and more than a month co-habitation during the appellant's return visit followed by continuing telephone contact, I would expect that in a genuine relationship founded upon pre-marriage

discussions the applicant would be aware of his wife's basic daily routines, nature of assistance required for her medical condition and other personal information with respect to her life in Canada. As it is, I am not persuaded that the couple's contact in the pre-marriage or post-marriage period is particularly meaningful or of the nature to be expected within the context of a genuine spousal relationship.

23 The appellant confirmed at the hearing that she can not dial the applicant's number in India without assistance of her family members. At the interview with the visa officer the applicant confirmed that the appellant's letters to him submitted in support of his application were written by the appellant's mother. Furthermore, the inconsistencies in the appellant's and the applicant's testimony leads me to conclude that the copies of phone bills between the appellant and the applicant and the photographs tendered are not meaningful and not indicative of subsisting relationship.

24 Considered in its entirety, the testimony of the applicant does not support a finding that he has the quality of knowledge about the appellant and her life in Canada that is reasonable to expect in a genuine marriage - in particular one where the spouses claim to be communicating on a regular basis.

25 The appellant and applicant were not persuasive in asserting that they have discussed their future plans together. I find in this case there were no specific statements indicating that the appellant made some efforts for specific planning, including the expected employment of the applicant, except stating that the applicant will work for one of her brothers. Given the applicant's claim that the appellant will not work outside the home as he will be able to support her I find the lack of the appellant's planning for the applicant's future in Canada inconsistent with the finding that this marriage is genuine.

26 The appellant's and the applicant's testimonies were consistent with respect to the couple's plan of having children. Given that the appellant and the applicant testified that they did not use any birth control methods during periods of cohabitation I find not credible the applicant's testimony that given her age he talked to the appellant only once about her ability to get pregnant and that her mother took her to a physician when the appellant missed her period.

27 The appellant was 39 at the time of the hearing. The appellant and the applicant indicated that they wanted to have children. Considering her age it is reasonable to expect that there should be some urgency with respect to her getting pregnant. However she has not returned to India since 2005. The appellant explained that she did not return to India because she decided to appeal the refusal of the application. This explanation is not reasonable. The appellant's lack of return considering the couple's alleged desire to have children calls into question the genuineness of relationship.

28 The appellant told the Panel that her family made a decision with respect to her marriage to the applicant and she finds him to be a very good person. She testified that neither the applicant nor

his family is greedy in terms of dowry demands as her ex-spouse and his family. I am not satisfied with the appellant's explanations for her attraction to the applicant.

29 The applicant testified that he had many opportunities to find a match in India besides the appellant. I find the fact of the age and marital incompatibility with no credible explanation combined with the other weaknesses described above all combine to undermine the genuineness of the marriage and the primary purpose of the applicant in marrying the appellant.

30 In relation to financial support to the applicant I find the appellant's father's testimony credible that he transferred money to the applicant because as his son-in-law he considered him to be a family member and he did not want him to suffer any hardship in India. The appellant's father testified that he has full confidence in the applicant's intentions toward the appellant because he knew his family for 18-20 years and the middleperson, whom he trusted recommended him.

31 I find it plausible that after the failure of the appellant's first marriage arranged by the appellant's father's sister the appellant's father wanted to secure a success of the appellant's second marriage and he was trying to ensure that a suitable candidate will take care of the appellant long after her parents are gone. While I accept the appellant's father's testimony that he believes that the applicant is the right choice for the appellant, given my credibility concerns with respect to the applicant I find that the applicant has reasons to wish to immigrate to Canada, which do not involve a future life together with the appellant. I note the appellant's physician comment in his letter of March 14, 2007¹⁴ stating that while he can not offer an opinion with respect to the appellant's ability to maintain marital relationship, as it is beyond the scope of his practice he writes that "many persons with epilepsy are able to have successful relationship that include being married and having a family." I find on the balance of probabilities that if the appellant is able to have a successful marital relationship, based on the evidence before me I am not satisfied that her marriage with the applicant is genuine one.

32 I find it plausible that the families arranged the marriage with the purpose to assist the applicant to immigrate to Canada, and the appellant's parents hope that the applicant will remain with the appellant upon his arrival in Canada.

33 In my view, this applicant has opportunities for settlement independent of the appellant in the circumstances of this case. When the evidence is considered in its entirety, I conclude that the marriage was, likely, entered into by the applicant primarily for the purpose of acquiring a status or privilege under the *Act*.

34 I have considered the applicant's testimony at hearing providing information with respect to the reason for his long term attraction to the appellant. His *viva voce* evidence in these areas does not overcome the marked deficiency in the evidence with respect to the significant incompatibility issues between the couple and the contact between the couple and their respective families in the pre-marriage period. It does not explain the applicant's obvious lack of knowledge of the appellant's medical needs and routines in Canada. The appellant did not present as a credible witness at

hearing. She could not recall significant dates, she contradicted her own and the applicant's evidence in several areas, for example, in the area regarding the time the couple spent together in India, their activities during that period and the progress in the relationship. The case is deficient in many ways. The appellant's father's testimony reflecting his belief that the couple's marriage is a genuine one does not overcome the substantial credibility concerns raised at hearing.

35 Accordingly, the concerns of the visa officer and the Minister's counsel at the hearing regarding the genuineness of the marriage and the primary purpose of the marriage were not met at this hearing by the evidence from and demeanor of the appellant and the testimony of the applicant.

36 There was not sufficient credible evidence to rebut the immigration officer's initial assessment that this marriage is not genuine and was primarily entered into for immigration purposes.

CONCLUSION

37 The appellant has not met the onus of demonstrating on a preponderance of reliable evidence that the marriage is genuine or not entered into primarily for the purpose of acquiring a status or privilege under the *Act*.

NOTICE OF DECISION

The appeal is dismissed.

Erwin Nest

10 July 2007

cp/e/qlaeb

1 Immigration and Refugee Protection Regulations, SOR/2002 - 227.

4. Bad Faith - For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the *Act*.

2 Immigration and Refugee Protection Act, S.C. 2001, c. 27.

3 Record, pages 16-17.

4 Record, page 19, page 31.

5 Record, age 26.

6 Record, page 36.

7 Exhibit A-1, tab B1, page 5.

8 Record, pages 37-40, Exhibit A-1, tab C-1, pages 1-58, tab C-2, pages 1-6.

9 Exhibit A-1, tab D, pages 1-76.

10 Exhibit A-1, tab A2.

11 Record, page 22.

12 Record, page 28.

13 Record, page 61.

14 Exhibit A-1, A-2.