Case Name:

Dhillon v. Canada (Minister of Citizenship and Immigration)

Charanjit Kaur Dhillon , appellant, and
Minister of Citizenship and Immigration, respondent

[2007] I.A.D.D. No. 1347

No. VA5-02422

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

Panel: Deborah Lamont

Heard: July 11 and August 16, 2007.
Decision: August 27, 2007.

(36 paras.)

Appearances:

Appellant's Counsel: Brij Mohan.

Minister's Counsel: Nancy McIver.

Sponsorship

Reasons for Decision

1 Charanjit Kaur DHILLON (the "appellant"), appeals the decision of an immigration officer overseas not to issue a Canadian permanent resident visa to her spouse, Lakhvir Singh DHILLON (the "applicant") from India. The application was refused pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the "*Regulations*").[1] The details of the refusal are set out in the refusal letter and in the Computer Assisted Immigration Processing System (CAIPS) notes.

2 In order for a foreign national to be caught by section 4 of the *Regulations,* the preponderance of reliable evidence must determine that the marriage is not genuine and was entered into primarily for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act* (the "*Act*")[2]. The onus is on an appellant to demonstrate that the applicant is not caught by the excluding section of the *Regulations*.

3 The appellant's and applicant's marriage occurred on 20 February 1999 in India. The appellant is 41-years-old. She was landed in Canada on 18 May 1997 after being sponsored by her first husband. The applicant is 31-years-old, was born in India, and he continues to live there today with his family.

HISTORY

4 An application to sponsor the applicant was filed on 4 August 1999, and on 21 March 2000 it was refused at the Canadian High Commission in New Delhi. On 23 May 2000 the appellant filed a Notice of Appeal. On 10 April 2001, the Immigration Appeal Division ("IAD") determined that the applicant was not a member of the family class and dismissed the appeal for lack of jurisdiction. On 27 August 2001, a second application was filed to sponsor the applicant, and on 16 September 2001 this application was refused again by the Canadian High Commission in New Delhi. On 9 July 2003, a third application was filed to sponsor the applicant and the appellant was deemed ineligible as she was not residing in Canada and therefore this application was also refused by the Canadian High Commission in New Delhi. The appellant filed an appeal to the IAD however she later withdrew her appeal. On 15 August 2004, the appellant filed a fourth application to sponsor the applicant, and on 6 June 2005 it was again refused by the Canadian High Commission in New Delhi. That decision was appealed to the IAD on 28 October 2005.

5 On 5 June 2006, the Minister's Counsel made an application pursuant to section 43 of the *Immigration Appeal Division Rules*[3] arguing the IAD is without jurisdiction to hear the matter of the appellant's appeal on the basis of the application of the doctrine of *res judicata* and that the appeal should be dismissed. On 13 June 2006 the appellant's counsel responded by submitting there is decisive new evidence to support his position that a hearing on the merits should proceed. The Minister's Counsel responded on 28 June 2006 by again asking the IAD to dismiss this appeal for the same reasons as previously argued in the application.

6 In chambers, on 15 September 2006, an IAD Member, Margaret Ostrowski dismissed the Minister's application. The Member found the appellant had provided decisive fresh evidence, namely medical records including tests regarding fertility/infertility of the appellant. This evidence coupled with the fact that the parties have been allegedly persisting for seven years as a married couple, led the IAD Member to find that circumstances exist that brings the appeal within the exception to the doctrine of *res judicata* and accordingly ordered a hearing of the matter on its merits.

DECISION

7 I have heard the testimony of the appellant and the applicant, reviewed the documentary evidence in the Record, as well as the additional documentary evidence that was submitted, heard submissions of counsel, and I am dismissing this appeal for the following reasons. I found on a balance of probabilities the applicant married the appellant to primarily obtain permanent resident status in Canada and not because he is in a genuine marital relationship with the appellant.

ANALYSIS

8 I acknowledge Member Ostrowski decision to dismiss the Minister's application, finding that there was decisive new evidence to warrant a full hearing on its merits. In particular the Member stated the following:

> More of the same kind of evidence that was presented at the first hearing is not sufficient, and in particular, more evidence of contact. Though the appellant has argued that there has been several extended visits and cohabitation since the marriage, I also note that at Tab B in the appellant's submissions that it states on page 1 "going to India - father ill". Accordingly, I am not persuaded that the sole purpose of the appellant's trips were to cohabit with her spouse. However, there are also tendered copies of medical records from a Dr. T.N. Traff including tests regarding the fertility/infertility of the appellant which were not available at the previous IAD hearing in April 2001. I find that this is a significant piece of new evidence which could be capable of altering the result of the previous decision if supported by other credible circumstances and evidence. I am of the opinion that these tests are not particularly easy to undergo. In other cases by IAD panels, pregnancy or a birth has been deemed to be decisive new evidence. I am less than willing to give no weight to such results of tests to couples who have difficulty conceiving. That, together with the fact that the parties have been allegedly persisting for seven years as a marriage couple, I feel that it would be justified to order a full hearing of this matter.

9 I respectfully considered Member Ostrowski's decision, and acknowledge that there is "some" credible evidence before me that the appellant has attempted to conceive a child, namely that she has seen a number of medical specialists and she has had a difficult time becoming pregnant. However I too noted, as Minister's counsel's submitted, there are anomalies on some of the documents that the appellant submitted, regarding her and/or her husband's medical treatment, and I am troubled by some of the documents submitted as a result. Some of these documents are not dated, some do not have names attached to the information included, others list the appellant much younger than she is which is significant as age is a factor in considering fertility, on a subsequent document another name is first listed and then crossed out and the appellant's name entered, and many of the documents were only submitted after the first sitting of this appeal, and only after the Minister's counsel asked many questions at the first sitting as to why more evidence was not submitted in this regard. The appellant either had no explanation, or claimed they were doctors'

errors, and for the late disclosures, she claimed she took all the documents to the interview in December 2004 and as the visa officer never looked at them she felt they were not important. I found her explanations unsatisfactory. While I can appreciate errors do occur the appellant has had years, namely since 2002 when she first consulted a doctor, to submit credible documentary evidence that supports her allegations that she and her husband have been persistently attempting to conceive a child. Further there is no mention of such evidence having been recorded at the interview, and again I am reminded the appellant was represented by legal counsel and the onus rested on her, as to what documents she tendered in this appeal. I found the appellant's efforts were less than diligent and raised doubts as to whether or not she and the applicant have persistently attempted to conceive a child.

10 Further even if I accept the appellant has steadfastly been attempting to conceive a child, I also noted she is 41-years-old today, and after considering all the other evidence in this appeal, I am not satisfied her efforts to conceive, establish that her marriage to the applicant is genuine. I find the appellant's medical evidence does not offer any decisive new evidence in which a determination could be made that the appellant and applicant have a genuine marriage. In particular I made this determination having found that the appellant and applicant were not cohabiting in India during her many visits as alleged. Considering the appellant was residing in India during this period, my findings that they were living apart without a satisfactory explanation undermined the genuineness of their relationship and marriage. I also made this finding after considering the many other credibility concerns as articulated throughout these reasons. Again I am reminded the appellant has not become pregnant even though she testified she first consulted a doctor in 2002 and she has been trying since 2003 to conceive, over four years ago. In addition, even if the appellant was pregnant this does not establish a genuine relationship. I noted the Federal Court's decision[4] that the mere existence of a child does not, on its own, establish the genuineness of a relationship. Keeping this in mind, I considered the concerns raised by the visa officer when she interviewed the appellant on 14 December 2004.

11 I first considered the issue of cohabitation. The appellant alleged she has lived with the applicant in his ancestral village on each and every return visit she made to India since her marriage in February 1999. She testified she has returned to India five times since her marriage and has stayed for periods; of four months, six months, and a year. During the interview the visa officer asked the applicant to draw a map of his immediate neighbours and to provide their names. Further as the appellant chose to attend the interview, she was also asked in a separate interview, to provide the same information and to draw a similar map. In addition, both the applicant and the appellant were asked to provide specific information of other residents in the applicant's ancestral home. The information the appellant provided was not consistent with the applicant's. She was unable to draw a map of the neighbourhood, however primitive it could have been. She did not know the correct name of the immediate neighbour, nor his children. Further she did not know simple basic information about the applicant's brother's wife, who also resides in the ancestral home. As a result, the visa officer determined the appellant has not lived with the applicant in his ancestral home as she alleged. The officer did accept however that the appellant had visited at the applicant's home.

12 After carefully reviewing the evidence, I agree with the visa officer's assessment. **It is reasonable to expect the appellant would have more information about the applicant's home and neighbourhood if she in fact lived with him for long periods of time during their more than five year marriage, namely the number of years before the interview.** Further as the appellant would have resided with the applicant's sister-in-law in the same home, it is reasonable to assume the appellant would have been able to provide consistent information about another female, a wife, in the home. Her inability to do so undermined her residency in the home altogether. I also made this finding as the applicant alleged the two daughters-in-law (the appellant and the applicant's brother's wife) have the responsibility of looking after the house, cleaning it, cooking for everybody, and they work together. Further I noted the appellant provided inconsistent information throughout the interview and she was unable to satisfactorily respond to the officer's concerns on the inconsistencies. In addition, no explanation was proffered by the appellant at this appeal to explain her failures in this regard. The onus was on the appellant to adequately explain these concerns, and as they were not addressed, they remain unanswered. As a result, I am not satisfied the applicant and appellant have cohabitated together in India during her visits there, over more than five years, before the interview. This seriously undermined the genuineness of their relationship, as it is reasonable to expect they would live together if they were a genuine marital couple.

13 Further I am reminded of the evidence provided in the interview that many of the appellant's family members had resided in India for long periods of time when the appellant was also in India, even though many of her family members live in the United States, including her mother and some siblings. After considering the aforementioned the visa officer found that it was more likely that the appellant had been living with her family members in India rather than the applicant, and I find this to be a reasonable assessment. Notably the appellant testified when she stayed in India from November 2005 until November 2006, her mother, her younger brother, his wife, their two children, her elder brother's wife, their child, her sister, and her sister's children were all present in India. Since her departure for Canada in November 2006 she acknowledged some of her family has returned to the U.S., including her mother. After considering all the evidence, I too found on a balance of probabilities the appellant had been living with her family in India on the various visits, not the applicant as alleged. I also made this finding in regards to the subsequent visits after the interview in 2004, including the period between November 2005 and November 2006. This finding again undermined the genuineness of the marriage of the appellant and applicant.

14 I also made this finding after considering the applicant's evidence that on each and every visit the appellant made to India, they visited relatives. The appellant testified she rarely visited relatives. In fact when she was asked to describe her and her husband's daily routine in India she completely omitted mentioning they visited relatives. I considered the applicant's testimony that their time with relatives was limited, yet he consistently referenced these visits when he was asked to explain what they did in India during her stays, and the appellant downplayed her visits to relatives. Although this admission by the applicant, by itself, would not support the above finding, in combination with the other concerns as expressed, it is notable nonetheless.

15 I also made this finding after considering the appellant's testimony at this appeal hearing. She was asked to describe her and her husband's daily routine, while she lived in India during her year stay with the applicant, from November 2005 until November 2006, and I was not persuaded by her testimony. There were noticeable pauses between her testimony, and while I concede some of the breaks were to allow for interpretation, I determined this was not the bulk of her silence. She was prodded continuously to continue and it was clear to me, she was struggling describing her and her husband's routine. I found on a balance of probabilities she was making up her evidence. In addition, other than stating the obvious, she provided no in depth explanation of her or her husband's daily activities. She also never mentioned the applicant went to work and only admitted this when her counsel asked on redirect if her husband worked throughout this year. I found her testimony in this regard lacked credibility and again undermined her allegations that she lived with the applicant for over a year, namely less than six months before her appeal hearing. It is reasonable to expect the appellant would have been able to provide a more detailed analysis of her and her husband's daily routines in India if they lived together for a year in 2005/2006, and/or previously. Her failure in this regard further undermined her cohabitation with the applicant in India.

16 I made the same finding regarding the applicant's testimony at the hearing. The appellant's counsel asked the applicant to explain what he and the appellant did in India together, and he testified they visited relatives, visited Gurudwaras, stayed home, played with kids, and had sexual relations. The applicant was asked this question on several occasions to address the appellant's repeated visits to India and his responses were similar, including during the appellant's alleged stay for a year in November 2005 until November 2006. Notably the applicant never mentioned attending the offices of fertility doctors, or that the appellant had operations, and he was tested, and finally advised to take medication. It was only when his wife's counsel specifically asked if he and the appellant have any children, then the applicant claimed they had medical problems and went for treatment in India as a result. Considering the alleged efforts the appellant and the applicant have made to conceive a child, it is reasonable to expect their efforts, including repeated visits to a doctor by both of them, would have been clear in the applicant's mind and proffered at the hearing without being prompted by counsel. I also made this finding as the appellant testified to the number of tests and the different procedures she was directed to have, the testing that the applicant had, and then their treatment as a result. Further she testified the treatment they received is expensive and the applicant continues to take medication today. Considering her testimony in this regard, it is also reasonable to expect these consultations with doctors in India, would be in the forefront of the applicant's knowledge and readily proffered. I again drew a negative inference as a result, and this further challenged the appellant's testimony that both she and the applicant were trying desperately to conceive a child when the appellant was in India.

17 In conclusion, and after considering all of the above, I found on a balance of probabilities the appellant was not residing with the applicant on her many visits to India. This seriously undermined the genuineness of their marriage. Also I found that the applicant married the appellant primarily for the purpose of acquiring a status or privilege under the *Act*. The evidence also established the appellant was well aware of the applicant's intentions all along, and she accepted the marriage of

convenience for reasons other than for a long lasting marriage. I find on a balance of probabilities the appellant was complicit in this immigration scheme. I made this finding even after considering the appellant and applicant have been married since 20 February 1999.

18 I also noted the following discrepancies and/or implausibilities. The appellant testified during her last visit to India in November 2005 to November 2006, she, the applicant, their families, and even neighbours, believed she was pregnant, as she gained noticeable weight including on her "breasts and tummy". She testified everyone was delighted, and when she returned to Canada in December 2006 she believed that she was six months pregnant and she visited her doctor in Canada and he tested her urine and discovered she was not pregnant. The appellant was asked why she did not obtain a pregnancy test in India, rather than waiting until she arrived in Canada. I noted she then changed her testimony and claimed she also was tested in India by ultra-sound, however the test did not indicate a baby. She was asked to explain when this test occurred and she testified she could not recall the date. No explanation was proffered to explain her changing testimony, and further she again contradicted this evidence, by stating when she left India everyone in India was happy as they thought she was pregnant. She further testified that when she notified everyone in India by phone about her non-pregnancy everyone cried including herself and she was comforted to hear the applicant and their families' words that it was in the hands of God. The appellant's changing evidence in this regard without an explanation offered, seriously undermined the appellant's credibility.

19 I also noted although the applicant also claimed he and everyone else close to their families thought the appellant was pregnant in November 2006 when she returned to Canada, he testified she did not obtain a pregnancy test in India at this time. He also testified she returned to Canada and was tested there by ultra-sound and she was told she was not pregnant. This further undermined the appellant's changing evidence, as it is reasonable to assume the applicant would be aware of the appellant visiting a doctor in India in 2006, and being told whether or not she was pregnant. As a result of all of the above, I do not accept as credible the appellant, the applicant, their respective families, or anyone else believed the appellant was pregnant in 2006. I made this finding as I find it implausible, that a couple who allegedly have made efforts since 2002 to visit a doctor, and later in 2003 take medical treatment to conceive a child, would then believe their efforts were successful because of weight gain, and not bother getting tested for at least six months to verify their beliefs, and only after the appellant departed India where most of their families were at the time. This evidence is highly unlikely, especially as the couple was allegedly repeatedly attending medical offices in India for consultation and treatment due to infertility. This finding seriously undermined the overall credibility of both the appellant and the applicant.

20 Further I found the following discrepancy notable. The appellant testified she was told by the doctor in Canada that her symptoms of weight gain and other physical symptoms were psychologically induced. She testified that the doctor advised her that because she wants so badly to become pregnant her body responded with false symptoms. She also testified she told the applicant and their respective families about the doctor's diagnosis that her symptoms were psychologically

induced. However when the applicant was questioned in this regard, he did not appear to be aware of this diagnosis, rather he claimed she just gained weight. He was asked the question a number of times and in a number of different ways, and his responses did not confirm the appellant's evidence that she advised him her symptoms were psychologically induced. Again considering the alleged efforts this couple has made to conceive, it is notable, the applicant was not able to corroborate the appellant's allegations in this regard. This further supports my earlier finding that the allegations were not credible, namely that the appellant, applicant, family members, and others, believed the appellant was pregnant in 2006.

21 It is also notable that both the appellant and the applicant testified that they will have a child once the applicant arrives in Canada, yet although the appellant and the applicant have allegedly been actively pursuing this goal in India since at least 2003, the appellant is still not pregnant. The appellant and the applicant were both asked what will happen if they are not successful however the couple repeated their responses that she will get pregnant and they also testified it is in God's hands. Clearly neither the appellant nor the applicant, were prepared to address this question, namely what would happen if the appellant is unable to become pregnant. After considering the appellant's age, and the period of time the couple have allegedly been trying, I am not satisfied this issue has been adequately considered and I found on a balance of probabilities this again undermined the intention of this couple. It is reasonable to expect this serious issue would have been considered by both the appellant and the applicant in case their alleged goals are not realized.

22 Further I noted the visa officer in the refusal letter dated 10 November 2005 also raised concerns, as to the compatibility of the appellant and applicant in terms of their age, marital background, and educational background. The officer determined that no credible explanation had been provided to explain why the applicant's family would consider the appellant a suitable match for their son considering their incompatibilities. The appellant is 10-years-older than the male applicant. The appellant was previously married and divorced, while the applicant has never been married. The appellant has five years of education, while the applicant has 10 years of education.

23 The appellant testified she does not look older than the applicant and therefore the applicant was not concerned. Further she claimed the applicant told her the differences in their education, was also not a concern, and the applicant also testified that the difference in their education makes no difference to him. Further he testified that the appellant comes from a good family and after he and his family met the appellant they all liked her. Even if the applicant believes the appellant's family is "good", and even if he was not too concerned about the differences in their education, the appellant is still much older than the applicant and she is divorced. His explanation that after they met everyone liked each other, does not explain, why this match was even recommended. The applicant was only 23-years-old when they met, and the appellant was 32-years-old. Further she was divorced and the applicant had never been married. After considering these serious incompatibilities, it is reasonable to expect the applicant and his family would have questioned more thoroughly, the proposed match, including before a meeting was even suggested. Notably the marriage was also arranged within 15 days of the first meeting. I am concerned that the applicant

and his parents showed indifference, and no satisfactory explanation has been provided to alleviate this concern.

24 I also considered an affidavit that was submitted from four witnesses who claimed that it is acceptable in Sikh culture for a man to marry a woman who is 10-years older and divorced[5]. However I do not know who these individuals are who signed the affidavit, or what expertise, if any, they have regarding marriages in Sikh cultures. Further I noted no explanation was proffered at this appeal as to why the applicant agreed to marry a divorced woman, other than as stated above. I found it is reasonable to expect the applicant's family would question the suitability of the appellant considering the many incompatibilities. Again I am reminded the appellant is 10-years-older than the applicant, a woman of 41-years, and the applicant is 31-years-old, and the evidence has established the appellant is having difficulty conceiving. Further in light of the incompatibilities, it is reasonable to expect the applicant's family would have serious concerns as to the suitability of the appellant for their son. As a result, I am not satisfied the visa officer's concerns have been adequately addressed. I further noted their incompatibilities were considered in their other sponsorship applications as well, including the previous appeal, and accordingly no reasonable explanation was provided to alleviate the concerns in this regard.

25 I also noted the appellant's testimony that her first marriage failed as her first husband drank alcohol and physically abused her. Yet within letters written by the appellant to the applicant she makes note of the applicant's drinking of alcohol, and his staying away from home to be with others, and she cautions him in this regard. The applicant explained that he used to drink beer as he missed the appellant so much, it was a way he dealt with his sorrow, however he testified as the appellant expressed her negative feelings about alcohol he has since stopped drinking. I considered this explanation but also noted the appellant testified that her first husband did not reveal his serious problems with alcohol until after she married him and after they lived together in Canada. As a result, I question whether or not the appellant investigated the applicant carefully enough before she agreed to this marriage. Considering the appellant's evidence regarding her first failed marriage, it is reasonable to assume she would take time to investigate her second husband to see if the match was desirable. The alcohol concerns acknowledged at the hearing were not satisfactorily explained as a result. Further I noted the applicant was not able to reasonably explain why the appellant was worried about him staying away from his home at night, and this further undermined their compatibilities.

26 If the partners are not mutually compatible, the logical presumption to be drawn is that the decision to enter into the arrangement was dictated by considerations other than a lasting marriage and in cases where there are prospects of immigration to a western country, it could have been agreed upon by the parties and their families merely to facilitate the admission to that country. I acknowledge their social background is similar, that they both belong to the Sikh community, and they both speak Punjabi, however these considerations do not detract from the other serious compatibility concerns noted.

27 Further the visa officer questioned the communication between the appellant and applicant as the applicant had limited knowledge of the appellant's life in Canada. In addition, the officer found the applicant not to be a credible person as his answers seemed contrived. I too noted at the interview, the applicant had limited knowledge of Canada or even the appellant's city of residency, namely Edmonton. He was unable to provide the province of Canada that the appellant lives in. He mentioned the city of Toronto however he had no idea if it was in the same province. He also could not provide the name of another large city close to Edmonton. He was unable to answer whether or not Edmonton is close to mountains, a desert, or a big lake. The only thing he knew was Edmonton had a lot of snow. He could not provide an answer of what someone could do in their spare time in Edmonton, other than go for groceries. Considering the appellant and applicant have been married for over eight years, over five at the time of the interview, and the alleged lengthy cohabitation periods, it is reasonable to expect the applicant would have more knowledge of the city where he is to live with his wife, if he planned on residing with her. His repeated answers that he could only answer the questions asked when he "goes" to Canada is unsatisfactory. I acknowledge the applicant had some knowledge of the appellant's uncle's family in Canada with whom she lives, however much of this information was documented within his sponsorship application. I also accept the applicant had knowledge of the appellant's family, and where they were living at present, however it is reasonable to expect these questions would have been discussed in preparation for the interview. Further I accept the applicant and the appellant know each other and their respective families, and they have attended family weddings and other family events. However after considering the aforementioned, I am not satisfied the applicant and appellant have made efforts to develop meaningful communication between them.

28 In summary, the visa officer raised a number of concerns in the CAIPS notes and refusal letter. Many relevant concerns have not been adequately addressed at hearing. I acknowledge the appellant and applicant have submitted some documentary evidence supporting their communication with one another, including letters, cards, photographs, and phone bills. Further I accept the evidence the appellant has visited India five times since the marriage. However these considerations do not overcome the seriously flawed evidence as it relates to the couple's alleged contact over time, or serve to address other credibility concerns articulated. For all these reasons, I conclude the marriage is not genuine.

29 I also noted within the four sponsorship applications, within the previous appeal, and within this appeal, serious issues of credibility were raised. Although the appellant's counsel argued it would be an error in law for me to consider these past failed sponsorship applications, this evidence is before me, and the appellant's counsel made no objections to the contents of the Record. Further as this is a *de novo* hearing, it is my duty to consider all the evidence in this appeal, including past sponsorship applications. In so doing, I noted many of the same concerns that were not adequately addressed in this appeal, also formed the basis for earlier refusals.

30 In the first sponsorship application the visa officer determined in March 2000 that the applicant was unable to demonstrate that he had a meaningful relationship of substance with the

appellant. Further the officer found that there was insufficient proof of contact, and the applicant had minimal knowledge of the appellant. Further the officer found the applicant was not credible. This finding was appealed to the IAD.

31 On 10 April 2001, the IAD Member determined that on the totality of the evidence the appellant failed to establish the applicant did not marry her in India primarily for the purpose of gaining admission to Canada as a member of the family class and did have the intention to reside permanently with her in Canada. In particular the Member found that it is clear from the photographs that the appellant is considerably older than the applicant and while not determinative, it supports an inference that the relationship is not *bona fide*. In addition, the Member found this coupled with the differences in their marital background was a strong factor. Further the Member found that the appellant's break-up of her first marriage not to be credible and she therefore concluded the appellant's first marriage was not *bona fide*. The Member determined the appellant was not a reliable or trustworthy witness. She also determined the applicant was not a credible witness as he changed his evidence and he was non-responsive. The Member also noted the appellant and applicant contradicted one another, the appellant claiming they did not use any form of birth control and the applicant claimed they used condoms. Other credibility concerns were noted and the Member found that it is more probable than not that the appellant and applicant were both in a scheme arranged by their families to gain the applicant's admission to Canada. Judicial review of the decision was not sought before the Federal Court.

32 In the second sponsorship application the visa officer found in September 2002 that the appellant and applicant were incompatible in age and marital background. Further the officer found that the applicant had a lack of significant knowledge of the appellant. The officer also found the post-wedding photographs appear to be staged, and they did not depict any genuine togetherness between the applicant and the appellant. Further the officer was not satisfied that the evidence submitted established a genuine relationship and that the applicant intended of residing permanently with the appellant. This refusal was not appealed. The refusal in 2003 was because the appellant was not residing in Canada and this decision was appealed but eventually withdrawn. The appellant testified she did not appeal the 2002 and 2003 decisions, however she was incorrect concerning the 2003 refusal, but it was withdrawn. The appellant claimed the immigration consultants did not correctly advise her as to her options in regards to appeals, and therefore she continued to file new sponsorship applications. Notably the appellant chose her counsel and therefore she is responsible for decisions that were made on her behalf. Her attempts to blame immigration consultants for her failures to appeal are not valid explanations as a result.

33 In light of all of the evidence before, I found the appellant has failed to establish the marriage is genuine or that it was entered into by the applicant primarily to gain a status or privilege under the *Act.* The appellant and applicant were provided another opportunity to be heard at this appeal. The appellant was represented by a barrister and solicitor in the Province of Alberta. Documentary evidence was tendered on her behalf. After carefully considering all the evidence before me, I determined the appellant has not met the onus on her of establishing, on a preponderance of reliable

evidence, that the marriage is genuine. For all these reasons, I conclude the marriage is not genuine.

34 I also considered the appellant's counsel's argument that the appellant has been denied natural justice in her previous applications. There is no credible evidence to support such an argument. The appellant had one previous appeal hearing, her appeal was dismissed, and she chose not to challenge this decision in the Federal Court. Further within the other two refusals by visa officers, she also chose not to appeal these refusals. The appellant is responsible for her own choices.

35 With respect to whether or not this marriage was entered into primarily to gain a status or privilege under the *Act*, I find that determination can be made on the issues I have already discussed. There was insufficient credible evidence submitted to rebut the immigration officer's assessment that this marriage was entered into for immigration purposes. Since this is a *de novo* hearing, I found the appellant failed to establish that the marriage was not entered into for immigration purposes.

CONCLUSION

36 I find that the appellant has not met the onus of proof. On a balance of probabilities, based on the evidence before me, I find this marriage is not genuine and was entered into to gain a status or privilege under the *Act*. Therefore, the appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

Deborah Lamont
27 August 2007

cp/e/qlaeb

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

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

3 *Immigration and Refugee Protection Act, Division Rules,* SOR/2002-228.

4 *Rahman, Azizur v. M.C.D. (F.C. no, IMM-1642-06), Noel, November 2, 2006; 2006 FC 1321*.

5 The Record, page 58