

*Case Name:*

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

**Kanwaljit Kaur Gill, appellant, and  
Minister of Citizenship and Immigration, respondent**

[2009] I.A.D.D. No. 1410

[2009] D.S.A.I. no 1410

No. VA7-02380

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

**Panel: Kim Workun**

Heard: June 9, 2009.

Decision: June 22, 2009.

(13 paras.)

**Appearances:**

Appellant's Counsel: Brij Mohan.

Minister's Counsel: Zonia M. Tock.

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*Sponsorship*

**Reasons for Decision**

**1** Kanwaljit Kaur GILL (the "appellant") appeals the refusal of the sponsored application for permanent residence in Canada of Jagjit Singh GILL (the "applicant") from India. The application was refused because, in the opinion of the visa officer, the requirements of section 12(1) of the

*Immigration and Refugee Protection Act, 2001* (the "*Act*")<sup>1</sup> were not met in that the applicant is a person caught by the exclusionary provision of section 4 of the *Immigration and Refugee Protection Regulations, 2002* (the "*Regulations*").<sup>2</sup> Section 4 of the *Regulations* provides as follows:

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 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 into primarily for the purpose of acquiring a status or privilege under the *Act*. In order to succeed on appeal, the appellant need only establish one of the prongs of the test has not been met. The onus is on an appellant to demonstrate that the applicant is not caught by the excluding section of the *Regulations*.

3 The refusal letter<sup>3</sup> articulates the visa officer's concerns with respect to this application. The visa officer concluded that the couple was incompatible in terms of age and marital background. The visa officer questioned the circumstances surrounding the marriage. As well, the visa officer was not satisfied with the evidence of contact between the parties, noting that the tendered telephone bills were not in the sponsor's name and the couple's limited knowledge about each other in personal areas. Finally, the visa officer did not find the applicant to be a credible individual, noting contradictions and evasive responses during interview. The application was refused.

4 The appellant and applicant testified at the hearing. I have considered their testimony, materials in the Record, additional material tendered at hearing,<sup>4</sup> along with oral submissions provided by both counsel.

5 As brief background, the appellant is 25 years old and the applicant is 32 years old. The appellant was previously married. Her marriage ended in divorce in October 2004. This is the appellant's first marriage. The appellant testified that she traveled to India in late 2004 to visit her ill father. She indicated that her father also wished her to re-marry in that period. According to the appellant, she knew of the applicant prior to her travel because one of her colleagues at work, knowing that she was looking for a husband, had suggested she meet the applicant. The couple met on November 22, 2004 and married on December 12, 2004. The appellant returned to Canada. The couple's child, Vishal Singh, was born on September 23, 2005.<sup>5</sup> The appellant returned to India on four occasions with her child, spending time with the applicant at his home in India. While the applicant was previously sponsored by the appellant, the applicant's application was refused in 2002. The appellant submitted a new sponsorship. The applicant's application was refused again. This is the appeal from the second refusal.

6 The test in Regulation 4, as noted, is a two-pronged test. I am mindful of counsel for the

respondent's submission that there is insufficient evidence to find that the marriage was not primarily entered into for an immigration-related purpose. The evidence contained in the Record on this point,<sup>6</sup> for the most part consisting of the applicant's direct responses at interview in this area, support the conclusion that immigration was the primary motivation for the marriage from the applicant's point of view. His lack of knowledge both in the context of his first interview<sup>7</sup> and, as well, in his later 2007 interview,<sup>8</sup> with respect to the appellant's previous marriage and divorce, support the conclusion that there was little, if any, discussion in this area prior to the marriage event. I also note that the applicant was not included in his family's previous immigration application because he was not eligible for inclusion as a dependent. In my view and notwithstanding the self-serving statements of the witnesses at hearing with respect to the motivation for the marriage, the balance of evidence supports the conclusion that the marriage was entered into primarily to acquire a status or privilege under the *Act*.

**7** In looking to the first prong of the Regulation 4 test, however, the balance of credible evidence supports the finding that the marriage is a genuine one. The couple married in December 2004. In the post-marriage period, a child was conceived. DNA testing has confirmed the applicant's paternity of the child.<sup>9</sup> The appellant resides with her child in the applicant's family's home in Canada. Subsequent to the birth of the child, she returned to India on four occasions to visit the applicant, spending protracted periods in India in his home. Photographs tendered into evidence<sup>10</sup> reflect the couple's activities, together with their child, during visits. There is evidence that the applicant has taken on an active parenting role with respect to the child and, in this regard, I note his responses at hearing indicating that he accompanied the appellant and child to doctors during periods of illness. I have also reviewed the photographs,<sup>11</sup> particularly those taken during the last travel period, and note that in several photographs the applicant appears comfortable and playful with the child. The photographs, when considered together with the testimony at hearing in this area, strongly suggest that the applicant, appellant, and child have bonded together as a family unit.

**8** Moving on, I also note the consistent witness testimony that the applicant maintains regular contact with his in-laws who continue to reside in India approximately 35km from his own home. This, together with the evidence that the appellant currently resides with her in-laws in Canada, suggests a co-mingling of the families such as one would expect in a genuine spousal relationship.

**9** The evidence with respect to future planning, in particular, the couple's plans to have more children, is consistent and, while counsel for the respondent submitted that it appears that the applicant has not addressed his mind to the possibility that he may not be successful in his visa application, I note his response in cross-examination in this area. When asked whether his wife would relocate to India in the event a visa does not issue, he indicated that she would and that "... she had come before as well..."

**10** At hearing, the couple's knowledge of each other's activities and routines was canvassed by counsel in both direct and cross-examination. I am satisfied that each demonstrated a reasonable knowledge-base in these areas. While I agree with counsel for the respondent that the applicant's

knowledge in areas identified by the visa officer at interview were deficient, noting that he could not provide the appellant's employer's name and knew very little about the circumstances surrounding her previous marriage and divorce, and while I agree that no explanation was proffered at hearing with respect to these deficiencies, I cannot conclude that his present knowledge is deficient or that there has not been a development in the relationship over time. In the context of this hearing *de novo*, the witnesses demonstrated a reasonable understanding and appreciation for the other's activities. In testifying in this area, both witnesses delivered their testimony in a straightforward and credible manner. There was little hesitation in their delivery and all responses appeared to be spontaneous. As noted previously, the applicant's dearth of knowledge at interview regarding the appellant's prior marital situation, in my view, reflects the fact that the subject was of little significance to him in that period given his family's wish to see him married and settled in Canada. Since that time and considering the extended visits and the couple's activities during those periods, however, I am satisfied that their communication is of the quality to be expected in a genuine spousal relationship.

**11** The testimony was supported by relevant documentary material. The witnesses described the couple's post-marriage activities consistently and the testimony is well-supported by documentary materials, including photographs, medical records, passports and the like.<sup>12</sup> I am satisfied that the applicant has a relationship of substance with his child and that he wishes to raise the child together with the appellant in Canada. I am satisfied that both parties have developed relationships of substance with their respective in-laws. I am satisfied that the couple's communications are of substance and that they have made joint plans for their future family life in Canada.

**12** Again, while I have determined that the relationship had, at the time it was entered into, a primary immigration-related purpose, the evidence supports the conclusion that it is, presently, one of substance. There is credible evidence reflecting its development over time. Conversely, there is no evidence to support the conclusion that the witnesses have merely attempted to remedy deficiencies in the applicant's previous interviews and augmented their case by conceiving a child. The balance of credible evidence supports a positive finding on the second prong of the Regulation 4 test. When all is taken together, I conclude that the marriage is a genuine one.

**13** The applicant, Jagjit Singh GILL, is not caught by the exclusionary provision as articulated in section 4 of the *Regulations*. The appeal of Kanwaljit Kaur GILL 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.

**"Kim Workun"**

**22 June 2009**

cp/e/qlspt

1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. **12** (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

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

3 Record, pages 157-160.

4 Exhibits A-1, A-2, R-1, R-2.

5 Exhibit A-1, Tab A1, page 1.

6 Record, page 154; also Exhibit R-1, page 5 wherein the applicant indicated at his first interview held November 22, 2005 that his parents "... insisted that he marry someone abroad..."

7 Exhibit R-1, page 5.

8 Record, page 154.

9 Exhibit A-2, Tab F.

10 Exhibit A-2, Tab K.

11 *Ibid.*

12 Exhibits A-1, A-2.