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Grewal v. Canada (Minister of Citizenship and Immigration)

**Gurdeep Singh Grewal, appellant, and
Minister of Citizenship and Immigration, respondent**

[1996] I.A.D.D. No. 945

No. V95-02448

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

Panel: L. Clark

Heard: September 9 and 11, 1996

Decision: September 11, 1996

Appearances:

B. Mohan, for the appellant.

A. Molander, for the respondent.

1 This is the appeal of Gurdeep Singh Grewal (the appellant), filed pursuant to section 77 of the Immigration Act¹ (the Act), from the refusal of the sponsored application for permanent residence made by his wife, Charanjit Kaur Grewal, and his step children, Jasdeep Singh and Harpreet Kaur (the applicants), from India.

DECISION FROM THE BENCH

PRESIDING MEMBER

2 This is the decision and reasons in the appeal of Gurdeep Singh Grewal filed with the Immigration and Refugee Board, Immigration Appeal Division, on August 31st, 1995, pursuant to

section 77 of the Immigration Act from the refusal of the sponsored application for permanent residence made by his wife, Charanjit Kaur Grewal, from India. The application was refused because the visa officer concluded that the applicant was a person described in subsection 4(3) of the Immigration Regulations, namely, that she married her sponsor 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 him.

3 The specific factors on which the visa officer relied in coming to that conclusion are found at pages 42 to 44 of the record in the refusal letter dated January 9th, 1995. These allege that the appellant and the applicant are not compatible in terms of their ages. The appellant is 44 years of age and was never married prior to his marriage to the applicant whereas the applicant is 27 years of age and is a widow with two small children, a son and a daughter aged respectively eight-and-one-half and seven years. The visa officer states that there was "no reason for him to settle for a widow with two children."

4 On the basis of his interview with the applicant on August 2, 1994, the visa officer also alleged that there was little contact between the parties after the appellant's return from India following his marriage on December 27, 1993. He returned to Canada on April 1, 1994. In four months there was only one phone call and the applicant did not know how to contact the appellant. He also noted that none of the applicant's relatives attended the wedding and concluded from this that she did not want to publicize her marriage to the appellant. A package of documents submitted on behalf of the appellant and consisting of seven items was entered into evidence as Exhibit A-1 and two further documents were entered into evidence as Exhibit A-2.

5 Two witnesses testified, the appellant and the applicant. The applicant gave evidence by teleconference from India. Three other witnesses, the appellant's sister and two of her daughters, the appellant's nieces, were present in court to testify on the appellant's behalf. However, the panel did not need to hear from these witnesses. The appellant testified that he was born on August 21, 1949, in the village of Sarabha in the Punjab District, India. He has four sisters and one brother. Both of his parents are deceased. The appellant resides with one of his sisters in Edmonton, Alberta. Two of his sisters and a brother live in Winnipeg, Manitoba. The appellant's eldest sister lives in India. The appellant was landed in Canada on August 13, 1990, sponsored by his mother. He works on construction as a truck driver.

6 The appellant said he did not get married until his marriage to the applicant because, despite the fact that his family was approached several times by families who were interested in him as a suitable match for their daughters, these proposals did not work out either because the girl did not like him or he did not like her. He also looked for a suitable marriage partner in Canada but just did not find the right person. He decided to go to India in 1993 to look for a wife there. He arrived in India in early December, 1993, and went to visit an old friend whom he had worked with in India prior to his coming to Canada. That person was Gurmail Singh, who lived in the village of Raikot, also in the Punjab. The appellant approached Gurmail and asked him if he knew of a suitable girl.

Gurmail's wife was a friend of the applicant and they told the appellant about her. Gurmail and his wife acted as the go-between. They told the applicant about the appellant. Both of them were very interested in meeting the other and they first met about December 12, 1993. The appellant said he had already made up his mind that he wanted to marry her. He said when he first saw her it was love at first sight; it was like they were made for each other. They met at Gurmail Singh's home five or six times and talked. He said he proposed to her and she said "yes", and they were both very happy.

7 Asked by his counsel why he was marrying a widow 16 years younger than him, the appellant said he could have found a 20 or 21 year old girl to marry in India but he was afraid such a person would not stay with him in Canada. He said the person he chose was older and more experienced and that he helped her and she would respect him and not leave him. In cross-examination, he said she needed somebody to look after her and support her and the children and that she found an anchor in him. The applicant said she was very sad after the death of her husband in July, 1993, and that she had no support from anyone. She said she liked Gurdeep's nature very much.

8 The applicant was born in Bhopal, India, on December 21, 1965. Following her marriage to her first husband, she lived in his ancestral village of Raikot. After her husband's death, her in-laws would not look after her and the children and there was a lot of conflict with them. She said they threw her and the children out 15 or 20 days after her husband's death and she and the children lived in one room some distance from them. Asked why none of her relatives were present at her marriage to the appellant, she said she did not want to invite them to share in her happiness after the way they had treated her and her children.

9 They were married in Ludhiana on December 27, 1993. After the marriage, they stayed with the appellant's eldest sister in Binjal, which is a very small village in the Punjab. The children were with them. Both the appellant and the applicant testified that there were no telephones in Binjal. As the applicant graphically expressed it, "no wires, no telephone, no nothing". They made short trips away from Binjal to small hill stations and to Amritsar to say prayers for blessings on their marriage as they had agreed to do at the time of the marriage. The marriage was consummated and they lived together as husband and wife until the appellant left on April 1, 1994, to return to Canada. When appellant's counsel asked him what his intentions were when he got married, he said "to stay together all our lives. Just like the whole world, we wanted to stay together."

10 Asked the same question, the applicant said she had no intention other than to live happily with her husband and to stay with him and not to live apart from him. She said the children like and love him very much and miss him. She and the children remained in Binjal with the appellant's sister and brother-in-law after the appellant returned to Canada. However, the applicant moved from Binjal to the city of Moga in October, 1994, where she lives with a niece of the appellant, a daughter of the sister in Canada with whom the appellant resides. The niece is married and lives with her in-laws. They have a telephone. Following the appellant's return to Canada in 1994, he worked on construction sites outside Edmonton at Grande Prairie, High Level and Fort McMurray.

While working on these jobs, he worked 12 to 14 hour days, sometimes seven days a week depending on the weather. He lived in motel rooms. He was not accessible by telephone so his wife could not call him. In addition, the sister with whom the appellant lives in Edmonton, moved while the appellant was out of town as a consequence of which their telephone number was also changed. This explains why the applicant was unsure of his telephone number at the time of her interview.

11 While the applicant was in Binjal before moving to Moga, she had no telephone so he could not call her. While both of them can speak Punjabi and Hindi, he is more fluent in Punjabi than she and she is more fluent in Hindi than he is. He cannot understand written Hindi and she is not fluent in written Punjabi though she said she could understand some of it. As a consequence, they did not have much contact from approximately April to October, 1994. But as this evidence makes clear, this was not because they did not care about one another or want to be in contact. Since the applicant moved to Moga, they have had frequent and regular contact by telephone, five or six calls a month, as is evident from the telephone bills found in Exhibit A-1.

12 Also, the appellant went back to visit the applicant and her children in late 1995/early 1996. He left Canada in late December and arrived in India on January 1, 1996, and returned to Canada on March 18, 1996. He stayed with his wife and the children in Moga and they again lived as husband and wife. They took trips to New Delhi and Aggra during his visit.

13 It is clear from the evidence that the appellant has supported the applicant financially since the marriage. He has sent her money by bank drafts as is evidenced in Exhibit A-1 with copies of receipts, and he also left her with 25,000 rupees when he returned to Canada in mid-March, 1996. In addition, she receives the income of approximately 20,000 rupees per year from his share of the income generated from the property which he still owns in the Punjab.

14 Asked what he would do if the appeal was refused, the appellant said that his wife had had enough upset in her life and he would go to India to live with her. The applicant became distraught when this question was asked of her and said he would have to come to India and that if he, the appellant, did not, she would have to commit suicide. She has no relatives other than the appellant in Canada.

15 On the totality of the evidence, the Appeal Division finds that the applicant is not described in section 4(3) of the Regulations. Given her status as a widow with two young children, and the fact that she knows no one in Canada other than the appellant, it is unreasonable to conclude that she would not remain permanently with the appellant if she is allowed to come to Canada. Counsel for the respondent's position is that the applicant needs someone to take care of her and that is why she married the appellant. However, while that may be true, it does not preclude her from also loving and caring about the appellant. Neither is it evidence that her primary purpose in marrying the appellant was to gain admission to Canada as a member of the family class. The copies of photographs found in Exhibit A-1 taken on the appellant's 1996 visit to India show a joyful, playful, warm and affectionate relationship between the appellant and the applicant.

16 The Appeal Division finds that this is a bona fide marriage. The Appeal Division finds both the appellant and the applicant to be credible and to have given reliable and trustworthy evidence. The appellant was a quiet, calm, somewhat reserved person who was spontaneous and responsive to the questions asked of him. It was apparent both from his evidence and his demeanour that he loves and cares for the applicant and her children and that he feels good about himself and the fact that the applicant relies on and respects him. It was apparent from the evidence of the applicant and the degree and depth of her emotional response to the proceedings, that she and her children have been through a very stressful period in their lives and that they are all looking forward to enjoying a happy and settled family life with the appellant in Canada.

17 The Appeal Division finds that the appellant has met the onus on him to prove that this is a bona fide marriage. Therefore, the Appeal Division finds the refusal invalid in law. The appeal pursuant to paragraph 77(3)(a) of the Act is allowed pursuant to paragraph 77(4) of the Act.

(Edited for syntax, spelling and punctuation.)

"Lorenne Clark"

Dated at Vancouver, B.C. this 16 day of October 1996.

qp/d/plh

1 Immigration Act, R.S.C. 1985, c. I-2, as amended.