

*Case Name:*

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

**Narinderjit Kaur Kalkat, appellant, and  
Minister of Citizenship and Immigration, respondent**

[2001] I.A.D.D. No. 1461

[2001] D.S.A.I. no 1461

No. VA1-00095

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

**Panel: John Borst**

Heard: November 5, 2001.

Decision: December 14, 2001.

(16 paras.)

**Appearances:**

Brij Mohan, Barrister & Solicitor, for the appellant.

Leah Gabretensae, for the respondent.

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**1** These reasons arise out of the appeal of Narinderjit Kaur KALKAT (the "appellant"). She appealed the refusal of the sponsored application for permanent residence of Harvinder Singh KALKAT (the "applicant"), from India. The sponsored application was refused because a visa officer determined the marriage was entered into to gain Harvinder Singh Kalkat's admission to Canada and the applicant, Harvinder Singh Kalkat, did not intend to reside permanently with the appellant, Narinderjit Kaur Kalkat, as set out in subsection 4(3) of the Immigration Regulations,

1978 (the "Regulations").

## DECISION

**2** The Appeal Division finds the appellant has shown on a balance of probabilities, that the applicant intended, at the time of the marriage, to reside permanently with the appellant. The applicant is a member of the family class and the refusal is invalid in law.

## BACKGROUND

**3** The twenty-eight year-old appellant was granted landing on April 7, 1998 as the spouse of Harpreet Singh Dhaliwal. This marriage occurred on March 29, 1996. One month after the appellant was landed, she and her first husband separated. The divorce was completed on August 27, 1999.

**4** The applicant was born in India on November 4, 1967. He is the eldest of three brothers.

**5** The appellant was introduced to the applicant by her uncle sometime around November 1999. The appellant flew to India on February 25, 2000, met the applicant on the 26th and the couple married on March 10, 2000. The couple testified they consummated the marriage and lived together until the appellant returned to Canada on May 2, 2000.

**6** The appellant flew to India to visit the applicant on March 29, 2001 and stayed until September 8, 2001 when she again returned to Canada. The appellant became pregnant during her stay in India. She is due to give birth on January 2, 2002. The couple testified the applicant is the father.

## ANALYSIS

**7** The decision in *Horbas*<sup>1</sup> sets the test to be applied to appeals of refused applications under 4(3) of the Regulations. For the appellant's appeal to succeed, the appellant must show, on a balance of probabilities, either that the primary purpose for the marriage was other than gaining the applicant's admission to Canada or that the applicant intended at the time of the marriage to reside permanently with the appellant.

**8** The applicant's credibility is questionable. At his interview the applicant did not know the reasons for the failure of the appellant's marriage even though the appellant and the applicant testified at the hearing she had told him all about her first marriage and the reasons for its failure at their first meeting. The applicant also evaded answering questions at his interview and was vague at the hearing.

**9** There is evidence the applicant was seeking to leave India since he applied for and received a passport before being introduced to the appellant. He explained he applied for the passport without intending to use it to go overseas. I find this hard to believe and it appears his desire to leave India played a greater role in his decision to marry than he was willing to admit.

**10** There is other evidence which might indicate the marriage might be for the purpose of gaining the applicant's admission to Canada. For example, the applicant stated the appellant was the first person he considered marrying, the role of his family in arranging the match is unclear, the reasons the applicant gave for the match make little sense and he stated his potential immigration to Canada played no role in his decision to marry the appellant.

**11** The appellant, however, meets her onus on the second prong of the test outlined in Horbas. The appellant became pregnant during her most recent trip to India and the testimony of the witnesses is that the applicant is the father. The Minister's representative did not cross-examine extensively on this point and did not present evidence which would undermine the credibility of this testimony. There is no evidence of anyone else who might be the father. I conclude the applicant is the father of the appellant's child.

**12** The panel would find it hard to believe that a woman from a traditional culture such as that found in India would agree to becoming pregnant to facilitate an applicant's admission to Canada unless in her mind she believed the marriage to be bona fide.

**13** The appellant testified the couple did not use birth control and the applicant testified this was because the couple wanted a child. This testimony indicates that from the beginning of the marriage the couple were planning a family. The planning for and the conception of the child is a strong indicator that the applicant intends to reside permanently with the appellant. The Minister has not shown that the child was conceived without the applicant's intent to reside permanently with the appellant.

**14** Other evidence in the appellant's favour is the constant contact maintained between the appellant and the applicant by telephone and through the mails. The appellant and the applicant also answered questions about their private lives which indicate, on a balance of probabilities, that they lived as husband and wife.

**15** This evidence and the finding that the applicant is the father of the appellant's expected child and the planned conception of the child show, on a balance of probabilities, that the applicant intended at the time of the wedding to reside permanently with the appellant. After considering all of the evidence I find the applicant is a member of the family class and the appeal is allowed.

#### ORDER

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

"John Borst"

Dated at Vancouver, B.C. this 14th day of December, 2001.

qp/e/nc/qlspg/qlplh

1 Horbas v. Canada (Minister of Employment and Immigration), [1985] 2 F.C. 359 (T.D.).