

Case Name:

Virk v. Canada (Minister of Citizenship and Immigration)

**Ranvir Kaur Virk, appellant, and
Minister of Citizenship and Immigration, respondent**

[2005] I.A.D.D. No. 1513

[2005] D.S.A.I. no 1513

No. VA3-04599

Immigration and Refugee Board of Canada
Immigration Appeal Division
Vancouver, British Columbia / Edmonton, Alberta

Panel: Kashi Mattu

Heard: July 18 and September 6, 2005.

Decision: October 18, 2005.

(13 paras.)

Appearances:

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

Minister's Counsel: David Macdonald.

Sponsorship

Reasons for Decision

1 These are the reasons and decision of the Immigration Appeal Division pertaining to the appeal filed pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act*¹ (the "Act") by Ranvir Kaur VIRK (the "appellant") from the refusal of her sponsorship application for a permanent

resident visa for her spouse Gurpreet Singh VIRK (the "applicant") from India.

2 The application was refused under section 4 of the *Immigration and Refugee Protection Act Regulations* (the "*Regulations*").² The details of the refusal are set out in the refusal letter and CAIPS notes of the immigration officer.³

Background

3 The appellant is 36 years old. She was born in India and she was landed in Canada on April 7, 1997. The appellant was previously married to Tarsem Singh Shoker on April 6, 1998 and divorced on March 29, 2001.⁴

4 The applicant is 25 years old and lives in India. The appellant and applicant were married on October 25, 2001.⁵

Analysis

5 A two-fold test must be applied in order to disqualify a spouse under section 4 of the *Regulations*. Both elements of the test must be satisfied if an applicant is to be disqualified as a spouse. The two elements of the test are: that the marriage is not genuine and that the marriage was entered into primarily for the purpose of acquiring a status or privilege under the *Act*. The determination of whether or not the marriage is genuine is made at the time of the hearing, nonetheless, given the nature of marriage, as a relationship between a husband and wife, I find the existence of a genuine marriage is a question of fact and it includes a mix of the past, current and future state of affairs in the relationship. Moreover, in circumstances of a marriage the status or privilege that can be acquired under the *Act* is that the spouse is granted permanent resident status in Canada through membership in the family class when the spouse qualifies to be sponsored to Canada.⁶ The onus of proof is on the appellant to show, on a balance of probabilities, that the applicant is not disqualified as a spouse.

6 The appellant and applicant testified at the hearing. Based on the evidence before me, I find the evidence does not, on a balance of probabilities, indicate a genuine spousal relationship between the appellant and the applicant. There were significant discrepancies, inconsistencies and implausibilities in the evidence and lack of knowledge demonstrated by the witnesses, for which satisfactory explanations were not provided. I will provide some examples.

7 There were discrepancies in the evidence in relation to the genesis and development of the relationship. There were no satisfactory explanations as to why the appellant and applicant married so quickly in their particular circumstances. The appellant and applicant are not compatible in age or marital background. The appellant is 11 years older than the applicant and has been previously married and divorced, a marriage she testified was genuine but short lived, and her ex-spouse allegedly ended because he did not like her due to the fact she was illiterate. The applicant is the eldest in his family. It is unusual in the couples' culture for a relatively young, never married male

to marry a woman so much older, and who had been divorced. The evidence of only one other match considered, the qualities the couple testified they were looking for in a match, i.e., someone uneducated and that would care for the applicant's family and the limited length and nature of discussions prior to the agreement to marry given the appellant's previous marriage did not support the genuineness of the couples' alleged intentions when entering this marriage.

8 The genuineness of the appellant's first marriage is not determinative of the genuineness of this marriage, however, the evidence put forward by the witnesses in relation to that marriage does affect the assessment of the credibility of the witnesses. There were discrepancies in the testimony regarding how much time, if any, the appellant lived with her former spouse in Canada. In addition, the divorce documents indicate he likely spent little time with the appellant in Canada. Moreover, I find the reasons given for the breakdown of the marriage so quickly are not credible. This evidence undermined the credibility of the witnesses.

9 There were further discrepancies in the circumstances surrounding this marriage. There were significant inconsistencies in the evidence regarding who was the middle person in arranging this match. I note in particular the applicant was non-responsive to many questions put to him in an effort to clarify or explain these discrepancies in the evidence. As well, none of the appellant's brothers from Canada traveled to attend her wedding. Yet one brother allegedly was in India after her marriage. The explanations provided as to why they did not attend such an important event in the appellant's life were not satisfactory, especially considering the evidence regarding her previous marriage and their push to have the appellant married quickly because they were not willing to care for her.

10 The appellant and applicant testified as to contact and communication since the wedding through telephone calls, letters and visits. There was some documentary evidence submitted.⁷ However, the evidence does not demonstrate the extent of the alleged contact and communication. For example, there were discrepancies in the evidence regarding how much time the appellant lived with the applicant after the marriage. There were no satisfactory explanations as to why the appellant waited two years before visiting the applicant, particularly given her ability to obtain extensive leave after that time. There were discrepancies regarding the nature and extent of medical problems the appellant and applicant have had and what, if any, treatment they have received. There were also discrepancies in the evidence regarding the exchange of letters between the couple who profess to both be illiterate and where the applicant has telephoned the appellant in Canada in relation to her places of residence. These would be important issues and events in a genuine spousal relationship about which I would not have expected such divergent testimony. These discrepancies further undermined the credibility of the witnesses and raised serious doubts in relation to the intentions for this to be a lasting relationship.

11 Given the significant incompatibilities between the couple, the discrepancies and inconsistencies in the evidence and demonstrated lack of knowledge, despite the extent of the alleged communication, I find, on a balance of probabilities, the marriage is not genuine.

12 The issue of whether the marriage was entered into primarily for the applicant to gain a status or privilege under the *Act* can be determined from the issues I have already discussed. It is not necessary for me to reiterate the evidence on these issues. There was insufficient credible evidence submitted to rebut the immigration officer's initial assessment. The evidence before me does not, on a balance of probabilities, support the development of a genuine spousal relationship. The appellant and applicant have not bothered to share or remember such basic information about each other and their circumstances that would be expected in a genuine spousal relationship, including their future plans and discussions of the types of work the applicant could do in Canada. Based on the evidence before me, I find the applicant entered this marriage for immigration purposes.

Conclusion

13 The appellant has not met the onus of proof. Based on the evidence before me and on a balance of probabilities, the marriage is not genuine and was entered into primarily to gain a status or privilege under the *Act*. Therefore, the appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

Kashi Mattu

18 October 2005

cp/e/qllls

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

2 *Immigration and Refugee Protection Regulations*, SOR/2002 - 27.

3 Record, pages 37-149.

4 Record, pages 9, 10; Exhibit A-1, Tab2.

5 Record, page 37.

6 Sections 11(1), 12(1) and 13(1) of the *Act*.

7 Record pages 40-78; Exhibits R-1 and A-1.

