IMMIGRATION AND REFUGEE BOARD
(APPEAL DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE REFUGIE
(SECTION D'APPEL)

VA0-02149

REASONS FOR DECISION AND ORDER

APPELLANT(S)/APPLICANTS — APPELANT(S)/REQUÉRANT(S)

RAMANDEEP KAUR GREWAL

RESPONDENT — INTIMÉ

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

DATE(S) OF HEARING — DATE(S) DE L'AUDITION

October 13, 2000

PLACE OF HEARING — LIEU DE L'AUDITION

Vancouver, B.C.

DATE OF DECISION — DATE DE LA DÉCISION

November 2, 2000

CORAM — CORAM

Lorenne Clark

FOR THE APPELLANT(S)/APPLICANT(S)) — POUR L'APPELANT(S)/REQUÉRANT(S)

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FOR THE RESPONDENT — POUR L'INTIMÉ

D. Macdonald

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These are the reasons and decision in the section 70 appeal of Ramandeep Kaur GREWAL (appellant) from the removal order issued against her in Vancouver, British Columbia (B.C.), on June 22, 2000. The removal order was issued on the basis of the fact that the appellant or someone else failed to disclose to CIC that at the time a visa was issued to the appellant on November 6, 1997,[1] the appellant's then husband had previously deceased on April 18 1997.[2]

The appellant indicated she was not challenging the legal validity of the removal order. Thus, the sole basis of the appeal is section 70(1)(b) of the *Act*[3] and the onus rests with the appellant to establish that she should not be removed from Canada in all the circumstances of the case. The appellant was the only witness to testify.

DECISION

The removal order is valid in law. I find the appellant has not met the onus of establishing she should not be removed from Canada in all the circumstances of the case. Accordingly, the appeal of Ramandeep Kaur Grewal is dismissed.

REASONS

ANALYSIS

Ramandeep Kaur Grewal was born in India on June 6, 1973,[4] and is 27 years of age. She was first married in India to Lakhwinder Singh Grewal on January 26, 1997. Lakhwinder Singh lived in Canada with his mother. He also had two sisters in Canada, both married and living on their own. Following the marriage the appellant lived with her father-in-law and two of Lakhwinder Singh's older brothers in India and Lakhwinder Singh sponsored her to Canada. She completed her application for permanent residence on May 22, 1997, indicating her husband was in Canada. However, as we are aware, Lakhwinder Singh had already died by that time, having deceased in Abbotsford, B.C. in April, 1997.

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1 Record of Landing, Ramandeep Kaur Grewal, Exhibit C-6 to the inquiry transcript, box 32.
2 Exhibit C-7 to the inquiry transcript, Death Certificate for Lakhwinder Singh Grewal.
3 *Immigration Act*, R.S.C. 1985, c.I-2 as amended (the *Act*).
4 Section 27 Report, Exhibit C-2, transcript of inquiry.

As indicated in the statutory declaration of the visa officer who processed her application,[5] the appellant was interviewed in New Delhi on November 4, 1997. As the visa officer indicates, the appellant gave no indication her then husband was not still alive and well in Canada. Instead, she told the visa officer Lakhwinder Singh worked in a nursery, that they talked to each other on the telephone at least twice a month and exchanged letters also about twice a month. She even produced telephone receipts, letters and birthday cards purportedly received from Lakhwinder Singh.

The appellant's whole story rests on her total denial that she knew anything whatsoever about Lakhwinder Singh's death at her interview, or at the time she was landed in Canada on November 29, 1997. Indeed, her story is that she knew nothing whatsoever about his death until some eight or nine months after her arrival in late November, 1997. Thus, she maintained she did not know of his death until July or August, 1998. She said she learned about it when her mother came to where she was living with her mother-in-law and they told her they were going to take Lakhwinder Singh's ashes back to India.

This was also the testimony of her mother at the inquiry. She said she was told about Lakhwinder Singh's death right after it happened but neither she nor the appellant's in-laws told the appellant because they were afraid this would cause the appellant to fall down in a dead faint as she had taken to doing since the death of her father some eleven or twelve years ago and again some years later following news of the death of a sister.

With all due respect, I find this whole story implausible and do not find the appellant to be a credible witness. At the time of her marriage to Lakhwinder Singh, the appellant was the only member of her family remaining in India. She testified she was included in her mother's application for permanent residence, sponsored by her older married sister in Canada. However, because she was fifteen days overage, she was deleted from the application. She wanted to join her family in Canada. Her family in Canada wanted her to be with them. Her sponsor was only 19 years of age and she was four years older than he was. It would not be difficult to come to the conclusion that the appellant's marriage to Lakhwinder Singh was done primarily for the purpose of gaining her admission to Canada as a member of the family class.

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[5] Exhibit C-4 to the inquiry transcript.

This plan could not, of course, work out unless the appellant was granted a visa and landed in Canada. However, it is not credible that she did not learn of the death of Lakhwinder Singh until approximately a year after his death. Everyone in Lakhwnder Singh's ancestral village would know about his death and the appellant was living there with her father-in-law and two brothers-in-law at the time of the death. His mother and two married sisters in Canada would also have known about it and it would have been known in the Sikh community in B.C. to which the family belonged. Her mother and family members in Canada would have heard about it. Even if her mother connived not to tell her, it is implausible than no one in the family would tell the appellant what was going on.

And it is not credible that the appellant was bought off from finding out what was happening to her husband as the months went by and he failed to appear. She said she thought he was on the end of the telephone calls she got from a man who identified himself as her husband. No one such as her mother testified about who this person really was. The appellant had lived with her husband in India for two months following the marriage. I do not find it credible that she did not know that the man on the other end of the telephone calls purportedly from Lakhwinder Singh was not Lakhwinder Singh.

I do not accept her defence that she is not guilty of misrepresentation because she did not know her first husband died on April 18, 1997, when she filed her application for permanent residence in May, 1997, and when she was landed in November, 1997. In any event, it is irrelevant whether she knew or not because section 27(1)(e) of the *Act* is satisfied if the misrepresentation of a material fact is made by the appellant or "by any other person".

However, the fact the appellant has not come clean about her knowledge of the fact that her first husband and sponsor died before her visa was issued is not itself determinative of the outcome of a removal order appeal. The appellant is not required to come to the hearing of the appeal with "clean hands" to succeed. However, that helps if only for the reason that being found to have persisted in perpetuating a falsehood is relevant to an assessment of the appellant's credibility.

It follows from the fact that the appellant insists she did not know her husband was dead when she obtained her visa to come to Canada, that she does not express any remorse

for what she has done. One cannot accept responsibility for what one did not know about. It is also important in this case, however, because the appellant is essentially asking the Board to find her most recent marriage sufficient reason to allow her to stay in Canada despite having gained admission to Canada fraudulently by means of her first marriage. Essentially, that entails finding her present, second, marriage to be *bone fide* and not just another strategy for remaining in Canada.

This is further complicated by the fact that the appellant's second husband has some immigration problems of his own and needs her to help him stay in Canada as much as she needs him to help her stay in Canada. She testified she married Gurdeep Singh Brar in Canada on December 12, 1998. This was about seven months after she purportedly learned of her first husband's death.

The appellant testified that Gurdeep Singh had been living in the United States (U.S.) but overstayed his visitor's visa. He came to Canada and has made a claim for refugee status which has not yet been determined. His hearing is apparently scheduled for a day next month, in November, 2000. He made a refugee claim in the U.S. which has been heard and determined. He was found by U.S. authorities not to be a Convention refugee. He lives in Canada with his grand aunt who is a distant relative of the appellant's mother. His aunt and her mother met and decided that their respective grandnephew and daughter should marry. The appellant testified the talks began in November, 1998, and they married on December 12 the same year. Clearly, this match was hastily arranged and quickly executed. They have since had a daughter, born February 14, 2000.

The appellant testified she and her husband can not return to India because her husband was a member of the All India Sikh Student Federation and his difficulties with police in the Punjab because of this were what caused her husband to leave India and go to the U.S. However, despite this alleged background, the appellant's husband was not found to be a refugee by the U.S. authorities and I am foreclosed in any event from taking into account conditions in the country to which the appellant is most likely to be removed.[6] The appellant's husband still has a family home and some family members in India. The

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[6] Chieu v. Canada (Minister of Citizenship and Immigration), [1999] 1 F.C. 605 (C.A.); (1998), 46 Imm. L.R. (2d) 163 (F.C.A.).

appellant also has two sisters in India although her mother and brothers are in Canada. Her father is dead.

The appellant and her second husband do not yet have much establishment in Canada, but they are both employed. Her husband is employed in a mill and earns $1,200 to $1,300 net per month. She has regular seasonal employment in nurseries, canneries, and agricultural work and earns $7,000 to $10,000 per year. They do not own their own home. No one from either the appellant's or her husband's family was present. However, I think we may infer that the appellant and her husband are supported by their respective family members in Canada and that some emotional dislocation will be experienced by their close family members if the appellant is removed from Canada. There is no indication of support from the community.

They have a young child who was born in Canada. Her counsel at the hearing referred to Baker,[7] but did not make extensive argument on the impact removal of the appellant would have on the best interests the child. Counsel for the respondent did not address this matter in his submissions at all. The child is a very small infant and it would not be in her best interest to be separated from her mother at least for some time. Ideally, her best interests would be best served by being able to be with both her parents. However, that is problematic given that both her parents have immigration problems in Canada and, according to the appellant, the child's father cannot safely return to India.

Given that the appellant's husband's refugee hearing is scheduled for the near future, I would hope and request that Immigration officials not remove the appellant from Canada before her husband's immigration status in Canada has been determined following his hearing in November, 2000. If he is found not to be a refugee, the family will have the option of remaining intact wherever they go. If he is found to be a Convention refugee, the appellant may have grounds for applying to have her hearing reopened in the light of that evidence.

If in those circumstances the appellant is not successful on the motion to reopen or on the reopened appeal, it will be up to the appellant and her husband to decide whether her

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[7] Baker v. Canada (Minister of Citizenship and Immigration) (1999), 174 D.L.R. (4th(193 (S.C.C.).

husband will accompany her and the baby or remain in Canada alone or with the baby. In the event he stays, with or without the baby, he would also be able to sponsor the appellant back to Canada and seek a Minister's Permit to do so. The child will, of course, be able to return to Canada as of right should she wish to do so in future. However, the fact the child is a Canadian citizen is not paramount and does not give either one or both of her parents an independent right to remain in Canada.

On the totality of the evidence, I find the appellant has not met the onus of establishing she should not be removed from Canada in all the circumstances of the case. She and her husband have little establishment in Canada. Misrepresentations such as those engaged in by the appellant and her family make a mockery of Canada's immigration system and its commitment to fair and equitable practices for the admission of new immigrants. Both she and her husband have family in India. There will be some emotional dislocation but both families appear to move freely between Canada and India and they will be able to visit.

The removal order is valid in law and the appellant has not met the onus of establishing she should not be removed from Canada in all the circumstances of the case. The appeal is dismissed.

ORDER

The Appeal Division orders that the appeal be dismissed. The removal order made the 22 day of June 2000 is in accordance with the law, and the appellant has failed to show that, having regard to all the circumstances of the case, the Appellant should not be removed from Canada.

"Lorenne Clark"

Lorenne Clark

Dated at Vancouver, B.C. this 2nd day of November, 2000.

You have the right under ss. 82.1(1) of the *Immigration Act* to apply for a judicial review of this decision, with leave of a judge of the Federal Court - Trial Division. You may wish to consult with counsel immediately as your time for applying for leave is limited under that section.