

IMMIGRATION AND REFUGEE BOARD
(APPEAL DIVISION)



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

VA0-03541

REASONS FOR DECISION AND ORDER

APPELLANT(S)/APPLICANTS

APPELANT(S)/REQUÉRANT(S)

KARAMJIT KAUR SANDHU

RESPONDENT

INTIMÉ

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

DATE(S) OF HEARING

DATE(S) DE L'AUDITION

May 30, 2001

PLACE OF HEARING

LIEU DE L'AUDITION

Vancouver, B.C.

DATE OF DECISION

DATE DE LA DÉCISION

June 7, 2001

CORAM

CORAM

Anita Boscarior

FOR THE APPELLANT(S)/APPLICANT(S))

POUR L'APPELANT(S)/REQUÉRANT(S)

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POUR L'INTIMÉ

Bill Gordon

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Karamjit Kaur SANDHU (“the appellant”) appeals the refusal of the sponsored application for permanent residence in Canada of Amneet Singh SANDHU (the “applicant”) from India.

The application was refused¹ because, in the opinion of the visa officer, the applicant is inadmissible as he is described in subparagraph 19(1)(c.1)(ii) of the *Immigration Act* (the “Act”), the applicant failed to answer truthfully all questions put to him by the visa officer, and is thus inadmissible pursuant to paragraph 19(2)(d), by way of subsection 9(3) of the *Act*, and the applicant is described in subsection 4(3) of the *Immigration Regulations, 1978* (the “Regulations”).

The foregoing conclusions of the visa officer are at issue in this appeal.

Summary of the Evidence

The twenty-seven year old appellant was born in India and was landed in Canada in December 1996, sponsored by her first husband, Gurmail Singh Dhanoa, whom she married in February 1996. She testified that she lived with her first husband for a period of two weeks, after joining him in Canada. She indicated that she left him because he drank excessively and would not allow her to communicate with her family members. The appellant testified that, during the year following her separation, some attempts were made at reconciliation, whereby the appellant and her first husband cohabited for periods of a week or so at a time, however, these attempts were unsuccessful because her first husband could not maintain a change in his behaviour. In October 1998, the appellant and Gurmail Singh jointly petitioned for divorce on the basis that they had lived separate and apart since December 15, 1996.² They were granted a divorce which became effective on February 19, 1999.³

¹ Refusal Letter, Record, pp. 141-151.

² Record of Divorce, Record, pp. 5-13.

³ Certificate of Divorce, Record, p. 4.

The appellant testified that the applicant's parents, his two sisters and his brother all reside in Canada. The twenty-nine year old applicant had been deleted from his parents' application for permanent residence in Canada because he was deemed to be no longer a dependant, consequently, as of 1997, when his parents, his brother, Kuljeet, and his sister, Kamalpreet, immigrated to Canada sponsored by his eldest sister, Amninder Kaur Gill and her husband, the applicant was the only family member remaining in India. The appellant at the time was the only member of her immediate family in Canada.

The applicant's mother, his sisters, brother-in-law and brother travelled to India in January 1999 for the marriage of Kamalpreet. According to the appellant, in February 1999, two respective maternal aunts of the appellant and applicant, who were friends proposed a match between the applicant's younger brother, Kuljeet Singh, from Canada, and the appellant's younger sister, Charanjit, in India. The appellant testified that two meetings between the two families took place during which her family visited the applicant's family to see and consider Kuljeet Singh. She indicated they were satisfied with him. His family then visited her family to view Charanjit, and it was during this visit of which the applicant was a part, according to the appellant, that her family first mentioned the appellant and her situation in Canada. The appellant stated that the applicant's family visited a second time, apparently to finalize arrangements for her sister's marriage. It was during this visit, according to the appellant's testimony, that her photograph was shown to the applicant's family, and the suggestion of a match between the appellant and the applicant first came up. The appellant testified that the applicant's family took her photograph home with them following this visit. The applicant's sister, Kamalpreet, married on March 5, 1997. The appellant testified that on March 7, 1999, the applicant's family again visited the appellant's family to confirm that they were in favour of both matches, and agreed to the younger son marrying the appellant's sister, and the appellant marrying the applicant. The appellant testified that her match with the applicant was finalized and agreed to without a meeting between herself and the

applicant. She indicated that she was satisfied by the assurances of her parents and sister that the applicant would be a good husband for her.

The appellant testified that she left Canada for India on March 3, 1999. The applicant testified it was his understanding that the appellant arrived in India on March 15, 1999. In any case, both testified that the appellant and applicant met for the first time at their engagement ceremony which took place on March 19, 1999. The appellant testified that both her engagement and that of her sister were held on the same day at the same marriage palace in Moga. Their two weddings took place on the next day, March 20, 1999, also at a marriage palace in Moga. The appellant testified that she returned to Canada on June 20, 1999. She claimed to spend her time in India with the applicant. She explained that the photographs taken following her marriage did not depict her wearing the traditional bracelets worn by brides because she wore those bracelets only for the traditional period of forty days following her marriage. She indicated that the day following her wedding the applicant accidentally injured his knee, which was eventually placed in a cast. She testified that the applicant had been prescribed six weeks of bed rest after the cast was applied to his knee. When she and the applicant were finally able to go on outings, the forty days for wearing the “*chuda*” or bracelets had expired, and she was consequently photographed without them. During his interview with the visa officer, which took place on March 13, 2000, according to the visa officer’s notes,⁴ the applicant, when asked about the appellant’s simple attire, atypical of brides following marriage, explained that the appellant was simply dressed because all of the photographs were taken early in the morning. He did not respond when asked specifically about the lack of *chuda*. He also made no mention of an accident which caused him to require six weeks of bed rest following his marriage. At the hearing, the applicant testified that he had injured his knee following his marriage, and was subsequently hospitalized for ten to fifteen days.

⁴ Record, pp. 157-160, at page 159.

During his interview with the visa officer, the applicant told a completely different story concerning the timing of the arrangement of his marriage to the appellant, and gave a different date for their marriage.⁵ The applicant advised the visa officer that his marriage to the appellant was arranged on April 18 or 19, 1999, and that it took place on May 30, 1999. In addition, he provided the visa officer with wedding invitations,⁶ inviting guest to his wedding on May 30, 1999, and a marriage certificate⁷ which states that his marriage to the appellant took place on May 30, 1999, and was registered on June 14, 1999.

The appellant explained that all of these documents are false and were procured by a travel agent who assisted the applicant with his application for permanent residence in Canada. According to the appellant's testimony, this travel agent advised the applicant to lie about the date of his marriage because visa officials would question the *bona fides* of his marriage since it took place so shortly following the appellant's divorce from her first husband. The appellant testified that the agent obtained both the wedding invitations and a false marriage certificate, for which he paid a sum of money, for the purpose of presenting these to immigration authorities in support of the applicant's claim of having married the appellant on May 30, 1999.

The visa officer, according to his notes,⁸ became suspicious about the applicant's claims concerning his marriage after viewing the wedding photographs of both the applicant and his brother. The visa officer noted that the same wedding guests appear in both sets of wedding photographs, all dressed in the same clothing for both weddings. He put his concerns to the applicant, who denied that all of the photographs were taken the same day. The visa officer interviewed the appellant's sister, Charanjit, on May 11, 2000, who had been sponsored for permanent residence in Canada by the applicant's brother.⁹ Charanjit confirmed to the visa officer that both her engagement ceremony and

⁵ Record, p. 158.

⁶ Record, pp. 82-86.

⁷ Record, p. 39.

⁸ Record, pp. 159, 160.

⁹ Record, p. 160.

her wedding were held on the same days as her sister's engagement ceremony and wedding, on March 19 and 20 respectively. She indicated that she did not know why her sister's wedding invitations and marriage certificate indicated something different. She too had no explanation why her sister was not wearing the *chuda* in the photographs taken of her following her wedding. Charanjit has since been landed in Canada, sponsored by her husband, the applicant's brother, Kuljeet.

The appellant claimed to communicate regularly with the applicant, largely through telephone calls, since returning to Canada. She testified that she lives with her mother-in-law, her sister Charanjit and her brother-in-law, Kuljeet, and has lived with her in-laws since her return to Canada in June 1999, following her marriage.

She provided copies of telephone bills in the name of Amninder Kaur Gill as corroborating evidence of communication¹⁰ between herself and the applicant. She also provided copies of written communication between herself and the applicant,¹¹ although she confirmed that she writes less frequently than she speaks to him on the telephone.

The appellant returned to India in January 2001, and remained to April 25, 2001. During this time, she attended her paternal cousin's wedding. She testified that she spent the time with the applicant and her in-laws.

ANALYSIS

I will deal firstly with the issue of whether the applicant is described in subsection 4(3) of the *Regulations*. Following the Federal Court Trial Division decision in *Horbas*,¹² a two-fold test must be applied in order to disqualify a spouse under subsection 4(3) of the *Regulations*. First, the marriage must have been entered into primarily for the purpose of gaining the applicant's admission to Canada, and second, there must be no intention on the part of the applicant to reside permanently with the appellant.

¹⁰ Exhibit A-1, Tab 1.

¹¹ Exhibit A-1, Tabs 2 and 3.

¹² *Horbas v. Canada (Minister of Employment and Immigration)*, [1985] 2 F.C. 359 (T.D.).

Counsel for the appellant argued, and I accept that it is not unusual for marriages to be arranged for two sisters to two brothers. I note that the appellant and applicant are compatible in age and share a common culture and beliefs. The appellant appears to be slightly more educated than the applicant since she commenced studying for a Bachelor of Arts (B.A.) degree, which studies she did not complete, and the applicant completed the equivalent of high school, according to the evidence before me. The appellant was a party to a very brief, unsuccessful marriage while the applicant was never married previously. In any case, I would not find these last two differences which would preclude compatibility between the parties.

However, even from the appellant's description of events, it appears that the arrangement of her marriage to the applicant was an "add-on" to the arrangement of her younger sister's marriage to the applicant's brother, notwithstanding the fact that the appellant and the applicant were both the elder siblings. It was only during the discussion of arrangements for her sister Charanjit's wedding that it occurred to her family members and those of the applicant to begin considering a match between the two of them.

The appellant's marriage was arranged very soon following her divorce from her first husband. The arrangements were concluded without the parties to the arrangement meeting to ensure they suited each other. This, when contrasted to the number of meetings which took place before Charanjit and Kuljit were married, and the length of time the applicant's family was in India - from January to March - before Kamaljeet was married, appears out of character. Furthermore, it is unclear why the appellant had to quickly arrange her affairs in Canada on short notice in order to rush to India to remarry someone she had never met, at almost the first possible moment, following the dissolution of her first, bad marriage.

It is not clear that the appellant and the applicant have been communicating regularly since their marriage, as the evidence before me of the appellant's place of residence in Canada since her marriage is inconsistent. The appellant testified that since June 1999, she has been living with her mother-in-law, her sister Charanjit and her

brother-in-law, Kuljeet at two different addresses, both of which she provided at the hearing. She gave a different home address for herself on her sponsorship application.¹³ She confirmed the address which appears on that application is that of her sister-in-law, Amninder Kaur Gill. The appellant testified that she has never shared a home with Amninder Kaur Gill. She explained that Amninder's address was provided on her sponsorship application to ensure that someone would be home to receive any correspondence from immigration officials. The applicant's application for permanent residence which is undated but stamped received by immigration officials December 8, 1999¹⁴ also gives Amninder Kaur Gill's address as that of the appellant.¹⁵

During his interview with the visa officer in March 2000, the applicant advised the visa officer that the appellant resided in a home in Canada with his mother, his two sisters, Amninder and Kamalpreet, and their husbands, his brother Kuljeet and his wife, Charanjit, explaining that his sisters and their husbands live upstairs and the appellant, his mother, his brother and the appellant's sister live in the basement.¹⁶ The appellant testified that the telephone billed to Amninder Kaur Gill is in the home she shares with her mother-in-law, Charanjit and Kuljeet. The applicant quoted the telephone number to the visa officer and intimated that the telephone is in the home shared by all of his family members in Canada. Prior to her marriage, the appellant lived in Abbotsford with her maternal aunts, according to her testimony. The applicant's family members live in Delta. I note the appellant's employment as a greenhouse worker is in Abbotsford,¹⁷ which is a fair distance away from Delta. Although it is entirely possible that the appellant commutes from Delta to Abbotsford six days per week, given the inconsistent evidence regarding her residence, it is more probable that she is not residing with family members of the applicant.

¹³ Record, p. 2.

¹⁴ Record, pp. 29-33.

¹⁵ Record, p. 29.

¹⁶ Record, p. 159.

¹⁷ Letter of Employment, Record, p, 27.

There is no evidence before me that the marriage of the appellant and applicant was duly registered following their marriage in March, nor is there evidence of invitations to guests with the correct date and time of their marriage placed before me. The applicant testified that he was advised by the agent who told him to lie about the date of his marriage in June. This does not explain the delay in registering his marriage to the appellant between March and June. If there had been no scheme from the beginning to “create” evidence so that it would appear the marriage took place in May, I would expect the marriage to have been duly registered shortly after it took place, if it had been entered into in good faith.

The appellant’s explanation for appearing in photographs following her marriage not attired as is customary for newly married women is not credible, in that neither the applicant nor the appellant’s sister who was in India at the time advised the visa officer during their respective interviews of the accident which had presumably befallen the applicant.

That the appellant returned to India following the refusal is not a factor to which I feel I can give great weight as evidence of the relationship between the appellant and the applicant. It post-dates the refusal and since the appellant’s parents also live in India, the fact that she travelled there does not overcome the other difficulties in the evidence with respect to the applicant and his intentions in marrying the appellant.

The applicant has all of his family members in Canada.

I find the appellant has failed to establish on a balance of probabilities that the applicant entered into marriage with her for a purpose other than to gain admission to Canada as a member of the family class. I further find that the appellant has failed to establish on a balance of probabilities that the applicant intends to reside permanently with her as her spouse.

I note that the applicant admitted at the hearing his untruthfulness to the visa officer with respect to the date of his marriage, and expressed remorse for being

untruthful, however a finding that the refusal pursuant to paragraph 19(2)(9d) by subsection 9(3) of the *Act* would be invalid would not affect the outcome of the case.

I further make no finding with respect to whether the applicant is described in paragraph 19(1)(c.1)(ii) of the *Act* because, given my finding that the applicant is not a member of the family class, such a finding becomes unnecessary. I note however that it is unclear in this case whether the marriage certificate in this case was a forgery, or a duly registered document simply containing incorrect information about the date of the marriage.

DECISION

Amneet Singh Sandhu is not a member of the family class as he is described in subsection 4(3) of the *Regulations*. The appeal of Karamjit Kaur Sandhu is dismissed.

ORDER

The Appeal Division determines that Amneet Singh SANDHU is not a member of the family class, within the meaning of the *Immigration Regulations, 1978*.

The Appeal Division orders that the appeal from the refusal to approve the application for landing made by Amneet Singh SANDHU be dismissed for lack of jurisdiction.

“Anita Boscarior”

Anita Boscarior

Dated at Vancouver, BC this 7th day of June, 2001.

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.