IMMIGRATION AND REFUGEE BOARD
(APPEAL DIVISION)

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

VA0-03060

REASONS FOR DECISION AND ORDER

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

KAMALJIT KAUR SIDHU

RESPONDENT — INTIMÉ

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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

December 11, 2000

PLACE OF HEARING — LIEU DE L'AUDITION

Vancouver, B.C.

DATE OF DECISION — DATE DE LA DÉCISION

February 19, 2001

CORAM — CORAM

Kashi Mattu

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

Massood Joomratty
Barrister & Solicitor

FOR THE RESPONDENT — POUR L'INTIMÉ

Steve Bulmer

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These are the reasons and decision of the Appeal Division in the appeal of Kamaljit Kaur SIDHU (the "appellant") from a deportation order issued September 20, 2000.

BACKGROUND

The appellant is 25 years old. She married Ajitpal Singh Gill on March 18, 1995. She was landed in Canada on April 1, 1996. The appellant filed a divorce petition several months later stating that they were separated on April 12, 1996, less than two weeks after she arrived in Canada, on the basis that Mr. Gill committed adultery. The divorce was finalized in January 1997.[1]

The appellant returned to India and married Lakvir Singh Sidhu on April 20, 1997. Her ex-husband also returned to India and remarried. The appellant's application to sponsor Mr. Sidhu was refused and the Immigration Appeal Division (IAD) dismissed the appeal on March 4, 1999.

On the basis of evidence provided at the March 1999 IAD hearing,[2] an inquiry was conducted. On February 8, 2000 an adjudicator found that the appellant should not be removed from Canada and declined to issue a removal order. The adjudicator's decision was appealed. A hearing was held before the IAD on the narrow issue of whether or not the adjudicator erred in her decision. On September 20, 2000 the IAD allowed the appeal, ordered the removal of the appellant and directed a hearing to consider discretionary relief.

ANALYSIS

The issue to be determined is whether, having regard to all the circumstances of the case, the appellant should not be removed from Canada.

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1 Exhibit R-1, *Sidhu, Kamaljit Kaur* v. *M.C.I.*, IAD V98-02594, Baker, March 4, 1999, pp. 1-2.

2 *Ibid*.

I have considered the following factors:

- The type of misrepresentation;
- Whether the misrepresentation was made by the appellant or someone else;
- Whether the misrepresentation was deliberate or inadvertent;
- The remorsefulness of the appellant;
- The length of time spent in Canada and the degree to which the appellant is established here; and
- The presence of family in Canada and the impact that deportation would cause.

The circumstances and explanations for this misrepresentation are unusual. In the March 1999 IAD hearing the appellant and her counsel made several clear admissions that the appellant's first marriage was fraudulent and a marriage of convenience. The appellant linked her second marriage to the fraudulent scheme.

At the inquiry, the appellant recanted her testimony at the March 1999 IAD hearing and explained that her first marriage was in fact a genuine marriage but due to cultural duress she had stated it was fraudulent. She claimed she was not granted landing by reason of misrepresentation. At the inquiry, counsel submitted that they could bring expert evidence on cultural duress and call the ex-husband as a witness to corroborate the appellant's testimony. Neither expert evidence or evidence from the ex-husband was provided at the inquiry.

In the July 2000 IAD hearing, counsel agreed to proceed only on submissions and did not call any witnesses, including the appellant.[3]

I have now heard the testimony of the appellant and do not find it credible or trustworthy.

A misrepresentation in relation to the *bona fides* of a marriage that is the basis under which an appellant is granted landing is a serious misrepresentation. It undermines the integrity of the immigration system. The appellant testified that no one helped her

[3] Exhibit R-1, *Sidhu, Kamaljit Kaur* v. *M.C.I.*, IAD VA0-01123, Mattu, September 20, 2000, p. 2.

with the story she told at the March 1999 IAD hearing. She remembered being advised that the consequences of landing by reason of a misrepresentation could be deportation and she was given the opportunity to change her testimony but she did not do so because of her feelings of cultural duress. On September 20, 2000 the appellant was found to have been granted landing by reason of a misrepresentation related to the *bona fides* of her first marriage.[4] This is a serious misrepresentation.

I have considered the circumstances surrounding the misrepresentation. Initially the appellant explained that the cultural duress she felt was due to a general stigma in India against divorced women and she was concerned that people would think her character was not good and treat her differently if they knew she had intimate relations with her ex-husband. Although her evidence varied during the hearing, she explained her real reason for fabricating the story was that she did not want anyone in Canada or villagers from her second husband's village to know her first marriage was genuine. She explained that her second husband and his family and all of the villagers in her ancestral village know the first marriage was genuine because it was an elaborate wedding and those villagers attended the second marriage as well. The appellant did not provide any corroborating evidence regarding the alleged elaborate weddings. The appellant also did not provide any expert evidence related to cultural duress to support her evidence, although such evidence was contemplated at the inquiry. While these may be the appellant's subjective feelings for why she concocted such an elaborate story of a fraudulent marriage, based on the testimony of the appellant, I do not find her explanations of cultural duress plausible and they seriously undermined the appellant's credibility.

The appellant is clearly upset over what has happened to her and she has continued to deny that she has been granted landing by reason of a misrepresentation. Yet she provided no corroborating evidence to show her first marriage was genuine. Counsel for

4 *Ibid.*

the appellant argued, both at the inquiry and at this hearing, that there would be a perverse result if the appellant is removed because of an alleged marriage of convenience when her first husband has been able to sponsor his second wife. I have reviewed and considered the reasons for decision of the appellant's first husband's appeal.[5] However, it is not clear on the face of the decision as to whether the *bona fides* of the appellant's first marriage were questioned in that appeal. The transcripts of that hearing were not provided. Further, it was open to the appellant in this hearing, and it was contemplated at the inquiry, to call her ex-husband to provide evidence regarding the genuineness of her first marriage, however, she decided not to.

The burden of proof is on the appellant. This type of misrepresentation is serious. The appellant has been found to have been granted landing by reason of her misrepresentation and she continues to deny it. I consider these factors as negative factors.

I also find that the appellant is not well established in Canada and does not have community support. The appellant had been in Canada for almost four years. She has been gainfully employed since she arrived. She is presently employed as a housekeeper at two hotels in Whistler. She lives in Squamish and rents accommodation. She explained that she works and goes to the Sikh Temple. She explained she has one friend in the Lower Mainland and another outside B.C. The appellant provided one letter of support from the main priest of the Sikh Temple but admitted that he is not aware of her circumstances.[6]

The appellant explained that she is quite lonely because she has no close family or relatives in Canada. Her parents and siblings are all in India. Her second husband is in India and the IAD dismissed her appeal to sponsor her second husband to Canada. Given these circumstances, there will be no dislocation or hardship to anyone in Canada if the appellant is removed.

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5 *Gill* v. *M.C.I.*, IAD V98-02883, Borst, June 29, 1999.
6 Exhibit A-1, p. 4.

It is inevitable that the appellant will suffer some anxiety and concern if she is removed from Canada. However, I do not find that it will be undue hardship. The appellant has spent most of her life in India and was educated to the college level in India. The appellant is very concerned that if she is required to return to India she will find it difficult to live there because she may not get any respect, particularly from her in-laws, because she was supposed to sponsor her husband to Canada. Nonetheless, her husband and all her family are in India and available to support her.

Based on all the evidence before me, I find the appellant has not met the burden of proof. The appellant has failed to show, having regard to all the circumstances of the case, why she should not be removed from Canada.

ORDER

The Appeal Division orders that the appeal be dismissed. The removal order made the 20th day of September 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.

"Kashi Mattu"
Kashi Mattu

Dated at Vancouver, BC this 19th day of February, 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.