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Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

ISHER SINGH GILL

Appelant(s)

Respondent

**The Minister of Citizenship and Immigration
Le Ministre de la Citoyenneté et de l'Immigration**

Intimé

**Date(s) and Place
of Hearing**

August 22, 2003
October 10, 2003
Vancouver, BC

**Date(s) et Lieu de
l'audience**

Date of Decision

January 29, 2004

Date de la Décision

Panel

John Munro

Tribunal

Appellant's Counsel

Massood Joomratty
Barrister & Solicitor

Conseil de l'appelant(s)

Minister's Counsel

Steve Bulmer

Conseil de l'intimé

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Reasons for Decision

[1] Isher Singh GILL (the "appellant") appeals the decision not to issue permanent resident visas to his putative spouse, Parmjit Kaur GILL (the principal applicant), and her dependent child, Reva Chahal GILL (collectively the "applicants") from India. The *Immigration and Refugee Protection Act* (the "Act")¹ and the *Immigration and Refugee Protection Regulations* (the "Regulations")² came into effect on 28 June 2002. The Notice of Appeal was filed on 9 January 2003.

[2] The application for the visas was refused under section 4 of the *Regulations*, which provides as follows:

4. Bad faith – For the purposes of these Regulations, no foreign national shall be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine or was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[3] Section 4 of the *Regulations* imposes a two-pronged test: that is to say, in order for a foreign national to be caught by section 4, the preponderance of the evidence must demonstrate that the marriage is not genuine and that it was entered into primarily for the purpose of enabling the applicant to acquire a status or privilege under the *Act*. The test has been interpreted to be disjunctive and, therefore, the onus rests on the appellant to establish that the marriage is genuine or that the applicant did not marry the appellant primarily for the purpose of acquiring permanent resident status in Canada.

[4] The refusal letter of 11 November 2002³ articulates the visa officer's reasons for concluding that the marriage in question, as per section 4 of the *Regulations*, is not genuine and that the applicant's primary purpose is to acquire permanent resident status in Canada. In particular, the visa officer appears to have been primarily concerned:

(a) that the applicant was vague about how her marriage was arranged;

¹ S.C. 2001, c.27.

² SOR/2002 - 227.

³ Record, pp.46-49.

- (b) that she agreed to the marriage on the basis that she would not argue with the appellant and only because she was a divorcée;
- (c) that there was no engagement ceremony;
- (d) that there was little evidence that the appellant and the applicant remain in touch with each other; and
- (e) that the applicant did not possess significant knowledge of the appellant.

[5] There was no challenge to the fact that a marriage in accordance with the laws of India took place.⁴ At issue in this case is whether the applicant falls within the class of persons described in section 4 of the *Regulations*.

[6] The appellant and the applicant were the only witnesses. I have considered their testimony, the documentary evidence in the record and in the exhibit,⁵ and the submissions of counsel.

Decision

[7] The appeal is allowed. I find that the appellant, Isher Singh GILL, has met the onus of demonstrating that the principal applicant, Parmjit Kaur GILL, is not caught by section 4 of the *Regulations*. Although some of the evidence remains troubling, I am satisfied, on a balance of probabilities, that the marriage is genuine.

Background

[8] The appellant, Isher Singh GILL, is a permanent resident of Canada, who was landed on 30 June 1996. He was born on 10 July 1970 at Village Nidhanwala, Moga District, Punjab State, India. He remains a citizen of India. Isher Singh has eight years of formal education and worked as a farmer on his family's land prior to losing his left leg in an accident in 1995. He is a Jat Sikh. His immigration to Canada was sponsored by his first wife, Balwinder Kaur Gill, whom the appellant married on 4 February 1994. Two children resulted from this marriage: Harpreet

⁴ Marriage certificate, Record, p.31.

⁵ Exhibit A-1.

Singh, born 15 November 1996 and Parmpreet Singh, born 24 November 1997. The appellant and his first wife ceased to cohabit on 20 June 1998 and were divorced on 3 March 2001.⁶ Balwinder Kaur has legal custody of their sons. At present, Isher Singh owns and operates a ladies clothing and jewelry store in a shopping mall in Abbotsford, British Columbia. For the last 12 to 14 months, he has shared accommodation with the principal applicant's sister, Kanwaljit Kaur Sidhu, her husband, Bikkar Singh, and their children in this same Fraser Valley city. This is the appellant's second marriage.

[9] The principal applicant, Parmjit Kaur GILL, was born on 15 April 1975 at Village Alamwala Kalan, District Moga, Punjab State, India. She has 12 years of formal education and some work experience as a shop assistant and maid. She too is a Jat Sikh. This is her second marriage as well. The principal applicant's first marriage was to Harnek Singh on 25 February 1996. A child, Reva Chahal, was born of this union on 29 October 1999. According to Harnek Singh's testimony at their divorce proceedings, they ceased to share a conjugal relationship around the time of the birth of their daughter in 1999,⁷ at which point they were living in Beirut, Lebanon. Parmjit Kaur returned to India with her daughter in November 2001.⁸ She sued for divorce on 27 November 2001, charging physical abuse. At the Immigration Appeal hearing, she testified that her in-laws made incessant demands on her parents for further dowry payments. The divorce was granted on 9 February 2002.⁹ Since returning to India, Parmjit Kaur and Reva Chahal have lived in the city of Moga.

Analysis

[10] The marriage broker was Wazir Singh, the husband of the principal applicant's paternal aunt, and an acquaintance of the appellant in both an Indian and a Canadian context.

[11] The appellant testified that he travelled to India in January 2002 in search of a wife. His need for a spouse was in significant measure related to the special care requirements of an amputee. He testified that, in consequence of his physical condition, he decided that a young

⁶ Divorce certificate and related documents, *Ibid.* pp.3-10.

⁷ At their divorce proceedings, Harnek Singh stated: "There is no chance of reconciliation, consumation, cohabitation and rejoining the petitioner [Parmjit Kaur] to her matrimonial house as she had already deserted from the last 2 and ½ years to him." *Ibid.* pp.29-30.

⁸ *Ibid.* p.13.

⁹ Divorce certificate, *Ibid.* pp.28-30.

wife would not do. His ideal candidate was a divorcée with a child of her own. He wanted someone who was not going to leave him at the first opportunity once she was in Canada. The panel finds the appellant's testimony in this regard entirely credible.

[12] It would appear that the appellant had broadcast the nature of his search prior to his departure for India, as he testified that he considered a number of 'girls' from India, whose photos he had received. Indeed, he wasn't long in India before Wazir Singh arrived on the scene to talk to him and his mother about Parmjit Kaur, who, to all intents and purposes, fit the appellant's bill.

[13] The principal applicant testified at the hearing that it was her parents who wanted her to remarry, which may have been true so far as this assertion has any meaning. Her father had died on 24 August 2001, some two and one-half months prior to her return to India.¹⁰ Although it is possible that he had earlier indicated his wishes as to her future. Her mother and younger sister were planning to immigrate to Canada to join her sister, Kanwaljit Kaur, who was sponsoring them. So it is quite possible that they too were concerned about Parmjit Kaur's future. At the time of her first meeting with the appellant in January 2002, Parmjit Kaur appeared to be sharing accommodation in Moga with her brother and his family.¹¹ She testified that her personal savings, accumulated from her work as a maid in Beirut, amounted to some \$2,500 (U.S.).

[14] The above was a situation that, in all probability, would have made her particularly amenable to the idea of remarriage, especially if the prospective spouse lived in British Columbia. Certainly, this was the conclusion of the visa officer who interviewed her in New Delhi on 29 October 2002. The CAIPS notes record the visa officer's view that Parmjit Kaur's marriage to the appellant was "merely to escape from her present situation."¹² The principal applicant did not deny her desire to live in proximity to her mother and sisters. The panel would not have found her credible if she had denied this.

[15] The principal applicant testified that Wazir Singh gave the appellant a good report, which included information about the appellant's accident, his two children and his divorce. When she

¹⁰ *Ibid.* p.14.

¹¹ See their respective addresses, *Ibid.* pp.13 and 15.

¹² *Ibid.* p.53.

met Isher Singh for the first time at a *Gurudwara* near Moga that was home to a Sikh priest much admired by both their families—there is some confusion over the actual date here—she testified that she was impressed by his goodness. She took no exception to his desire to live with someone who did not argue with him all the time. She concluded that, as a divorced woman with a child, she was not going to do any better.

[16] The panel was not persuaded by the respondent's argument that Parmjit Kaur's family was so anxious for her immigration to Canada that they paid the appellant enough money to start his new business to marry her. Minister's counsel offered no evidence in support of his contention. The appellant denied this charge at the hearing.

[17] Minister's counsel pointed to that portion of the appellant's divorce documents dealing with "Support or Maintenance," dated 22 September 2000, which states:

Since the defendant [the appellant] is unemployed, is not receiving social assistance, and does not have any other source of income, he is unable to make child support payments. The defendant is disabled having lost in 1995, his left leg in India in an accident after the parties were married. He is supported by friends that he lives with and has not worked for more than three months since the accident.¹³

The appellant, although agreeing with the above assessment, countered that he possessed half his family's 20 acre agricultural holdings in the Punjab as a source of income and collateral.

[18] The panel observes that the CAIPS notes record that the appellant submitted: "Letter of employment, 2001 tax summary and copy of T4 (2001)." The Lock-in date is recorded as 30 May 2002. It is also recorded that, "Undertaking submitted for wife & type b(i) d[au]g[t]e[r] Reva."¹⁴ Although these documents are not included in the Record or elsewhere in the evidence, they indicated the family of the principal applicant had no difficulty allowing their daughter to marry "an economic loser who cannot support his family" to use the unfortunate phrase of Minister's counsel.

[19] However, it is true that the appellant moved into his sister-in-law's home following his wife's visa interview, and that he has remained there, by his own testimony, rent-free.

¹³ *Ibid.* p.9.

¹⁴ *Ibid.* p.53.

Undoubtedly, this is of considerable assistance to him as he attempts to establish his new business. The question is whether this represents anything more than the appellant's incorporation into his wife's family. He has no blood relatives of his own in Canada, apart from his two young sons that is. The panel finds nothing untoward in his new family providing him comfort and care in the absence of his wife, especially given his disability.

[20] The visa officer was concerned that there was no engagement ceremony. The panel finds quite credible the contention of the principal applicant that the fact that they both were divorced with children rather rendered some of the traditional ceremonies related to most Sikh marriages superfluous. This marriage was not so much the union of two families—continents were about to separate them in any event—as it was the opportunity for two people to escape the tragic consequences of their past lives.

[21] A traditional marriage was held on 25 February 2002, attended by both his parents and by her mother. The religious portion in a local *Gurudwara*¹⁵ was followed by a reception was held under a tent at her maternal aunt's home in Moga. The estimates of those in attendance vary wildly from 80-100 to as many as 200. More important, however, is the testimony of the appellant that he and his bride subsequently travelled to her home village of Alamwala Kalan to make known their marriage.

[22] Of great significance to the principal applicant, according to her testimony at the hearing, is the fact that the appellant has adopted her daughter, Reva Chahal.

[23] The appellant has provided substantial telephone records for the period January 2003 to June 2003. Unfortunately, these are in the name of the appellant's brother-in-law, Bikkar Singh. In the circumstance, it is not possible to determine who is calling whom. However, the deficiencies in the principal applicant's knowledge of the appellant were largely remedied by the time of the hearing.

¹⁵ See photographs, *Ibid.* pp.34-43.

Conclusion

[24] The panel finds that the testimony of the applicant and the appellant to be generally trustworthy and credible. Notwithstanding this, the panel also finds that there is little doubt that the prospect of immigration to Canada played a large part in the decision of the principal applicant to marry the appellant. However, the panel finds more than a marriage entered into primarily for the purpose of enabling the principal applicant to acquire a status or privilege under the *Act* for herself and for her dependent child.

[25] I find the applicant, Parmjit Kaur GILL, is not described in section 4 of the *Immigration and Refugee Protection Regulations*. I find that the marriage is genuine. Parmjit Kaur GILL is a member of the family class. The appeal of Isher Singh GILL is allowed.

NOTICE OF DECISION

The appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and the officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

"John Munro"

John Munro

29 January 2004

Date (day/month/year)

Judicial review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.