



IAD File No. / N° de dossier de la SAI : VA3-01683
Client ID no. / N° ID client : 4131-5597

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

Balwinder Kaur KHOKHAR

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**

June 11, 2004
July 14, 2004
Vancouver, BC

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

Date of Decision

October 26, 2004

Date de la Décision

Panel

Kashi Mattu

Tribunal

Appellant's Counsel

Massood Joomratty
Barrister & Solicitor

Conseil de l'appelant(s)

Minister's Counsel

Jeff Williamson

Conseil de l'intimé

La Direction des services de révision et de traduction de la CISR peut vous procurer les présents motifs de décision dans l'autre langue officielle. Vous n'avez qu'à en faire la demande par écrit à l'adresse suivante : 344, rue Slater, 14^e étage, Ottawa (Ontario) K1A 0K1, par courriel à translation.traduction@irb.gc.ca ou par télécopie au (613) 947-3213.

You can obtain the translation of these reasons for decision in the other official language by writing to the Editing and Translation Services Directorate of the IRB, 344 Slater Street, 14th Floor, Ottawa, Ontario, K1A 0K1, or by sending a request to the following e-mail address: translation.traduction@irb.gc.ca or to facsimile number (613) 947-3213.

Reasons for Decision

[1] These are the reasons and decision of the Immigration Appeal Division pertaining to the appeal filed pursuant to section 63(1) of the *Immigration and Refugee Protection Act*¹ (the “Act”) made by Balwinder Kaur KHOKHAR, (the “appellant”), from the refusal of the sponsorship application for a permanent resident visa of her spouse, Sunil Datt KHOKHAR (the “applicant”) from India.

[2] The application was refused under section 4 of the *Immigration and Refugee Protection Regulations*² (the “Regulations”). 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 25 years old and landed on November 7, 2000. The appellant married her first husband on October 10, 1999, they were separated on January 5, 2001 and they were divorced on March 16, 2002.⁴ The appellant has one child Rahul, born April 9, 2003.⁵

[4] The applicant is 39 years old and lives in India. The appellant and applicant registered their marriage on April 14, 2002.⁶

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

¹ S.C. 2001, c. 27.

² SOR/2002-227.

³ Record, pp. 63-81.

⁴ Record, pp. 23-30.

⁵ Exhibit A-1, p.72.

⁶ Record, p. 22.

the existence of a genuine marriage is a question of fact and 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.⁷ 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] 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 and inconsistencies in the evidence and lack of knowledge demonstrated by the witnesses for which satisfactory explanations were not provided. I will provide some examples.

[7] Moreover, the appellant and applicant are not compatible in terms of age or marital background. The applicant is 14 years older than the appellant and the appellant was previously married and divorced whereas the applicant has never been previously married. The appellant's first marriage was relatively short-lived and her ex-husband was also considerably older than the appellant. In addition, the applicant was the first cousin of the appellant's ex-husband but he claimed not to inquire into or be aware of the reasons for the breakdown of the appellant's first marriage. While these apparent incompatibilities are not of themselves determinative of the genuineness of this marriage, there were no satisfactory explanations as to why the appellant and applicant and their respective families would agree to the marriage so quickly in these circumstances and this undermined the credibility of the witnesses.

[8] Moreover, while the applicant's previous attempt to enter Canada on a visitor's visa is not determinative of the genuineness of this marriage, his egregious actions in relation to that attempt and concealing that attempt and the fact he had family in Canada in this application seriously undermined the applicant's credibility. I find the applicant's allegations he was the victim of fraud by an agent are not plausible or credible.

⁷ Sections 11(1), 12(1) and 13(1) of the *Act*.

[9] The applicant applied for a visitor's visa on October 11, 2000.⁸ In that application, he declared he had a wife and two children in India and a sister and brother-in-law named Asha and Satnam Singh Sandhu in Canada. However, in the documents relating to this sponsorship application, the applicant declared he was not previously married, had no family members living in Canada and none of his family members in Canada were acquainted with the appellant. In addition, the applicant declared he first met the appellant in April 2002 through an introduction by his sister Kamlesh and had never previously applied for or had been refused a visitor visa.⁹ At his interview, the applicant stated a common friend Kamlesh introduced the couple and they met the first time on April 2, 2002.¹⁰

[10] There were a number of discrepancies and implausibilities in the evidence regarding the circumstances of the development of the relationship and they undermined the witnesses' credibility. Although there were some inconsistencies and vagueness in the testimony at the hearing as to whether or not the applicant attended the appellant's first marriage, it is clear from the evidence that the appellant and applicant were related to each other through the appellant's first marriage to the applicant's first cousin and through the applicant's first cousin Asha's marriage to the appellant's first cousin, Satnam Singh Sandhu. Based on the evidence before me, I find it highly implausible that the applicant would not have met the applicant at either of his relatives' weddings or subsequently through family functions or visits years prior to the alleged first meeting in April 2002.

[11] The appellant testified she returned to India to visit her parents because of the breakdown of her first marriage and had no intentions of remarrying, yet she was remarried to the applicant less than one month after her divorce to his first cousin. The appellant's first marriage did not last long. The appellant only lived with her ex-husband about one week at the time of the marriage and for about two months once landed in Canada. The witnesses' testified that appellant's ex-husband and family alleged she practices some form of black magic and that was the reason for the divorce. The circumstances of the appellant's first marriage, i.e., whether or not it was likely a marriage of convenience, is not determinative of this appeal but the

⁸ Record, pp.80-81.

⁹ Record, p.10, 12,16.

¹⁰ Record, p.74.

circumstances surrounding that marriage and its breakdown, the close family connections with this marriage and the testimony related to these issues raise significant concerns about the genuineness of this marriage.

[12] For example, there were discrepancies in the evidence regarding when or whether the applicant became estranged from his first cousin, i.e., the appellant's ex-husband. When questioned regarding why the applicant and his family would agree to the marriage with the appellant given the alleged reasons for her divorce from the applicant's close family member, the applicant alleged he has not been on speaking terms with the appellant's ex-husband since the late 1980's. However, the applicant was vague and evasive as to the circumstances surrounding the estrangement. Moreover, credible evidence from independent third parties indicated the appellant's ex-husband's was involved in attempting to assist with and expedite the applicant's immigration to Canada and this does not support the alleged on-going estrangement between the applicant and the appellant's ex-husband.¹¹ Moreover, evidence that the applicant's first cousin Asha, who is the appellant's ex-husband's sister, was involved in assisting with the applicant's sponsorship is also not consistent with the applicant's evidence regarding family estrangements and alleged objections to the marriage between the appellant and applicant.

[13] The evidence presented was of a relatively short courtship and the couple was married less than one month after the appellant was officially divorced. The timing of the marriage discussions and marriage raise concerns in relation to the genuineness of the marriage, given the circumstances of the alleged breakdown of the appellant's first marriage and the close family connections between the appellant's ex-husband and the applicant. It is more likely the timing of such marriage discussions is consistent with immigration motives for the marriage.

[14] However, the appellant remained in India for several months after the marriage and became pregnant. There was no challenge as to the paternity of the child. Nonetheless, based on the evidence before me, the appellant appears to be a vulnerable and easily manipulated individual who has abided by the demands and wishes of her family and others. Based on the evidence before me and on a balance of probabilities, I find it is more likely the appellant was a

¹¹ Testimony of Corporal Roxine Wright, RCMP.

naïve pawn in a scheme by the applicant's family in Canada, most particularly the appellant's ex-husband, and the applicant in their attempts to acquire status for the applicant in Canada.

[15] The appellant and applicant testified that they have maintained contact with each other regularly since the marriage.¹² However, I find the evidence does not corroborate the extent of the alleged contact. Although the appellant remained in India for a significant period of time after the marriage, there were no other documents or photographs to corroborate the testimony of the witnesses regarding any time the couple spent together after the marriage or places they visited together. There were also no letters exchanged prior to the refusal of the application and limited proof of telephone calls. The telephone bills that have been submitted are in the name of the Satnam Singh Sandhu. He is the appellant's first cousin with whom she was living for a significant period of time, however, he is also married to the applicant's first cousin Asha, the appellant's ex-husband's sister, and they live in the same building as the appellant's ex-husband. Therefore, I place limited weight on these bills as evidence of calls between the appellant and applicant as they likely also reflect calls between the applicant and his family members.

[16] In addition, the appellant has not traveled back to India to visit the applicant. Although the appellant did give birth to her child since the marriage, there were no satisfactory explanations as to why she did not return to visit the applicant and so he could meet his child. More disconcerting is that the applicant did not encourage or insist the appellant return to India given the potentially dangerous situation the appellant has been facing in Canada. The applicant admitted he was aware of threats that the appellant has received from her ex-husband but was vague and evasive when questioned regarding details of these threats and the difficult circumstances the appellant has faced because of her ex-husband. The applicant's actions in relation to this serious problem the appellant has been facing since the marriage are clearly not indicative of a genuine spousal relationship.

[17] The appellant and applicant were able to provide superficial knowledge of each other but it was not consistent with the extent of the alleged communication since the marriage or what would be expected of a couple in a genuine spousal relationship for over two years. For example, the applicant was not aware of the details of the threats the appellant was facing from her ex-

¹² Record, pp.52-62; Exhibit A-1.

husband or the proximity of where the appellant initially lived in relation to her ex-husband. Even more disconcerting is that the applicant is not even aware that the babysitter for the child lives with the appellant. The applicant testified the appellant goes to drop off the child at the babysitter. This lack of knowledge is not indicative of the concern of a spouse for his wife or child.

[18] Given the incompatibilities between the appellant and applicant, the timing of the alleged development of the relationship and the circumstances surrounding the marriage and the discrepancies and contradictions in the evidence and lack of demonstrated knowledge or concern despite the alleged communication since the marriage, I find, on a balance of probabilities, the evidence does not demonstrate the development of a genuine spousal relationship. Therefore, based on the evidence before me and on a balance of probabilities, I find the marriage is not genuine.

[19] The question of whether or not the marriage was entered into primarily for the purpose of acquiring any status or privilege under the *Act* is also determined from the evidence on the issues already discussed. It is not necessary for me to reiterate the evidence as clear inferences and findings can be made from the evidence already set out that it is more likely that the marriage was arranged primarily for the applicant to acquire permanent resident status in Canada. Moreover, there was no credible evidence to rebut the immigration officer's assessment or to show the marriage was not entered primarily for the purpose of the applicant acquiring permanent resident status in Canada. The applicant's previous attempt based on falsehoods to get to Canada, are also evidence of the applicant's strong immigration motives.

[20] The appellant and applicant have not demonstrated that they have developed or are developing a spousal relationship. The evidence before me indicates that the applicant has fabricated evidence in efforts to bolster his case because he did not intend this to be a lasting relationship as the marriage was entered into for immigration purposes. In addition, the applicant has close family in Canada, who has also attempted to assist him to enter Canada previously under false pretenses, to whom he can look to for support other than the appellant.

Decision

[21] Based on the evidence before me, I conclude that the appellant has not met the burden of proof. I find, on a balance of probabilities, the marriage is not genuine and was entered into primarily for the purpose of acquiring a status or privilege under the *Act*. The applicant is disqualified as a spouse, and therefore, the appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

“Kashi Mattu”

Kashi Mattu

26 October 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.