



IAD File No. / N° de dossier de la SAI : VA3-04643  
Client ID no. / N° ID client : 2318-2285

## Reasons and Decision – Motifs et décision

### *Sponsorship*

**Appellant(s)**

**SAROEUTH ROM**

**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**

September 15, 2004  
Vancouver, BC

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

**Date of Decision**

October 6, 2004

**Date de la Décision**

**Panel**

Kim Workun

**Tribunal**

**Appellant's Counsel**

Massood Joomratty  
Barrister & Solicitor

**Conseil de l'appelant(s)**

**Minister's Counsel**

Josee Heaps

**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<sup>e</sup> étage, Ottawa (Ontario) K1A 0K1, par courriel à [translation.traduction@irb.gc.ca](mailto: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](mailto:translation.traduction@irb.gc.ca) or to facsimile number (613) 947-3213.

## Reasons for Decision

[1] Saroeuth ROM (the “appellant”) appeals the refusal of the sponsored application of Sarady SRUN (the “applicant”) from Cambodia. The application was refused because, in the opinion of the visa officer, the requirements of subsection 12(1) of the *Immigration and Refugee Protection Act, 2001* (the “Act”)<sup>1</sup> were not met in that the applicant is a person caught by the exclusionary provision of section 4 of the *Immigration and Refugee Protection Regulations, 2002* (the “Regulations”).<sup>2</sup> Section 4 of the *Regulations* 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 and was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[2] The “bad faith” test imposes a conjunctive two-pronged test, that is, in order for a foreign national to be caught by section 4 of the *Regulations*, the preponderance of reliable evidence must demonstrate that the marriage is not genuine and was entered into primarily for the purpose of acquiring a status or privilege under the *Act*. In order to succeed on appeal, the appellant need only establish one of the prongs of the test has not been met. The onus is on an appellant to demonstrate that the applicant is not caught by the excluding section of the *Regulations*.

[3] At issue in this case is whether the applicant falls within the class of persons described in section 4 of the *Regulations*. In my view, the appellant, in the present case, has not discharged that onus. The appeal fails.

[4] The refusal letter<sup>3</sup> articulates the reasons for refusal. The visa officer concluded the marriage was arranged for the purpose of facilitating the applicant’s admission to Canada. He noted the circumstances of the introduction, the failure of the appellant’s family members, including extended family in Cambodia, to attend the marriage event, the “small-scale” marriage event and hasty preparations for the marriage. The visa officer noted the applicant has other

---

<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>2</sup> *Immigration and Refugee Protection Regulations*, SOR/2002 – 227, as amended by SOR 2004-167.

<sup>3</sup> Record, pp. 39-40.

immediate family members residing in Canada. Finally, the visa officer found the applicant to lack credibility at the interview and considered the applicant's knowledge of his sponsor to be limited and inconsistent with the conclusion the relationship is a genuine one. The visa officer refused the application.

[5] The appellant testified at the hearing. The applicant testified, by telephone, from Cambodia. I have considered all the testimony adduced at hearing, the contents of the Record, additional materials tendered at hearing<sup>4</sup> and oral submissions of counsel.

[6] The appellant has not demonstrated, on a preponderance of reliable evidence the marriage is a genuine one nor has she established the marriage was not entered into primarily for the purpose of acquiring a status or privilege under the *Act*. The appeal fails.

[7] There was inconsistency in the testimony as between the witnesses. I did not find the witnesses' explanations in particular areas to be credible. The panel noted the applicant's continuing deficient knowledge of his sponsor's activities and routines in Canada. The witnesses' explanation for the applicant's woefully deficient interview before the visa officer was insufficient.

[8] With respect to the inconsistency in the testimony as between the witnesses at the hearing *de novo*, I note there was discrepancy in the evidence with respect to the frequency of the pre-marriage contact by telephone. There is also discrepancy in the evidence with respect to whether the applicant was aware the appellant had a long-time relationship with another individual in Canada during the course of their alleged contact by telephone in the pre-marriage period.

[9] The applicant's sister, a resident of Canada, introduced the couple in April 2002.<sup>5</sup> According to the witnesses, the appellant and the applicant's sister had known each other since 1996 and had worked for a one-year period together in or around the time of the introduction between the couple. The witnesses testified that they maintained some telephone contact and that the appellant, along with the applicant's sister, traveled to see her Cambodian "homeland" 21 February 2003. Although the appellant has extended family in Cambodia, including a

---

<sup>4</sup> Exhibit A-1; A-2.

<sup>5</sup> Record, p. 23.

grandmother, aunt and uncle, she did not make any attempt to contact these extended family members either prior to her travel or during the course of her sojourn in Cambodia. I do not find her explanation for her failure to contact these family members, in light of her stated purpose for the travel, to be credible. Even were the panel to accept the appellant's explanation that she did not wish her extended family to "worry" about her presence and travel in Cambodia, I note the applicant's dissimilar explanation for the appellant's failure to contact these family members during the appellant's visit to Cambodia. There is a significant lack of cogency in the evidence in this area.

[10] The appellant did not invite her extended family to the marriage event. For his part, at interview, the applicant indicated that they were not informed and, when asked why, responded that the "grandmother was sick and I do not know".<sup>6</sup> While at hearing, both witnesses maintained that these extended family members were not informed of the marriage or the appellant's presence in Cambodia, cogent evidence has not been presented by way of explanation for the failure to take reasonable steps to invite these family members or introduce the applicant to these family members in the post-marriage period.

[11] The appellant arrived in Cambodia 21 February 2003. The couple married 1 March 2003 and the appellant returned to Canada 5 March 2003. Within a month after the appellant's return to Canada, she realized that she was pregnant by her former partner, an individual in Canada. The appellant's child was born 27 October 2003. The appellant testified that she was unaware of her pregnancy during her travel and marriage in Cambodia. The witnesses testified that, although the applicant expressed initial anger upon learning of the pregnancy a month after the appellant's return from Cambodia, he accepted the situation a week later and is now content to raise the child as his own. The appellant testified that she has had no contact with the child's father since her break-up with her former partner one month before her travel to Cambodia in February 2003.

[12] The witnesses testified that, since the appellant's return to Canada 5 March 2003, they have maintained regular contact by telephone. There is one untranslated letter in evidence.<sup>7</sup>

---

<sup>6</sup> Record, p. 46.

<sup>7</sup> Exhibit A-1.

They also maintain contact by an overseas internet connection. As noted by the visa officer, there was no documentary material tendered in the application or at interview to support allegations of contact.<sup>8</sup> At hearing, limited documentary material was tendered in this regard. The documentary material with respect to the alleged telephone contact<sup>9</sup> consists of one calling card and billing receipts evidencing calls between numbers in Cambodia and Canada in the months of October 2003, more particularly, 18 October 2003, and June/July 2004.<sup>10</sup> In passing, I note the date of interview was 17 October 2003<sup>11</sup> and the scheduling of this appeal took place June 2004. The internet receipts appear to be in the name of one of the applicant's family members and reflect internet fees for a 23 minute unit call to the appellant's number in June 2004<sup>12</sup> and for an internet billing in September 2003.<sup>13</sup> The paucity of documentary material establishing contact is significant in light of the applicant's poor performance at interview in areas relating to his personal knowledge of his sponsor and, moreover, in light of the apparent continuing deficiency in his knowledge as demonstrated at the hearing *de novo*.

[13] In this regard, I note the applicant knowledge of his sponsor at interview was superficial. He was unable to provide anything other than general information about the sponsor's alleged employment routines in Canada. More significantly, however, he indicated to the visa officer that the sponsor, in the interview period, was employed in Canada. He provided a rough estimate of her working hours and indicated she traveled to work by car. There are a number of difficulties with his statements on this point. Firstly, according to the appellant at hearing, she was unemployed at the time of the applicant's interview, having been laid off some three or four months earlier. The applicant's interview does not reflect his knowledge as to his sponsor's then-employment situation. Secondly, and more significantly however, at the time of the hearing, the applicant demonstrated a lack of knowledge as to the timing and reason for her departure from her former place of employment. To exacerbate the situation further, the applicant was unaware that the appellant had recently acquired employment and had only been laid-off in the

---

<sup>8</sup> Record, p. 44, line 23; p. 46, lines 13-14; p. 47, line 10.

<sup>9</sup> Exhibit A-1.

<sup>10</sup> Exhibit A-1.

<sup>11</sup> Record, p. 44, line 37.

<sup>12</sup> Exhibit A-1, p. 8; the panel notes the month of the service is somewhat unclear, however it appears to be one of June, July or, possibly, August 2004; the panel also notes that p. 9 of the materials reflects a call to the appellant's number for a 23 minute period 5 June 2004.

<sup>13</sup> *Ibid.* pp. 11-12.

two weeks prior to hearing. He, erroneously, believes that the sponsor has not worked since September 2003. The applicant's current level of knowledge is not supportive of the conclusion the couple maintain the level and frequency of contact as alleged at hearing.

[14] With respect to the other numerous deficiencies at interview, including the applicant's lack of knowledge as to his sponsor's activities in her free-time, her likes and dislikes, what the sponsor's parents do in Canada, the nature of her siblings' work in Canada, whether his sponsor's family owns or rents their home, the type of the home and whether his sister and the appellant continue to work together, I am not satisfied with the explanation that the applicant "panicked and forgot things". In my view, the applicant's continuing deficient knowledge at hearing as it relates to the appellant's employment history during the course of the marriage, including her lay-off in July 2002 and the reasons for her lay-off, and his lack of understanding with respect to her recent acquisition and loss of new employment strongly suggest that, at interview, he was similarly uninformed. I reject the simplistic explanation proffered at hearing.

[15] In new areas explored at hearing, again, the evidence is unsatisfactory. I note the discrepancy in the evidence with respect to the timing of the appellant's transfer of her child's photographs to the applicant. She testified she has sent photos on two occasions, at four months after the birth and two weeks prior to the hearing. For his part, the applicant testified he received photos two months after the birth and approximately four or five weeks prior to the hearing. In another area, the applicant testified he spoke to the appellant's father in Canada approximately a week after the appellant's return from Cambodia in March 2003. For her part, the appellant believes the first conversation between her father and the applicant occurred two or three months after the marriage event. One would think that, if such a conversation occurred as alleged, there would be reasonable consistency on this point. With respect to his knowledge of the appellant's former relationship, the applicant does not know the name of the child's father or the duration of the appellant's relationship with her former partner. I conclude there has been little discussion in this area. In light of the appellant's unexpected pregnancy and the child's birth, and in the context of a genuine spousal relationship, one would expect there would have been reasonable discussion in this area and disclosure of these details. The applicant could not provide any names of his wife's friends in Canada, other than the names of his own family members. For her part, and although allegedly with the applicant for a two-week period in 2003 and observing the

applicant's daily interactions with his friends, the appellant was unable to provide any names of the applicant's friends to the panel and, in fact, advised the panel that she was "not interested in meeting (his friends) or asking their names". All of this does not suggest any particular degree of closeness in the relationship. Moreover, I note the appellant's daily and regular opportunities to meet the applicant's friends during her two-week trip to Cambodia in the marriage period.

[16] With respect to the couple's plans for joint cohabitation in Canada, the testimony was general in nature and does not allay the significant credibility concerns raised by the other evidence in the case. While I have considered a wire transfer of funds from the appellant to the applicant in 2004,<sup>14</sup> I note the other fund transfers appear to have been made by the applicant's family in Canada to their family members in Cambodia.<sup>15</sup>

[17] The appellant has not discharged the evidentiary burden on her in this case. I am not persuaded that, upon a balance of credible and trustworthy evidence, the marriage is a genuine one.

[18] With respect to the motivation for the marriage, I note the applicant's advice at interview that his sister had asked him whether he wished to marry someone from Canada, that the introduction was made for this purpose and that the appellant had come to Cambodia with the intention to get married.<sup>16</sup> I have considered the appellant's explanation for her travel to Cambodia in the marriage period and, agreeing with counsel for the respondent's submissions in this area, find it to be lacking in cogency. I note the hasty nature of the agreement to marry, within two days or one week (depending on the respective witness statements) of meeting in person, and the failure of the applicant to make any attempt to invite her extended family in Cambodia to the event. When all is taken together with the deficient evidence of the couple's contact in the post-marriage period as reflected in the applicant's lack of knowledge at interview and continuing lack of knowledge in obvious areas at the appeal hearing, reliable evidence fails to establish the couple's alleged meaningful and regular contact in the post-marriage period. I conclude the marriage does not have a legitimate spousal purpose and that the appellant has not

---

<sup>14</sup> Exhibit A-1, p. 4.

<sup>15</sup> *Ibid.* pp. 5-7.

<sup>16</sup> Record, p. 45.

shown that the marriage was not entered into primarily for the purpose of acquiring a status or privilege under the *Act*.

## Conclusion

[19] The appeal is dismissed.

[20] The applicant, Sarady SRUN, is caught by the exclusionary provision as articulated in section 4 of the *Regulations*. The appeal of Saro euth ROM is dismissed.

## NOTICE OF DECISION

The appeal is dismissed.

\_\_\_\_\_  
"Kim Workun"

Kim Workun

\_\_\_\_\_  
6 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.