IMMIGRATION AND REFUGEE BOARD
IMMIGRATION APPEAL DIVISION

COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
SECTION D'APPEL DE L'IMMIGRATION

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Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s) / **Appelant(s)**

SHERRY LYNN **BRUNELLE**

Respondent / **Intimé**

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

Date(s) and Place of Hearing / **Date(s) et Lieu de l'audience**

January 14, 2005
Vancouver, BC

Date of Decision / **Date de la Décision**

January 28, 2005

Panel / **Tribunal**

John Munro

Appellant's Counsel / **Conseil de l'appelant(s)**

Massood Joomratty
Barrister & Solicitor

Minister's Counsel / **Conseil de l'intimé**

Judy Milne

Reasons for Decision

[1] Sherry Lynn BRUNELLE (the "appellant") appeals the refusal to grant a permanent resident visa to her putative spouse, Anoop KUMAR (the "applicant"), 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 2 April 2004.

[2] The application 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 and 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 onus rests on the appellant to establish that the marriage is genuine or that the marriage was not entered into by the appellant and the applicant to enable the applicant to acquire permanent resident status in Canada.

[4] The refusal letter of 15 March 2004[3] articulates the reasons of the Canadian Consul in Seattle[4] 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 Consul was concerned that the interviews with the appellant and with the applicant revealed a mass of discrepancies in their respective versions of the circumstances surrounding their marriage and their relationship. He was concerned as well that the applicant lacked significant knowledge of the appellant and that there was a language barrier inhibiting effective communication between them. Finally, he noted that the applicant had used false identity to enter the United States.

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1 *Immigration and Refugee Protection Act*, S.C. 2001, c.27.
2 *Immigration and Refugee Protection Regulations*, SOR/2002 - 227.
3 Record, pp. 55-57.
4 Bill Hawke, Consul, Consulate General, Seattle.

[5] However, the hearing of the Immigration Appeal Division is a hearing *de novo*. At issue is whether the applicant, as of the date of the hearing, falls within the class of persons described in section 4 of the *Regulations*. There was no challenge to the fact that a marriage in accordance with the laws of the United States of America took place.[5]

[6] The appellant and the applicant were the only witnesses. I have considered their testimony, the documentary evidence in the Record, additional materials tendered for the hearing,[6] and the submissions of both counsel.

Decision

[7] The appeal is dismissed. I find that the appellant, Sherry Lynn BRUNELLE, has not met the onus of demonstrating that the applicant, Anoop KUMAR, is not caught by section 4 of the *Regulations*. On the basis of the evidence before me, I am satisfied, on a balance of probabilities, that the marriage is not genuine and was entered into primarily for the purpose of the applicant acquiring the status of a permanent resident of Canada.

Background And Analysis

[8] The appellant, Sherry Lynn BRUNELLE, is a citizen of Canada, who was born on 14 July 1981 at Kamloops, British Columbia. She has 11 years of formal education—although the panel is not clear about whether her 11th year was successfully completed. She is unilingual English. Her religion is Christian. This is her first marriage. At present, the appellant resides with her retired parents and an older brother in an apartment in Abbotsford, British Columbia.

[9] The appellant testified at the hearing that she has never had gainful employment, but is in receipt of a $836 monthly disability pension (level 2)—which the panel understands to be a "Persons With Disabilities" allowance from the British Columbia Ministry of Human Resources. A letter, dated 1 April 2004, from the appellant's family doctor, Richard Egolf, MD, of Abbotsford, states that the appellant suffers from Bipolar Affective Disorder.[7] Dr. Egolf enclosed with his letter the discharge summary of the appellant's last (February 2002) hospitalization.

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5 Certificates of marriage, *Ibid*. pp. 30-32.
6 Exhibits A-1 and A-2.
7 Exhibit A-1, p.16.

This document is signed by Dr. S. Uppal, MD, MSA General Hospital, Fraser Valley Health Region, and reads in part:

> Sherry Brunelle is a 20-year-old caucasian female who was admitted to Psychiatry.... Sherry was admitted as a certified patient. She had a history of bipolar affected disorder with one hospitalization to Langley. At the time of her admission her behaviour was bizarre and she had delusional thoughts. ... A family meeting was held on February 26th to discuss her current mental state and ongoing treatment plan. Regular followup was arranged with her family physician and she was connected to Abbotsford Mental Health Centre as well. Sherry was discharged back home to her parents.[8]

[10] The appellant confirmed in her testimony that she had had what she described as two "nervous breakdowns," and that her first such illness happened in 2000. She also testified that her mental illness required her to be on drugs. Dr. Egolf's letter noted that the appellant's medications involved Risperidone, Trazodone and Valproic Acid. However, the appellant stated that she had stopped taking her medications because she was pregnant, with a due date of 17 May 2005. Her pregnancy is confirmed by a further letter from Dr. Egolf, dated 17 December 2004.[9] The evidence contains no professional medical assessment of the appellant's present mental state. At the hearing, the appellant was represented by legal counsel. In addition, her parents were present in the hearing room as observers. At no point during the hearing did the panel find that the appellant did not appreciate the nature of the proceedings,[10] nor was there such suggestion from either counsel.

[11] The applicant, Anoop KUMAR, is a citizen of India, who was born on 5 October 1968 at Village Urmar, Hoshipur District, Punjab State, India. He has completed 10 years of formal education.[11] He is employed as a gas station attendant. His principal language is Punjabi. Although he claims enough English language ability to sell gas, to clerk in a 7-Eleven store or to talk about simple things with the appellant, the applicant required an interpreter at both his visa interview and at the Immigration Appeal Division hearing. His religion is Hindu. This is his first marriage. At present, the applicant resides with his sister, brother-in-law and their children in Lynnwood, Washington State, United States of America.

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8 *Ibid*. p. 17.
9 Exhibit A-2, p.4.
10 See subsection 167(2) of the *Act*.
11 Record, p. 11.

[12] The applicant testified at the hearing that he arrived in the United States five years ago, which according to his immigration application would have been in January 2000.[12] At his visa interview, he stated that he arrived in the United States in March 1999. He freely admitted both at his visa interview and at the hearing that he used someone else's passport for the purpose of gaining entry into the United States. Once in the United States, the applicant, at some point, applied for political asylum. He asserts that his membership in a particular Indian political party made him afraid to continue living there. It is not clear to the panel if his fear encompassed all of India or just Punjab State. He testified that if his asylum claim fails, he will be deported to India.

[13] At his visa interview, the applicant stated that his asylum case was going "fine," and that all the paper work regarding same was in the hands of his lawyer—a lawyer resident in the United States, as he indicated at the hearing. Although there is no evidence to the contrary, neither is there independent evidence to suggest that his claim is likely to succeed, and that his annual United States Employment Authorization card, which allows him to work in the United States (but does not allow country exit and return privileges), will be renewed. Indeed, the panel finds it probable (as did Minister's counsel in her submission) that the applicant's fear that his political asylum claim is going to be rejected was a prime motivation for his marriage to the appellant.

[14] The appellant testified that she met the applicant at a party in Shoreline City, just north of Seattle. The spousal questionnaire portion of the applicant's immigration application specifies that this occurred on 23 December 2001 in Seattle.[13] The appellant testified that she was invited to this party by an individual named Andy, who is the proprietor of a Sumas, Washington State, gas station/convenience store. She claimed that Andy is a "friend" of her parents and of herself—their friendship apparently based on the long-time patronage of Andy's business by the appellant's family, who shop/shopped there for cheaper American gasoline and dairy products. In that the appellant, according to her testimony, does not have a driver's licence,[14] she is unlikely ever to have been at Andy's place of business except in the company of at least one of her parents.

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12 *Ibid*. p. 12.

13 *Ibid*. p. 15.

14 The appellant's learner's driving permit is in evidence at *Ibid*. p.6. However, the appellant testified that she never acquired a driver's licence.

[15] There is nothing in the evidence to suggest that, with the exception of this one party invitation, there was ever social intercourse beyond what might pass for customer-relations bonhomie between Andy and the appellant's family. The appellant testified that Andy has a wife, but she did not testify that Andy's wife was her friend or one of her parents friends. Whatever the actual case, the appellant accepted Andy's invitation to attend the birthday party of the son of one of his friends in Shoreline, some two hours by automobile south of Sumas. Andy, the panel notes, is a member of one of Washington State's East Indian communities, as was the party's host and nearly all of his guests, among whom was the applicant.

[16] The appellant was interviewed on 26 February 2004 along with the applicant at the latter's visa interview in Seattle. She told the Immigration Program Officer who questioned her that the party at which she met her husband was held at Bellingham in the Spring of 2001, and that she was taken there by a friend from Canada. Bellingham, according to the appellant's testimony at the hearing, is a mere 20 to 30 minute drive from Sumas. The applicant displayed no such confusion in presenting his version of events at his visa interview: the party was at the home of a friend in Shoreline City. By the time of the hearing, the appellant's story with regard to this (and much else) was in sync (i.e., harmonized) with that of the applicant.

[17] However, among those portions of their respective accounts of their relationship's genesis and development that were not in sync at the hearing was the applicant's relationship to Andy. The appellant testified that the applicant and Andy had been friends in India. The applicant testified that he had never met Andy before the party. Whatever the actual case, the panel finds it most probable that Andy invited the appellant to the party so that she might meet the applicant, and that he went to considerable trouble to do so.

[18] As intimated in paragraph [12] above, the panel finds that the applicant's potentially precarious immigrant status in the United States provided him motivation to find a wife whose nationality might secure him permanent resident status, if not in the United States, at least in Canada. The panel finds it probable that Andy, in inviting the mentally 'troubled,' and not at all sophisticated appellant to the Lakeshore party, was responding to a call (however authored) to help the applicant in his hour of perceived need.

[19] The appellant testified that she spent most of the five hours she was at the Shoreline party in the company of the applicant, talking and dancing—but mainly talking. The question, given the language barrier between them, is: how could they spend hours talking? At his visa interview 26 February 2004—some 20 months after his marriage to the appellant—the applicant said that they were able to talk to each other over the telephone "a little bit:" that they can say, "How are you?" and How are you doing?"[15]

[20] The applicant and the appellant agreed in their respective testimony that the appellant gave the applicant her telephone number at the party. However, the applicant stated at his visa interview that it was the appellant who later called him; whereas the appellant testified at the hearing that he called her in January 2002 to invite her to visit him at the home of his sister in Lynnwood. The appellant further testified that her parents accompanied her on this visit, and that they stayed for two days. The applicant testified that, on this occasion, her parents did not accompany her, and that she stayed for a week.

[21] The appellant told the Immigration Program Officer that they decided at their second meeting to marry.[16] This was approximately one month after their first meeting. They would be married on 16 July 2002. At the hearing, the applicant was asked when he first learned that the appellant had mental health problems. He testified that he knew about her mental condition before the wedding, but that he never enquired as to the exact nature of her illness. The panel finds this lack of interest in the appellant's well-being incompatible with any commitment the applicant might claim to a genuine relationship with the appellant.

[22] As to the wedding itself, this was performed in a Christian Church or Chapel by a Minister of the Christian gospel, Reverend Zady Evans.[17] At his visa interview, the applicant did not know the name or denomination of the church nor the name of the person who married them. He said that they were married in a church because that was the wish of the appellant.[18] However, at the hearing, the appellant testified that she was not particularly religious; whereas, the applicant described himself as a devout Hindu. The panel finds it probable that the

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15 *Ibid*. p. 63.
16 *Ibid*. p. 64.
17 *Ibid*. p. 30.
18 *Ibid*. p. 63.

applicant's lack of concern about the nature of his marriage's solemnization is reflective of his lack of long-term commitment to his relationship with the appellant.

[23] The appellant signed her sponsorship application for the applicant on 1 November 2002. As noted in paragraph [4] above, the refusal to grant the applicant a permanent resident visa was conveyed to him in a letter dated 15 March 2004. The appeal was filed on 2 April 2004. The appellant, according to her testimony, was five months pregnant at the time of her Immigration Appeal Division hearing on 14 January 2005. This means that she became pregnant in August 2004.

[24] The appellant testified that her pregnancy was an accident. She did not attempt to reconcile this statement with her testimony that she and the applicant had not been using birth control during their sexual relations. The applicant testified that the appellant's pregnancy was planned; that he, in fact, set out to impregnate the appellant. However, he denied that this was in aid of his being allowed to immigrate to Canada. Instead, he said, it was because the appellant wanted to have a baby, and that he did too. The panel finds it probable that the appellant sincerely believes that hers is a genuine marriage and further believes that the applicant genuinely cares for her. It well may be that the appellant, in consequence of her view of her union with the applicant, is pleased to be pregnant. However, the panel does not find the applicant's denial of a pregnancy of convenience at all credible.

Conclusion

[25] As elsewhere noted, there are many discrepancies in the evidence. Some relate to the absence of photographic documentation of the marriage or to the frequency and duration of the appellant's visits to the applicant or to the actual role of the appellant's parents in facilitating her marriage. There are also questions related to significant differences in their respective ages, backgrounds and religions that the witnesses were asked to address, but did not do so satisfactorily. However, the panel finds that they pale in importance when compared to the creation of a baby of convenience.

[26] The panel finds it probable that the applicant has been able to manipulate the emotions and actions of the appellant from their first meeting, and that she is the unwitting victim of his quest to avoid being returned to India. The panel finds, on the basis of the evidence before it,

and, on a balance of probabilities, that the applicant entered his marriage to the appellant for immigration purposes alone. The panel also finds it probable that if the applicant were to be granted permanent resident status, he would not linger long with the appellant.

[27] Minister's counsel, in her submission, contended that there was heartbreak down the road for the appellant (whom Minister found to be as credible as she was able to be) if this appeal was to be allowed. Appellant's counsel, in reply, contended that a dismissal of this appeal would break the appellant's heart. The panel agrees with both counsel. The appellant's heart is likely to be broken in any event, and with whatever possible dire consequence.

[28] Are there the best interests of a child directly affected by the decision to be considered in this appeal? The panel finds that, as yet, there is no child to be considered.

[29] I find the applicant, Anoop KUMAR, is described in section 4 of the *Regulations*. I find that the marriage is not genuine and was entered into by the applicant primarily for the purpose of acquiring a status or privilege under the *Act*. Anoop KUMAR is not a member of the family class. The appeal of Sherry Lynn BRUNELLE is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

"John Munro"
John Munro

28 January 2005
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.