



IAD File No. / N° de dossier de la SAI : VA4-02775
Client ID no. / N° ID client : 3291-4646

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

JAGMOHAN SINGH DEOL

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**

November 7, 2005
November 14, 2005
Vancouver, BC

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

Date of Decision

November 14, 2005

Date de la Décision

Panel

Margaret Ostrowski

Tribunal

Appellant's Counsel

Masood Joomratty
Barrister & Solicitor

Conseil de l'appelant(s)

Minister's Counsel

Ron Yamauchi

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.

Oral Reasons for Decision

Introduction

[1] The appellant, Jagmohan Singh DEOL, appeals from a refusal to issue a permanent resident visa to Darshan Kaur Deol (the “applicant”) as his spouse pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the “*Regulations*”).¹ This is the oral decision.

[2] The visa officer determined that the relationship between the appellant and Mrs. Deol was not genuine and was entered into primarily for the purpose of acquiring status or a privilege under the *Immigration and Refugee Protection Act of Canada* (the “*Act*”).²

[3] In reaching this decision, the visa officer relied on the following factors:

- (1) that the appellant and applicant are incompatible in terms of marital background because the appellant was divorced twice and the applicant had never been married;
- (2) that it was highly unlikely that the applicant’s parents would not have investigated the circumstances of the appellant’s divorces or agreed to a match based on the information provided by the middleman;
- (3) that the marriage was organized and held in haste – they met on January 21, 2004 and were married on January 26, 2004;
- (4) that there was possibly a concealed material fact and the visa officer was not satisfied that the appellant and the applicant have made efforts to develop a genuine spousal relationship intended to last long term.

[4] At issue in this case is whether section 4 of the *Regulations* applies and thereby excludes the applicant from consideration as the appellant’s spouse and therefore as a member of the family class.

¹ *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

4: 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 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[5] A hearing before the Appeal Division is a hearing *de novo* and additional evidence that was not before the visa officer may be taken into account on appeal. The burden of proof on a balance of probabilities rests with the appellant.

Background and Relevant Evidence

[6] The appellant is a thirty-three year old truck driver born in India and arrived in Canada in January 1997, sponsored by a previous wife. He was first married on January 24, 1996, stayed with her one month and they were divorced on September 4, 1998. He was next married on June 27, 1999, separated in February, 2001 and divorced on March 30, 2002. He owns his own home in Surrey, B.C. He has two married sisters in Canada and a brother, mother and father in India who he is also sponsoring. He was involved in a serious accident on April 9, 2003, injured his head, shoulder and leg, and was hospitalized for four months at that time. He still suffers pain from that accident and requires more surgery.

[7] The applicant is a twenty-six year old housewife who resides in India with the appellant's family. She has no relatives in Canada and her marriage to the appellant is her first. She has two married siblings in India.

[8] The appellant and applicant were introduced to each other by a friend whose father was a friend of the applicant's father in December, 2003 after it was suggested by the appellant's parents that he should remarry. They spoke on the phone initially. The applicant was working in Hong Kong at that time as a nanny and they met in India for the first time on January 21, 2004. They were engaged January 23 and were married on January 26, 2004.

[9] The appellant testified that his first marriage was arranged. He stated that his wife at the time would not tell him where she was going and would get phone calls that would disconnect when he answered the phone. He commenced the divorce proceedings.

[10] The appellant's second marriage was also arranged. He explained that this wife knew that he was a truck driver but that she was not happy that he was not home every evening. If he was home every evening, he would only make about \$1400 to \$1500 per month and she liked to shop. His wife commenced the divorce proceedings in this instance.

[11] The applicant testified that she was told about the appellant's prior marriages and his accident before she met him in person and that the divorces were not a concern to her because she had been told the reasons for the divorces. She said that she would do whatever her parents wanted her to do and that the decision for the marriage was made by herself and her parents. She had been told that he was good natured, hardworking, did not drink or smoke, was a vegetarian, and came from a similar cultural background as her. She also testified that there were had been other possible marriage candidates canvassed for her but he was the only one that did not have a "demand" for a dowry. She further stated that her family had asked about the appellant in his village and the neighbouring villages. Her parents had gone to the appellant's home and spoke to him and his family on January 18, 2004. Her application form was completed by an Indian lawyer and she said that this was why the form was not filled out accurately in all places.

[12] The appellant stayed in India with his wife for three months after the marriage and has visited her three more times. One trip was a special surprise trip for their wedding anniversary. There was evidence at the hearing that they both have undergone fertility testing to investigate why the applicant is not yet pregnant. The appellant stated that his wife takes very good care of him and it is not a nurse that he needs – that it is hard to live by himself and that he is getting older.

[13] The appellant and his parents give the applicant money for expenses. He has provided her with a credit card. The applicant testified that she talks to him on the phone almost every day and they discussed their plans for the future.

[14] There are many pictures in the Record of the wedding between the applicant and the appellant and of their outings. There are also records of billings for telephone calls between the applicant and the appellant and copies of cards and letters sent to each other.

[15] The applicant was interviewed in Chandigarh, India on October 26, 2004.

[16] Counsel for the appellant submitted that the entirety of the evidence should be considered in this *de novo* hearing and in the context of an arranged marriage, that both the applicant and appellant have been candid and forthright, and that all the concerns of the visa officer have been met in the evidence.

[17] Counsel for the Minister agreed that the appellant and applicant are of a similar age, education, language, traditions and culture, that there were multiple trips to India, evidences of many notes between them, they knew each others siblings, and he acknowledged the fertility evidence. He submitted however, that this marriage seemed rushed, that there was evidence of discrepancies such as the size of the wedding party and exactly when money was sent after the wedding. He suggested that the genuineness of the marriage increased after the marriage but that the appellant's testimony suggested that what he wanted was a caregiver and not a wife.

Analysis

[18] In order for a foreign national to be disqualified 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*

[19] The panel has reviewed the concerns of the visa officer regarding the incompatibility of the parties and the lack of an investigation by the applicant's family of the appellant's background. The evidence presented at this hearing was contrary to these findings and in fact, the Minister's counsel was in agreement that there were many areas of compatibility between the applicant and the appellant and, furthermore, the evidence was not rebutted by him that the marriage had not been investigated by the applicant's family.

[20] The panel found that both the applicant and appellant to be honest and sincere in their answers even though sometimes there were minor inconsistencies.

[21] In regard to the alleged incompatibility in the number of previous marriages between the parties, the panel was persuaded that this was not an issue by the argument that the applicant's international work experience for three years in Hong Kong could have modified any traditional views she had of this issue.

[22] In regard to the issue of the hastiness of the marriage, given the evidence that the parties had been talking on the phone for more than a month before their meeting, that there had been investigations and the families had met, and that the hotel for the marriage had been previously booked by the parents, the panel is of the opinion that this was not a marriage in undue haste in

that this was an arranged marriage. Additionally, the inconsistency between the numbers of 600 and 700 of estimated people attending the wedding is regarded by the panel to be insignificant.

[23] The panel also accepted the explanation of some incorrect information on the applicant's application form that it was in fact completed incorrectly by a lawyer on her behalf.

[24] The panel found that the un rebutted evidence of three additional visits by the appellant to visit the applicant in India since their marriage and the evidence of very frequent communication between them corroborates the genuineness of the marriage.

[25] Finally it is the opinion of the panel in regard to the concern of the Minister's counsel that the applicant was wanted as a caregiver and not as a wife, that this seems unlikely given that there was unchallenged evidence that the parties were undergoing fertility testing in order to have a child. Furthermore, the exact nature of relationships are not dictated by law; there is merely a requirement that there be an intention by the parties to live together permanently as husband and wife; caregiving can form part of that relationship.

[26] Accordingly, the concerns of the visa officer and the Minister's counsel at the hearing regarding the genuineness of the marriage were met at this hearing by the evidence from and demeanor of the appellant and the testimony of the applicant. Any concerns that remain outstanding are not significant in light of the panel's impressions of the witnesses at the hearing and its overall assessment of the evidence. The appellant has met the onus of demonstrating on a preponderance of reliable evidence that the marriage was genuine and not entered into primarily for the purpose of acquiring a status or privilege under the *Act*.

Decision

[27] The applicant, DARSHAN KAUR DEOL, is not excluded by the provisions of section 4 of the *Regulations*. The appeal of JAGMOHAN SINGH DEOL is allowed.

[Edited for clarity, spelling, grammar and syntax.]

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.

"Margaret Ostrowski"**Margaret Ostrowski**

15 November 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.