IMMIGRATION AND REFUGEE BOARD OF CANADA

IMMIGRATION APPEAL DIVISION

COMMISSION DE L'IMMIGRATION ET DU STATUT DE RÉFUGIÉ DU CANADA

SECTION D'APPEL DE L'IMMIGRATION

IAD File No. / N° de dossier de la SAI : VA4-03010
Client ID no. / N° ID client : 2651-8495

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)	**Appelant(s)**
GAGANDEEP SINGH GREWAL	
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**
19 October 2005 Vancouver, BC	
Date of Decision	**Date de la Décision**
December 6, 2005	
Panel	**Tribunal**
Hope Sealy	
Appellant's Counsel	**Conseil de l'appelant(s)**
Massood Joomratty Barrister & Solicitor	
Minister's Counsel	**Conseil de l'intimé**
Steve Bulmer	

Reasons for Decision

[1] Gaggandeep Singh GREWAL, (the "appellant") appeals the decision of a Canadian immigration officer overseas not to issue a Canadian permanent resident visa to Harpreeet Kaur GREWAL, (the "applicant") from India.

[2] The sponsored application for a visa was refused because in the opinion of the officer, the marriage is not genuine and was entered into primarily for the purpose of acquiring permanent residence in Canada under the *Immigration and Refugee Protection Act* (the "*Act*").[1]

[3] At issue in this case is whether section 4 of the *Immigration and Refugee Protection Regulations* (the "*Regulations*")[2] applies, thereby excluding the applicant from consideration as the appellant's spouse and as a member of the family class.

[4] The appellant bears the burden of proof.

[5] The panel heard testimony from the appellant and the applicant. The panel has considered their testimony, other evidence provided by the appellant's counsel,[3] contents of the Record and submissions of appellant and Minister's counsel.

[6] The panel comes to the conclusion that the appellant has established that section 4 of the Regulations does not apply in this case.

BACKGROUND

[7] The appellant who was born in India is twenty-one years old. He was landed in Canada on November 5, 1990 and is a Canadian citizen.[4]

[8] His marriage to the applicant took place on May 13, 2004.[5]

[9] The applicant is twenty-five years old and lives in India.[6]

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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 Exhibits A-1 and A-2.
4 The Record, p. 2.
5 The Record, p. 10.
6 The Record, p. 2.

[10] The appellant and applicant met on March 2, 2004. A proposal having been put forward by the marriage broker Narinder Singh who is a cousin of the applicant and a family friend of the appellant's family.[7]

[11] The appellant left India on May 25, 2004,[8] and sponsored the applicant to Canada as his wife.

[12] A Canadian immigration officer interviewed the applicant in Chandigarh on November 15, 2004.[9] Among the concerns the immigration officer addressed at the interview (in the interview notes) and in the refusal letter of November 19, 2004[10] were the following: Given that this is an arranged marriage the incompatibility in age, social background and education of appellant and applicant; the fact that the appellant's father and siblings did not attend the marriage and the haste with which the appellant returned to Canada after the wedding. The immigration officer also found that the applicant did not show knowledge of the personal circumstances of the appellant such as would be expected from a party to an arranged marriage and that there did not appear to have been much communication between appellant and applicant. Further, the immigration officer stated that the applicant had contradicted herself during the interview and had been evasive surrounding circumstances of the marriage.

[13] The immigration officer found that the applicant is not the appellant's spouse for the purposes of Canadian immigration law, because of section 4 of the *Regulations*.

[14] The hearing of the Immigration Appeal Division is, however, a hearing *de novo*. At issue is whether the applicant, today, 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 India took place.

Analysis

[15] The test articulated in Regulation 4 is two-pronged. To succeed in appeal the appellant must only demonstrate that one of the two prongs does not apply to the relationship.

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7 The Record, p. 17.
8 The Record, p. 21.
9 The Record, p.p. 121-123.
10 The Record, p.p. 114 –117.

[16] The panel will deal first with the concerns of the immigration officer and will deal then with credibility issues identified at the hearing.

[17] The applicant has to her credit sixteen years of education. She holds a diploma in nursing and works as a staff nurse at the Deep hospital in Ludhiana.[11] The appellant completed the twelve years of high school. Based on those facts the appellant is clearly at a disadvantage compared with the applicant. However, for the following reasons the panel does not find that the incompatibility in their educational background is too disadvantageous to the appellant.

[18] The uncontested evidence before the panel is that the appellant is studying to be a chartered accountant. The applicant advised the immigration officer of this at the interview.[12] The appellant gave more detailed evidence on his studies, including accounting, at the hearing saying that by the end of April 2006 he should have completed the studies for a business diploma. He testified that his plan is to become a business accountant. In this context the panel does not find that the incompatibility in terms of education made out by the immigration officer is substantial.

[19] Further, the panel finds reasonable the assertion that trained persons from abroad such as the applicant need to re-qualify in Canada before practising their profession in Canada and finds that any educational disadvantage to the appellant is not real.

[20] Both appellant and applicant are in their twenties.[13] The age difference between them is not large – four years to the disadvantage of the appellant. The panel does not find this to be a serious impediment to the finding that the marriage is a genuine one.

[21] There are no details given in the refusal letter as to what the immigration officer saw as the incompatibility in terms of social background between appellant and applicant. However, in the immigration officer notes, the panel reads as follows on this subject. “Sponsor has been living in Canada for the last 14 years”.[14]

[22] The testimony of the appellant is that he was sponsored to Canada as an adoptee and landed here in November 1990. However, according to the appellant, his adoptive parents sent

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11 The Record, p. 13.
12 The Record, p. 122.
13 The Record, p. 2.
14 The Record, p. 121.

him back to India for education in 1991, citing the greater discipline in schools there. He said that he studied there for nine years. It was, he said, from a village school in India that he completed his high school education. In the light of this evidence, unchallenged at the hearing, the panel does not find incompatibility in social background between appellant and applicant.

[23] The panel cannot find in the immigration officer notes any indication that the applicant at that time lacked knowledge of the personal circumstances of the appellant. It did not so find at the hearing. Rather, it found that both appellant and applicant had the level of knowledge it would expect from persons in a genuine marital relationship but living in different countries. During the hearing the appellant stated that he had moved homes in February/March 2004. This was not the testimony of the applicant who stated that this move had been in January 2005. The panel accepts as reasonable counsel's comment that the appellant was clearly misstating the time of his residential move in Vancouver. In February/March 2004 he was in India.

[24] The appellant returned to Canada within a fortnight of his marriage. The uncontested evidence before the panel is that he travelled to India in search of a wife on February 16, 2004. He then met with the applicant and her family on March 2, 2004, having earlier met with seven other candidates. The appellant then told the applicant that he wished his adopted mother in Canada to meet with her before committing to the marriage and he then returned to Canada for exams on March 9, 2004. The appellant's adopted mother travelled to India on April 23, 2004 to meet with the applicant. The appellant himself followed and travelled to India on May 9, 2004. His adopted mother having approved of the applicant, plans were made for the marriage that took place on May 13, 2004.

[25] Given the time spent in India as noted above, the appellant explained that he could not have remained in India for a longer period after the marriage because of the holidays he had earlier taken in February/March. The panel finds the appellant's reasons for so speedy a return to Canada following the marriage to be persuasive.

[26] The appellant's adoptive mother was the only member of the appellant's adopted family in Canada to attend his marriage ceremonies. Both appellant and applicant spoke of the dislike of India by the appellant's half-siblings in Canada. The appellant testified that his adopted father had been unable to make the trip to India because he needed to remain here to take care of the appellant's brother who lives with a mental handicap and to look after the other children.

Minister's counsel suggested that it would be reasonable to expect that arrangements would have been made so as to allow the appellant's adopted father to attend the marriage. The panel does not know what arrangements Minister's counsel had in mind and finds the explanation given by the appellant to be a reasonable one.

[27] Minister's counsel was concerned at the handwriting on letters before the panel purporting to have been sent by the appellant to the applicant. Lacking a handwriting expert, as it does, the panel will not make a finding on the matter. The panel's interest in communication between appellant and applicant is to better judge their relationship and the knowledge developed by each of the other. The panel has much before it to support that there has been communication between appellant and applicant and that they have the knowledge one would expect from married partners in their circumstance.

[28] Minister's counsel was concerned that the brother of the appellant drove the appellant and applicant to one of the destinations they visited on their honeymoon. The appellant testified that he therefore paid for two rooms at the hotel at which they overnighted. He testified to not being comfortable himself driving on the "wrong" side of the road. That a family member would be chosen as chauffeur does not to the panel indicate that this period of the honeymoon was not indeed a honeymoon.

[29] Credibility issues did arise at the hearing. The evidence before the panel is of a ring ceremony as part of the marriage celebrations of appellant and applicant. The appellant was not wearing a ring at the hearing. He told Minister's counsel that he had an allergy to rings. When asked whether the appellant wears his ring the applicant answered that he sometimes did but that he doesn't like gold that much. Even without the care that the panel must exercise in examining evidence obtained through the services of an interpreter, the panel does not find that there is an inconsistency here that needs concern it.

[30] Of more significance to the panel is the inconsistency of evidence before it around the sexual relations between appellant and applicant. It was the testimony of both that the marriage was consummated. One placed the consummation on the wedding night the other on night two. The appellant testified that no method of birth control had been used and stated that only one out of every one hundred sexual encounters results in children. The applicant testified that indeed condoms were used.

[31] The panel prefers the testimony of the applicant and will detail why it so does. During the hearing the appellant had answered questions without hesitation and fully. It was only on the question of consummation and birth control that the appellant's entire demeanour changed. He turned to the panel to ascertain if he had to answer the question. He said that he found these questions to be personal.

[32] The dramatic change in his demeanour leads the panel to find that answering such necessary questions was offensive to his sensibilities and hubris. The panel finds that on this matter he provided unreliable evidence. But for the manner in which his demeanour changed the panel would have found his statements on this matter to undermine the credibility it could give to his entire testimony, to undermine the panel's very finding regarding the genuineness of the marriage. But this was not the case.

[33] The panel finds that it has much credible evidence before it speaking to the genuineness of the marriage of appellant and applicant and accepts it to be such. The panel finds that the preponderance of evidence before it points to the genuineness of the marriage.

[34] Accordingly, the appeal 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.

"Hope Sealy"
Hope Sealy

6 December 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.