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 : VA5-00753
Client ID no. / N° ID client : 4431-2835

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)	**Appelant(s)**
IQBAL SINGH DHALIWAL	
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**
27 April 2006 Vancouver, BC	
Date of Decision	**Date de la Décision**
27 April 2006	
Panel	**Tribunal**
Kashi Mattu	
Appellant's Counsel	**Conseil de l'appelant(s)**
Massood Joomratty Barrister & Solicitor	
Minister's Counsel	**Conseil de l'intimé**
Ron Coldham	

Oral Reasons for Decision

[1] These are the reasons and decision of the Immigration Appeal Division in the appeal made by Iqbal Singh DHALIWAL (the "appellant"), from the refusal to approve the permanent resident visa application made by Amarjit Kaur GILL (the "applicant"), and Kuldeep Singh GILL and Narinder Singh GILL, her children, from India.

[2] The application was refused pursuant to section 4 of the *Immigration and Refugee Protection Act* (the "*Act*").[1] The details are set out in the refusal letter and the CAIPS notes. I will not reiterate them here.

[3] The test to be applied in these types of cases is a two-fold test that is, whether the marriage is genuine and whether the marriage was entered into primarily to gain any status or privilege under the *Act*. Given that marriage is a relationship between a husband and wife, I find that determination is a question of fact based on the past, present and future state of affairs of the relationship. The status or privilege that can be gained under the *Act* is for the applicant, and in this case her children, to gain permanent resident status in Canada. The onus of proof is on the appellant to show, on a balance of probabilities, that the applicant is not disqualified as a spouse.

[4] I have heard the testimony of the appellant and the applicant and I have reviewed the documents in the Record, as well as the additional documentation that was provided. I find it to be generally credible and trustworthy. I find, on a balance of probabilities, the evidence does demonstrate that this is a genuine spousal relationship. While it may be, and given the applicant's direct testimony, the primary purpose of this marriage was to gain a status or privilege and better life for her sons, I am prepared to make a finding that that is likely a large and primary factor as to why she may have chosen the appellant, although she did provide testimony that she had difficulty and expected continuing difficulty in finding another spouse, given she was divorced and had two teenaged children.

[5] With respect to the genuineness of the marriage, the appellant and applicant testified as to the genesis of the marriage and the motivations to enter into the marriage. I find that they were generally credible and the evidence was not such that it appeared to be a prepared story in that it was completely consistent.

---

[1] *Immigration and Refugee Protection Act* (the "*Act*"), S.C. 2001, c. 27.

[6] The appellant is widowed. His wife died shortly after he arrived in Canada and then, subsequently, when he was to marry his daughter and go back to India, he had some difficulties with his son. It is clear there are some family problems, sibling rivalry, with respect to inheritance and possibly time and money the appellant has spent on his daughters rather than his son with whom he was living in Canada.

[7] While the applicant in her documents and testimony indicated that her first knowledge and introduction to the appellant was in January 2004, there was no meeting until March 2004. There was consistency from the appellant's testimony that his first meeting and contact with the applicant was in March 2004. The appellant provided a credible and plausible explanation as to the fact that although he had agreed and finalized arrangements to marry the applicant he decided that he would not marry on that trip because the purpose of that trip had been to marry his daughter and to return the ashes of his wife and he did not think it was appropriate for him to marry on that same trip.

[8] There was contact subsequently and the marriage was arranged prior to the appellant returning to India. They were married about three days after he arrived in India and the appellant remained for about three months living with the applicant and her children in her parents' home with her brothers and sister-in-law and children. This is quite unusual in this community and culture but I find that there were satisfactory explanations with respect to why there was some secrecy with respect to this marriage, why the appellant did not take the applicant or her sons to his native village where he visited a few times or why he did not take the applicant and her sons to his daughter's homes in India while he was there.

[9] The appellant testified credibly and candidly that this type of marriage or remarriage at his age and circumstances, particularly with a bad relationship with his eldest son, only son, is not common and usual in his community and it is relatively embarrassing the circumstances, although it is accepted in a place such as Canada, and that he would deal with the issues when his wife and new children would come to Canada.

[10] The evidence with respect to contact and communication since the marriage was generally consistent. The witnesses demonstrated knowledge of each other that I would have expected in a genuine relationship.

[11] There were a few discrepancies in the evidence such as the exact names and number of children that were living at the applicant's home but, given that one child was born since the appellant came back to Canada and he had not met the child, I find that that is a reasonable explanation for the discrepancy. With respect to the discrepancy regarding whether the appellant actually spoke directly to his paternal aunt about this marriage and the details of it, I accept that he has not had direct communications. Although it is clear that the aunt has, in fact, met the applicant on a recent trip since the appellant came back to Canada and she clearly knows that he is married and she would likely have been told by her sons, in the community and in the circumstance of this case, I accept that the appellant has not had those direct discussions and also not had direct discussions with one of his daughters, but that she also knows of the marriage.

[12] Therefore, based on the evidence before me, although there is a significant age difference, given the particular circumstances of this case, I find that the concerns of the immigration officer and what likely would be the concerns of the Minister's counsel have been overcome and any other minor discrepancies are not of such a nature as would generally undermine the credibility of either of the witnesses.

[13] Based on the evidence before me, I find the appellant has met the onus of proof. While it is more likely that this marriage was primarily entered into to gain status or privilege under the *Act*, I find that the marriage, on a balance of probabilities and based on the evidence, is genuine.

[14] Therefore, 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.

"Kashi Mattu"
Kashi Mattu

15 June 2006
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.