

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 : VA5-01597
Client ID no. / N° ID client : 5460-8714

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

SANDEEP KAUR DHILLON

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**

June 30, 2006
Vancouver, BC

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

Date of Decision

June 30, 2006

Date de la Décision

Panel

Kashi Mattu

Tribunal

Appellant's Counsel

Massood Joomratty
Barrister & Solicitor

Conseil de l'appelant(s)

Minister's Counsel

Jeff Williamson

Conseil de l'intimé

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Oral Reasons for Decision

[1] These are the reasons and decision of the Immigration Appeal Division in the appeal made by Sandeep Kaur DHILLON (the “appellant”) from the refusal to approve the permanent resident visa application made by Tejwinder Singh KHERA (the “applicant”) from India.

[2] The application was refused pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the “*Regulations*”).¹ The details of the refusal are set out in the refusal letter and the CAIPS notes of the interviewing officer. I will not repeat them here but I will deal with some of the issues.

[3] The test to be applied in these types of cases, marriage cases, is a two-fold test; one, whether the marriage is genuine and, two, whether the marriage was entered into primarily to gain any status or privilege under the *Immigration and Refugee Protection Act* (the “*Act*”).² Because marriage is a relationship between a husband and wife, the determination of whether it is genuine is a question of fact based on the past, present and future state of affairs of that relationship. The status or privilege that can be gained under the *Act* is for the applicant to gain permanent resident status in Canada if he qualifies as a spouse. 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 reviewed the evidence, both in the Record and that which were subsequently submitted. I find that the evidence is not generally credible or trustworthy. The evidence does not disclose the development of a genuine spousal relationship. I will provide some examples.

[5] The appellant and applicant are not compatible. While it is not inconceivable that someone growing up in Canada could be compatible and marry a spouse that has been brought up in India, it is clear given the background, demeanour, life history and circumstances of this appellant and applicant they are such that there was no satisfactory explanation as to why they would enter into this relationship, other than for immigration purposes.

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

² *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[6] There were significant discrepancies and inconsistencies for which satisfactory explanations were not provided. For example, there were discrepancies with respect to how this relationship was even initiated, whether it was an arranged marriage or a relatively developed love marriage. The appellant would have this panel believe that she fell in love with this man. The applicant testified it was an arranged marriage with not only the appellant's cousin, Ravi, but her mother being involved in it prior to an alleged proposal. The appellant's testimony was wholly contradictory to the appellant's. Her testimony with respect to the circumstances of the proposal were clearly intended to mislead this panel.

[7] The applicant testified with respect to the type of individual that he would like as a wife and described her as simple and traditional and described the appellant as such a person. The appellant is not a traditional or simple individual by any means. She is a very independent, articulate and Westernized young lady that, of course, may have Indian values but is not, by any means the type of a woman that the applicant described as the woman that he would like to marry.

[8] The applicant had little, if any knowledge, of the details of the appellant at his interview. He also testified that he was advised by an agent to testify in a certain way. It is clear that the information in the application was misleading. The applicant and the appellant misled immigration officials and both the appellant and applicant attempted to mislead this panel at this hearing today. Such behaviour is not condoned. The applicant and appellant described the development of a relationship and, in fact, there was a whole story about this being a secret wedding from the appellant's father whom she fears might do something if he found out about this relationship, yet there were discrepancies as to who in the family knows about this marriage and who does not which undermined the witnesses' credibility and the story of it being a secret.

[9] Moreover, there were discrepancies in the evidence with respect to whether or not the appellant bothered to visit the applicant's shop that he runs in India. There were discrepancies in the evidence with respect to how long the appellant has had her most recent job. There were discrepancies in the evidence with respect to whether there has been any discussion about her changing her surname. Such discrepancies are not indicative of the intention for this to be a lasting relationship.

[10] Further, there was evidence of the appellant returning to India for a visit. I find that the purpose of that visit was more likely primarily to attend her cousin's wedding, not to visit a genuine spouse. Moreover, the appellant has not travelled back to India to visit the applicant since the refusal, however, the applicant has travelled to the United States, to London, England and to Paris, France and has not advised the applicant of those trips. This type of behaviour is clearly not indicative of a genuine spousal relationship.

[11] Based on the unexplained incompatibilities between the appellant and the applicant, the significant contradictions, discrepancies and inconsistencies in the evidence and lack of demonstrated knowledge of each other, I find that this marriage is not genuine.

[12] With respect to whether this marriage was entered into primarily to gain a status or privilege under the *Act* I find that that determination can be clearly made on the issues that I have already discussed. There was no credible evidence to rebut the immigration officer's initial assessment that this marriage was entered into primarily for immigration purposes. There were limited photographs of the appellant and applicant together as a couple. The appellant testified that they spent a significant period of time together and yet the documentary evidence does not support that and it is clear from the evidence that the appellant and applicant have misled immigration officials and this panel. Therefore, I find that this marriage was primarily entered into to bring a distant relative to Canada.

Conclusion

[13] The appellant has not met the onus of proof. Based on the evidence before me and on a balance of probabilities, I find this marriage is not genuine and was entered into primarily to gain a status or privilege under the *Act*.

[14] Therefore, this appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

“Kashi Mattu”

Kashi Mattu

1 August 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.