

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 : VA4-03079  
Client ID no. / N° ID client : 2883-4657

## Reasons and Decision – Motifs et décision

### *Sponsorship*

**Appellant(s)**

**JAGJIT SINGH MANGAT**

**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  
Vancouver, BC

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

**Date of Decision**

January 23, 2006

**Date de la Décision**

**Panel**

Kim Workun

**Tribunal**

**Appellant's Counsel**

Massood Joomratty

**Conseil de l'appelant(s)**

**Minister's Counsel**

Rick Brummer

**Conseil de l'intimé**

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## Reasons for Decision

[1] Jagjit Singh MANGAT (the “appellant”) appeals the refusal of the sponsored application for a permanent resident visa in Canada for Harpreet Kaur SEKHON (MANGAT) (the “applicant”) from India. The application was refused because, in the opinion of the visa officer, the requirements of subsection 12(1) of the *Immigration and Refugee Protection Act, 2001* (the “Act”)<sup>1</sup> were not met in that the applicant is a person caught by the exclusionary provision of section 4 of the *Immigration and Refugee Protection Regulations, 2002* (the “Regulations”).<sup>2</sup> Section 4 of the *Regulations* 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.

[2] In order for a foreign national to be caught 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*. In order to succeed on appeal, the appellant need only establish one of the prongs of the test has not been met. The onus is on an appellant to demonstrate that the applicant is not caught by the excluding section of the *Regulations*.

[3] At issue in this case is whether the applicant falls within the class of persons described in section 4 of the *Regulations*.

[4] The refusal letter<sup>3</sup> articulates the visa officer's concerns with respect to this application. The visa officer concluded the couple was incompatible with respect to their age, previous marital history and education. The visa officer was not satisfied with evidence of the couple's contact in the post-marriage period. Finally, the visa officer had concerns with the applicant's credibility during the course of her interview. The application was refused.

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>2</sup> *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

<sup>3</sup> Record, pp. 69-73.

[5] The appellant and applicant testified at the hearing. I have considered their testimony, materials in the Record, additional material tendered at hearing<sup>4</sup> and submissions of counsel, including written submissions received from counsel for the appellant in the post-hearing period. Counsel for the respondent filed no written submissions in response.

[6] The appellant has met the onus on him of establishing, on a preponderance of reliable evidence, that the marriage is genuine. Moreover, I conclude reliable evidence establishes the marriage was not entered into primarily for the purpose of acquiring any status or privilege under the *Act*.

[7] As brief background, the appellant became a permanent resident of Canada in 1993. He previously married and sponsored a wife from India, however, that marriage lasted only briefly, ending by divorce January 1998.<sup>5</sup> Apparently, the appellant's former spouse left him shortly after arriving in Canada. During this period, the appellant had a drinking problem. The appellant testified that he continued drinking notwithstanding the disapproval of his family, until 2002 when his family finally "insisted" that he stop drinking, get married and settle down. To that end, a marriage was arranged as between the appellant and his brother's wife's sister. The appellant testified that he had met the applicant previously briefly at the time of his brother's marriage to the applicant's sister. The respective families, however, did not contemplate the present marriage because the appellant was still drinking excessively and was not seen as a suitable match at that time. In any event, the couple married 3 March 2004 and remained together for a one-month period. The appellant returned to visit the applicant in 2005. The witnesses testified that they maintain contact primarily by telephone.

[8] As noted by the visa officer, there is an age difference in favor of the male applicant. It is also apparent that the couple's marital history is dissimilar as is their educational background. At hearing, however, the witnesses adequately addressed the visa officer's concerns in these areas. I note that the applicant was 34 years old at the time of the marriage. The witnesses explained that, given her age, her marriage prospects were limited. As a result, the appellant's previous marital history was not of great concern. Similarly, the age and educational difference

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<sup>4</sup> Exhibits A-1, A-2.

<sup>5</sup> Record, p. 26, Q. 17.

were of less significance to the family. As pointed out by appellant counsel in submissions, there is evidence that the families knew each other as a result of the marriage between the appellant's brother and applicant's sister. The appellant's brother's marriage is a successful one and he has a child with his wife, the applicant's sister. The appellant's brother and sister-in-law were present at the hearing. I am satisfied that the compatibility issues, as raised in the refusal, have been addressed at hearing.

[9] In looking to the couple's degree of contact in the post-marriage period, there is sufficient documentary material reflecting the couple's contact by telephone in that period. While respondent counsel submits that it is just as likely that the telephone receipts reflect contact between the applicant and her sister, residing with her husband and the appellant in Canada, I conclude that the receipts more than likely reflect contact between the couple. I say this as a result of my impressions of the witnesses at hearing and their combined testimony demonstrating their level of knowledge of each other in personal areas. The witnesses were questioned at length with respect to their knowledge of the other's routines and activities in their respective countries of residence. Many of the questions were specific. The questions elicited highly detailed responses in particular areas. The responses were reasonably consistent throughout the hearing. The only area raising some concern at hearing was the area surrounding the appellant's employment routines in Canada. Both witnesses initially testified that the appellant held steady and full-time employment in the months preceding the appeal hearing. When questioned further, the appellant admitted that his hours of work in the months preceding the appeal hearing were, in fact, limited and that he spent much of his time at home playing with his brother's kids and going about his leisure activities. The applicant, initially, did not appear to be aware of his limited work activities and when cross-examined in this area, was evasive, eventually indicating that he only works when work is available. She was unable to address her clear previous and incorrect response that the appellant worked long hours every day, except Sunday. This unresolved discrepancy in the evidence remains troublesome to the panel. Against this single difficulty in the evidence, however, the panel notes the consistency in almost every other area. The witnesses were aware of each other's social contacts, general activities including pastimes, personal backgrounds, current debts and previous relationship histories including the appellant's knowledge of the applicant's previous verbal engagement to another individual.

[10] The balance of credible evidence in this case supports the conclusion that the marriage is a genuine one. The appellant delivered his testimony in a forthright and spontaneous manner as did the applicant, but for her deficient testimony in the area surrounding the appellant's level of work in the months preceding the appeal hearing. While true that the appellant has limited assets in Canada and has a "spotted" personal history, including his previous unsuccessful marriage and previous drinking history, I conclude that the applicant and appellant have *bona fide* intentions with respect to the relationship. I note the appellant's visit to the applicant in India notwithstanding his lack of funds and need to obtain a personal loan so as to effect travel. I note his purchases of gifts, including clothing, for the applicant. These factors, taken together with the testimony at hearing addressing the couple's knowledge of each other in varied and personal areas, supports the conclusion that the marriage is a genuine one.

[11] With respect to the motivation for the marriage, I note the applicant's candid testimony that she wished to join her mother and sister in Canada. This desire, no doubt, played a role in the applicant's decision to marry the appellant. At the same time, I cannot conclude, on the basis of the evidence before me, that it was the primary motivation. Again, I note the pre-existing family relationship between the appellant and applicant by reason of their respective siblings' marriage to each other. I note that the respective families appear to be supportive of the present union and that the conduct of the appellant and applicant in the post-marriage period reflects a commitment to the relationship and the fact that it was, likely, entered into for a legitimate spousal purpose. In this regard, I note the couple's consistent testimony regarding their future plans, including employment and family planning, and the continuing family support for the couple in terms of their residency together in Canada. I conclude that the marriage was not entered into primarily for the purpose of acquiring any status or privilege under the *Act*.

## **Conclusion**

[12] The applicant, Harpreet Kaur SEKHON (MANGAT), is not caught by the exclusionary provision as articulated in section 4 of the *Regulations*. The appeal of Jagjit Singh MANGAT 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.

\_\_\_\_\_  
"Kim Workun"

Kim Workun

\_\_\_\_\_  
23 January 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.