

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 : VA4-01485
Client ID no. / N° ID client : 2875-7341

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

HARJINDER SINGH RANA

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**

January 27, 2006
February 1, 2006
Vancouver, BC

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

Date of Decision

February 1, 2006

Date de la Décision

Panel

Margaret Ostrowski

Tribunal

Appellant's Counsel

Massood Joomratty

Conseil de l'appelant(s)

Minister's Counsel

David Macdonald

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, HARJINDER SINGH RANA appeals from a refusal to issue a permanent resident visa to JASVIR KAUR RANA (the “applicant”) as his spouse pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the “Regulations”).¹

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

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

1. the parties are incompatible in terms of age, education and marital background;
2. lack of bona fides of the marriage – married the day after meeting each other, vagueness and contradictions re marriage arrangements, no engagement ceremony, appellant’s parents and sisters did not attend the wedding, no photos relevant to the outings, applicant could not remember date of departure of appellant from India, vagueness re 2003 visit, 18 month delay in sponsoring of applicant;
3. lack of contact and knowledge – lack of knowledge of basic aspects of appellant, knowledge of only one previous marriage and divorce and lack of details of the marriage, lack of communication on a regular basis;
4. lack of credibility of the applicant – answers were contrived and made-up during the course of the interview.

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.

[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.

[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. The burden of proof on a balance of probabilities rests with the appellant.

Background and Relevant Evidence

[6] The appellant is a 35 year old hotel auditor who is working as a baggage handler at the airport. He came to Canada from India in March, 1993 sponsored by his first wife whom he did not get along with partly because she was a smoker and they were subsequently divorced. He is now a Canadian citizen. He has sponsored several members of his family including his parents to come to Canada. He married a second time on October 16, 1998 and divorced that wife on March 26, 2002. He could not remember her first name. He said that she changed when she came to Canada and started going out on her own without telling him. He has completed three years of college but has two associate degrees by correspondence – hotel management and public administration – from a university in Idaho. He had been employed at a hotel in Vancouver as a hotel auditor but was fired for falling asleep on the job. There is a copy of a letter in evidence from the Fraser Health Authority documenting a concussion and other problems for the appellant and a hospital admission date of June 22 and a discharge date of June 26 (no year indicated on that document). The applicant testified that the appellant fell from a cherry tree in 2004 and has had more memory problems and depression since that time. The appellant stated that he has had problems since birth with memory and anxiety but was not diagnosed until 2000. He says that he takes eleven types of pills twice a day and has been taking medication for about five years. He has been helping his brother who is brain injured and visits him five or six times per week and repaid his brother's social assistance debt. He is not close with his parents in Canada or his family in India. He lives with the applicant's sister. He has taken a modeling course and worked as an extra in a few movies.

[7] There is a letter in evidence from a Canadian doctor stating that the appellant suffers from mild to moderately severe obstructive sleep apnea and states that he will require lifelong treatment with CPAP (continuous positive airway pressure).

[8] The applicant is a 26 year old housewife who resides in her home of birth in India with her mother, some siblings and extended family. Her father was a farmer ten years older than her mother but he is now deceased. She has grade 12 education and on the advice of her husband, has recently completed a parlour course paid for by her husband so that she can work in the hairdressing business in Canada. There is a copy of a letter from doctor in India dated June 16, 2004 stating that the applicant is suffering from depressive psychosis and is under his treatment at that time. She confirmed in her testimony that she did not know that the appellant had been married twice before. She said that the appellant likes the fact that she is tall and likes her voice. She is not concerned about marriage with a man with medical problems because “everyone will get medical problems”. She is not concerned about the age difference as he looks about the same age as her. She likes him because he is hardworking, not into drugs, and has a quiet nature. She said that it is getting hard for her to live in her village as the villagers are wondering why she is not with her husband.

[9] In the CAIPS notes,³ the applicant states that the appellant came back to visit her for a month in 2003 but was not sure of the dates – March or April. At the interview, the applicant did not have answers to quite a few question about her husband including where he got his degree, what he studied in, details about his car, details about his brother’s injury, his friends, and his day to day routine.

[10] The appellant testified that his doctor advised him to get married but he could not find a suitable mate in Canada. The parties were introduced on the phone by the applicant’s sister and talked for six or seven months on the phone. The appellant stated that he first met his wife in person on November 13, 2002 at her aunt’s house in India. They were married in India on November 17, 2002 and about 200 to 300 persons were in attendance.

³ CAIPS - Computer Assisted Immigration Processing System.

[11] The appellant and applicant have plans to set up a hair dressing business with the applicant's sister who is a hairdresser and then start a family.

[12] The applicant testified that the application for sponsorship was delayed because a passport had to be applied for for her and was not issued until June 2003. There was a further delay. She further stated that there were some mistakes on her application questionnaire. She said that at the interview, she was very upset and stressed and she had been waiting for three hours. She said that there were more things that she found out about her husband after the marriage but they had discussed that they were not going to talk about their previous lives.

[13] The applicant stated that she had two sisters in Canada both of whom were sponsored. One stayed with her husband for about a year, and the other is still with her husband after four years.

[14] There are phone cards and telephone invoices in evidence as well as cards, letters and Western Union receipts for funds sent.

[15] Counsel for the appellant submitted that, *inter alia*, this is a hearing *de novo* and that the CAIPS notes are not a verbatim record. He stated that the applicant is a girl from a small Indian village and the relationship has developed. He further stated that it was credible that the appellant couldn't find a spouse here because of his personality and medical conditions.

[16] Counsel for the Minister submitted, *inter alia*, that in a *de novo* hearing, the panel can take regard to the visa officer notes – the interview was two years after the marriage and there are big problems with it. He further stated that if this was a genuine marriage, there should have been more care, caution, and forthrightness by the appellant with the applicant's family and the middle person. He found it surprising that no one remembered the date of the appellant's second trip to India. He said that there were discrepancies regarding discussions of having children and when the brother first met the appellant.

Analysis

[17] 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*

[18] The panel has reviewed the concerns of the visa officer and of the Minister's counsel and after a consideration of the evidence heard and supplied at the hearing and the submissions made by both counsel, the panel finds as follows:

1. that although there are some incompatibilities that might, *prima facie*, indicate a marriage of convenience such as the fact that the wife is almost ten years younger than the husband, the incompatibilities that are a hallmark of a traditional marriage might be less observed when one of the parties has been living in Canada for more than ten years and one might expect, be "canadianized" with respect to those hallmarks. For instance the fact that the appellant is divorced and the applicant never been married is not an incompatibility issue in Canada and therefore could understandably not be an issue for the appellant and his family. The appellant's college education might be attractive to the applicant's family. The applicant did indeed say that she wanted a "smart" man. The panel was convinced by the applicant's testimony that the age difference was not an issue, especially in light of the fact that her mother was ten years younger than her father. The panel finds that it is credible that the applicant was shocked when she found out that the appellant had been married not once before, but twice. This would in fact be in keeping with this marriage being genuine. She would not care about another previous marriage if in fact, she had no intention to live with her husband. The panel attributes to the appellant poor judgment or perhaps wanting to make himself look better than he was as he was not successful in finding a wife in Canada, in not telling his wife about his previous life.
2. the panel finds the applicant to be a generally credible witness and accepts her testimony regarding the genuineness of the marriage. She did testify that she was stressed and anxious at the interview. The letter from her doctor dated within two

- weeks of the refusal letter that she was in a depressive psychosis is corroborative of her anxious personality.
3. the appellant seems to have some problems with judgment. The panel is in agreement with the Minister's counsel that there are some difficulties here with the applicant's answers at the interview and the fact that there was a lack of forthrightness by the appellant in regards to his past and in particular his two not one previous marriages. The panel noted that the appellant was of the misguided view that withholding information is not a type of dishonesty. The panel finds that the applicant's interview problems were caused mainly by the appellant's unwillingness to share information about himself with the applicant and is not an indication of a non-genuine marriage. The panel is of the view that both parties are anxious individuals and that the appellant has not told the applicant very much about himself because he is concerned and perhaps insecure that she might not have agreed to marry him or might not stay with him. The insecurity resulting in the lack of forthrightness has in fact created more problems for him
 4. in other circumstances, the panel would find that the lack of forthrightness by the appellant about his past to his wife and her family, the lack of details about the visit in 2003, the delay in the application for sponsorship, discrepancies in their testimonies to be *indicia* of a lack of genuineness of the marriage and intention. In the circumstances here, the panel has given some weigh to the medical disorders of the appellant – his memory problems, his anxiety, his depression, his sleep apnea – and finds that these factors are significant enough to tip the balance in favour of the appellant. The medical document in evidence confirmed sleep apnea, the appellant is living with his sister-in-law so that he has help with his medical condition, and at the hearing, the appellant exhibited the demeanour of a person with medical issues.
 5. There were sufficient letters, cards, Western Union receipts and telephone invoices in evidence to indicate marital support and communication between the appellant and the applicant.

[19] Accordingly, the relevant concerns of the visa officer of the genuineness of the marriage and the purpose of the marriage were met at the hearing by the evidence from and demeanour of the appellant and the testimony of the applicant and the documents submitted. 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 was not entered into primarily for the purpose of acquiring any status or privilege under the *Act*.

Decision

[20] The applicant, JASVIR KAUR RAMA is not excluded by the provisions of section 4 of the *Regulations*. The appeal of HARJINDER SINGH RANA is allowed.

[Edited for clarity, 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

8 February 2006

Date (day/month/year)

<p>Judicial review – Under section 72 of the <i>Immigration and Refugee Protection Act</i>, 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.</p>
--