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 : VA6-00379
Client ID no. / N° ID client : 4181-2628

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)	**Appelant(s)**
GURSHINDER SINGH AULAKH	
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**
25 April 2007 Vancouver, BC	
Date of Decision	**Date de la Décision**
15 May 2007	
Panel	**Tribunal**
Mojdeh Shahriari	
Appellant's Counsel	**Conseil de l'appelant(s)**
Massood Joomratty Barrister & Solicitor	
Designated Representative	**Représentant désigné**
Nil	
Minister's Counsel	**Conseil de l'intimé**
Jeff Williamson	

Reasons for Decision

[1] These are the reasons for the decision of the Immigration Appeal Division (the "IAD") pertaining to the appeal filed pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act* (the "*IRPA*")[1] by Gurshinder Singh AULAKH (the "Appellant"), whose sponsorship application for the permanent residency of his spouse, Gurpreet Kaur AULAKH (the "Applicant") was refused by M. Keshub (the "Visa Officer") in a letter dated January 16, 2005 (the "Refusal").[2]

BACKGROUND

[2] The Appellant is a twenty-six year old man who was born in India. The Appellant became a permanent resident of Canada on May 24, 2003. The Applicant is a twenty-four year old woman; a resident and citizen of India.[3]

[3] The Appellant and the Applicant both testified that they met each other for the first time on December 19, 2004. The Appellant and the Applicant were married in India on December 28, 2004 through an arranged marriage (the "Marriage"). Subsequent to the Marriage, the Appellant returned to Canada on January 3, 2005.[4] The Appellant sponsored the Applicant with a lock-in-date of May 19, 2005. The Visa Officer interviewed the Applicant on January 16, 2005 (the "Interview")[5] leading to the Refusal, which is the subject of this appeal.

[4] The Appellant and the Applicant testified at the IAD hearing. I have considered their testimonies; materials in the Appeal Record; additional material tendered by the Appellant's counsel into evidence; and, submissions provided by both counsel.

ISSUE

[5] The Visa Officer did not challenge the legal validity of the marriage. The Visa Officer refused the application for the permanent residency of the Applicant because, in the opinion of the Visa Officer, the requirements of subsection 12(1) of the *IRPA* were not met in that the

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1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
2 Appeal Record, pages 77-83.
3 Appeal Record, page 2.
4 Appeal Record, pages 18-19.
5 Appeal Record, Interview notes, pages 72-75.

Applicant was found to be caught by the exclusionary provision of section 4 of the *Immigration and Refugee Regulations* (the "*Regulations*").[6] 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 ... of a person if the marriage ... is not genuine and was entered into primarily for the purpose of acquiring any status of privilege under the Act.

[6] 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 *IRPA*. In order to succeed on appeal, the Appellant need only negate one of the prongs of the test set out in section 4 of the *Regulations*.

[7] The issue, therefore, which arises for determination on this appeal, is whether or not the Applicant is caught by section 4 of the *Regulations*. The onus is on the Appellant to demonstrate that on a balance of probabilities, the Applicant is not excluded by section 4 of the *Regulations*.

DECISION

[8] Based on the totality of the evidence before me, I find that the Applicant is excluded from consideration as the Appellant's spouse by virtue of section 4 of the *Regulations*. I find that the Appellant has failed to establish on a balance of probabilities that the Marriage is genuine; or, that it was not entered into primarily for the purposes of acquiring a status or privilege under the *IRPA*. In particular, I find that there are a plethora of unresolved discrepancies in the evidence with respect to the material facts at issue, tantamount to the Appellant's failure to meet his burden of proof for this case.

ANALYSIS

[9] The concerns of the Visa Officer are not stated in the Refusal. The said concerns can be ascertained from the Computer Assisted Immigration Processing System Notes (the "CAIPS Notes").[7] It was open to the Appellant to provide trustworthy evidence at the IAD hearing; a *de novo* hearing, to rebut the concerns of the Visa Officer. However, it is my finding that the

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

7 Appeal Record, pages 89-93.

Appellant failed to discharge his burden of proof in that the evidence in its totality contains numerous unresolved discrepancies with respect to key factors in this appeal.

[10] I concur with the Appellant's counsel that any concerns with respect to incompatibility between the Appellant and the Applicant were adequately addressed at the IAD. I do find that the Appellant and the Applicant share the same ethnic, cultural, and religion background. However, compatibility alone is insufficient to establish on balance that a given marriage such as this, namely an arranged marriage, is a genuine one; or that it has not been entered into primarily for the Applicant to acquire a status under the *IRPA*.

[11] I have also taken into consideration, the material in the evidence pertaining to communication between the Appellant and the Applicant.[8] However, the evidence does not establish on balance that the record of telephone bills in the evidence reflect calls necessarily between the Appellant and the Applicant. It turns out that the number reflected in the admitted phone bills illustrate a number in Vancouver that the Applicant has called to since 2005.[9] This number belongs to the Applicant's cousin. The Appellant was not able to provide any satisfactory explanation for this. When confronted directly with the question of whether he was staying at the Applicant's cousin's place when in Vancouver, he affirmed, but was not able to explain why he never mentioned it when previously asked where he stayed in Vancouver on his trips between Vancouver and Toronto as a truck driver. As such, I find that it is more likely, based on this discrepancy, that the said records simply manifest an ongoing relationship between the Applicant and her cousin in Canada.

[12] A major contradiction in the evidence, for which no satisfactory explanation was provided to me, arose at the IAD with respect to a significant event leading to the Marriage. The Appellant claimed that the Applicant and he exchanged rings at their first meeting on December 19, 2004. He further elaborated that the rings were exchanged after they sat and talked to each other first. The Appellant also testified that they had never given each other any jewellery except for the rings and except for December 19, 2004. The Applicant, on the other hand, told me a completely different story. According to her, the Appellant and the Applicant exchanged rings on the day of the Marriage. In my view, this is a significant discrepancy in the evidence as it is not plausible, absent evidence to establish otherwise, that the Appellant and the Applicant

8 Exhibit A-1, pages 1-20; Exhibit A-2.
9 Exhibit A-1, pages 13-20.

have different versions of an important event such as their exchange of rings if the spousal relationship was genuine.

[13] Without getting into detail of each and every discrepancy that arose at the hearing, I note that there is discrepancy with respect to many important events before and after the Marriage. For example, there is discrepancy in the evidence with respect to the village where the Appellant and the Applicant allegedly met each other on December 19, 2004. The Appellant's testimony contradicted the information in the immigration forms. In cross-examination, the Appellant admitted that he was wrong with respect to this matter. However, no satisfactory explanation was provided as to why he made a mistake with respect to something as important as to the location where he met his wife for the first time.

[14] Also troubling to me is the Applicant's lack of adequate knowledge of the Appellant's life circumstances even at the time of the IAD hearing; three years after the Marriage. For example, the Applicant is not aware that the Appellant has relatives in the United States with whom the Appellant communicates; or, perhaps even more importantly is unaware of the particulars of his work. Once again, absent evidence to establish otherwise; and juxtaposed with my earlier finding that the evidence does not establish ongoing communication between the Appellant and the Applicant, I find that the Appellant and the Applicant are not in contact with each other as a husband and wife would be.

[15] Based on the foregoing, it is my decision that the *indicia* of a genuine marriage is significantly lacking in this case. I find that the Appellant has failed to discharge his burden of proof in establishing that the Marriage is genuine; or, that it was not entered into primarily to provide the Applicant with immigration status to Canada. With respect to the second prong of the applicable test in this case, in addition to the reasons above, I have also taken into account the fact that the Applicant has family members in Canada such as a cousin with whom she maintains ongoing contact. Based on the totality of the evidence, I find that it is more likely than not that the Applicant's marriage to the Appellant was motivated primarily with acquiring immigration status in Canada in order for her to join other family members in Canada.

CONCLUSION

[16] In conclusion, I find that based on the totality of the evidence available to me, the Marriage is not genuine and was entered into primarily for the purpose of acquiring a status or privilege under the *IRPA.* As such, the Applicant is not a member of family class and I dismiss the appeal of Gurshinder Singh AULAKH.

NOTICE OF DECISION

The appeal is dismissed.

"Mojdeh Shahriari"
Mojdeh Shahriari

15 May 2007
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.