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Reasons and Decision – Motifs et décision

Sponsorship Appeal

Appellant(s)

Satwant Kaur CHEEMA

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 13, 2007
Vancouver, BC

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

Date of Decision

August 7, 2007

Date de la Décision

Panel

Diane Fecteau

Tribunal

Appellant's Counsel

Massood Joomratty
(Barrister and Solicitor)

Conseil de l'appelant(s)

Minister's Counsel

Jeff Williamson

Conseil de l'intimé

Reasons for Decision

[1] These are the reasons for the decision in the appeal pursuant to section 63(1) of the *Immigration and Refugee Protection Act (IRPA)* of **Satwant Kaur CHEEMA** (the appellant) from the refusal of the sponsored application for a permanent resident visa of her spouse, **Balwir Singh CHEEMA** (the applicant), a citizen of India.

[2] The applicant's sponsored application for a permanent resident visa was refused by way of a letter dated March 23, 2006. The basis of the refusal was that the relationship is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the *IRPA*, as described in section 4 of the *Immigration and Refugee Protection Regulations (IRPR)*:

“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.”

[3] The appellant and the applicant testified.

Background

[4] The appellant is a 39-year-old divorcee permanent resident who landed in Canada on May 11, 1988 as a dependant child. She has two sons from her first marriage. In 2005, she decided to get married again and went to India to find a husband. Her marriage was arranged by her brother who lives in India. She works as a seamstress in a curtain factory.

[5] The applicant is a 33-year-old citizen of India. The appellant works on his father's farm and has completed grade 7. This is his first marriage.

[6] In spite of the visa officer's refusal, the appellant and the applicant maintain that their marriage is genuine and once in Canada, the applicant will live with the appellant.

Analysis

[7] The onus rests on the appellant to establish that, on a balance of probabilities, her marriage to the applicant is genuine, or that it was not entered into primarily to acquire a status or privilege in Canada.

[8] The legality of the marriage was not challenged. Therefore, the tribunal will not examine this issue. The tribunal pointed out during the hearing that even though a marriage certificate was submitted to the visa officer, no such document was produced in the Appeal record. The appellant stated that she had an original at home and could produce it.

[9] In assessing the genuineness of a marriage, a broad range of factors may be considered, but not limited to, such as the cultural and religious background, how the couple met and how the relationship evolved, the duration of the relationship and the amount of time spent together prior to the wedding, the nature of the engagement and/or wedding ceremony, the intent of the parties to the marriage, the evidence of ongoing contact and communication before and after the marriage, the spouse's conduct after the wedding, the level of knowledge of each other's relationship histories, the provision of financial support, the partners' families knowledge of and involvement in the relationship, the knowledge of and contact with extended families of the parties, the level of knowledge about each other's daily lives and plans and arrangements for the future. These factors are not exhaustive, and the weight assigned to them will vary according to the circumstances of each case.

[10] The circumstances surrounding the appellant's marriage lead the tribunal to conclude that it was not entered into, in order to form a lasting spousal relationship. As well, the tribunal did not find the appellant and the applicant credible. There were many discrepancies and contradictions on important points which are not compatible with a genuine marital relationship and for which no satisfactory explanations were provided.

[11] After carefully considering all of the evidence, the tribunal decided to dismiss the appeal for the following reasons.

[12] According to the visa officer, the selection of the bride and groom was made contrary to the usual norms and customs in Punjab, that normally a young man does not get married to a woman older than him, divorced and with two children; although unusual, the tribunal is of the opinion that these grounds alone are insufficient to justify a refusal, but when combined with the hastiness of the celebration of the marriage and the numerous contradictions on important points between the testimonies, the tribunal concluded that the appellant has not demonstrated that her marriage is genuine or that it was not entered into primarily to acquire a status or privilege in Canada.

[13] The tribunal noted that this marriage was arranged in haste in India by the appellant's brother and no other match was considered. According to the appellant, the marriage talks started in June 2005, according to the applicant, the talks started on July 16, 2005. According to her testimony, the groom was well-known to the appellant's family; this situation would explain why no in depth check-up were done on him. She arrived in India on July 15, 2005¹ and on July 16, 2005, she met for the first time her husband to be and his family at a restaurant for lunch. During the evening, the applicant's father phoned the appellant's brother to inform him that they were agreeable to the match and they fixed the engagement date for the following day on July 17. The next day, they met again at the restaurant where the applicant offered a ring to the appellant and a date was fixed for the marriage.

[14] The appellant explained that she had a short moment to talk with the applicant and according to her, he knew of the age difference, that she was divorced and had two children from her previous marriage. The appellant had no issue with the fact that her husband was younger than her even though, she stated to the Immigration Officer that she learned about his age after she agreed to marry him. Asked what made her believe that this marriage will be long lasting, the appellant stated that she has experienced life enough to be able to judge. The tribunal notes that the appellant explained the failure of her first marriage by the fact that she never got along with her first husband and never developed an understanding with him.

[15] Asked why the wedding was arranged in such a hurry, the appellant justified it by the fact that since her trip was of one month duration, she did not have much time and they wanted to be together for the longest period possible.

[16] Considering that the appellant went through a divorce, that her children had not met her second husband prior to their wedding, the tribunal does not find the appellant's explanations sufficient to justify the haste into which she married the applicant and finds that situation is not compatible with a *bona fide* relationship.

[17] The appellant went to India in February 2006 in order to attend an interview with the Immigration Officer and went back, in July 2006, with her two sons, in order for them to meet with

¹ Exhibit A-2, page 10.

her husband and provided photographs to that effect. During this trip, they visited relatives and visited different locations and tourist sites.

[18] However, in spite of these trips and alleged weekly telephone calls, when questioned on important issues, the appellant and the applicant contradicted themselves and were caught inventing replies which undermine their credibility and the genuineness of their marriage.

[19] Her husband being a baptized Sikh, the appellant stated that she was planning to be baptized once her husband would be in Canada, that she had not discussed as yet this issue with him and that it would be up to her sons to decide if they want to be baptized; according to the applicant's testimony, this issue was already discussed and settled for his wife and her two sons. The tribunal concludes that this is an important contradiction and is not compatible with a genuine marital relationship where the spouses are communicating on a weekly basis for a period of two years.

[20] The appellant explained that she has two brothers living in Canada who were not invited to her wedding. Since her divorce, they stopped talking to her and as of 1996, she has not visited or talked to them; according to the applicant, her two brothers could not come to their wedding because it was planned within a period of two days and they could not make it; furthermore he added that the appellant visited her brothers every two to three weeks and they talked about it during their weekly phone calls. The tribunal concluded that it was clear from his explanations that the applicant was not at all aware of the problems between the appellant and her brothers, and that this is an important fact in the appellant's life that one would normally expect a husband to be aware of. Yet, when questioned about it, the applicant went ahead providing information to the tribunal that was contradictory. This is fatal to his testimony, as it is clear that the appellant or the applicant was prepared to say anything. This situation undermines the credibility and genuineness of their marriage.

[21] According to the appellant, during her second visit to India, her husband took her to visit the farm and she reported that on the farm, there was only a one room building that was used when they were irrigating the land. She described this room as having electricity, but no stove and a pump motor for water and no washroom. But, according to the applicant, he never took his wife on

the farm, he only went with her two sons and there is no one room building on the farmland. In cross-examination, he stated that there is a “tub” and a hut on the farmland.

[22] This contradiction is not compatible with a genuine marital relationship. The appellant’s counsel tried to justify this situation by stating that they were both talking about the same building, but the fact remained that, according to the applicant, he never took her on the farm and if so, then the tribunal is of the opinion that the appellant went ahead describing to the tribunal a building that she never saw. Thus, this situation undermines their credibility.

[23] The tribunal notes that when questioned about her in-laws, the appellant did not appear to have a very good knowledge of them; for example, there were also discrepancies with regard to the applicant’s sister’s level of education, the appellant stated that her sister-in-law did not complete her level 2+ and that the family had no plans at the moment to get her married. The applicant stated that she did complete her level 2+ of education and the family was actively planning to have her married.

[24] The appellant explained that during her second trip, she went to visit relatives who live in Chandigarh in an ultra modern house where they stayed for two days; asked to identify these persons, the appellant provided different names than the applicant. She stated Baldev Kaur and her husband Gulder Singh; when the applicant identified them, he stated Zuk Dev Kaur and her husband Baldev Singh.

[25] The tribunal concluded that these discrepancies are not indicative of a genuine marital relationship and combined with the selection of the bride and groom contrary to the usual norms and customs in Punjab and the circumstances of this arranged marriage, the tribunal concluded that the appellant has not demonstrated, on a balance of probabilities, that her relationship with the applicant is *bona fide*. On the contrary, the tribunal concludes that this marriage was organized in order to provide the applicant a status in Canada and that they have no intention of living together.

Conclusion

[26] The appellant has not established, on the balance of probabilities, that her relationship is genuine or was not entered into primarily for the purpose of acquiring any status or privilege under the *IRPR*.

[27] I, therefore, find that the visa officer's decision is well-founded in law. The appeal is dismissed.

NOTICE OF DECISION

The appeal is **dismissed**.

Diane Fecteau

Diane Fecteau

August 7, 2007

Date

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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.