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 : VA6-00051
Client ID no. / N° ID client : 2317-4432

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)	**Appelant(s)**
TARSEM SINGH DHILLON	
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**
22 May 2007 Vancouver, BC	
Date of Decision	**Date de la Décision**
22 May 2007 (rendered orally) 11 June 2007 (written decision)	
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**
Steve Bulmer	

Oral Reasons for Decision

[1] These are the oral reasons for the decision of the Immigration Appeal Division pertaining to the appeal filed pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act,* (the "*IRPA*"),[1] by Tarsem Singh Dhillon (the "Appellant") whose sponsorship application for the permanent residency of his spouse, Kuldip Kaur Dhillon (the "Applicant") was refused by Sarasa Nair (the "Visa Officer") in a letter dated December 13, 2005 (the "Refusal").

[2] By way of background, the Appellant is a 23-year-old man, a Canadian citizen, who was born in Indian and became a landed immigrant (now referred to as a permanent resident) in Canada on March 23, 1986. The Appellant lives with his parents and one sister and is currently working as a tutor. The Applicant is a 25-year-old woman, a citizen and resident of India. This is the first marriage for both the Appellant and the Applicant.

[3] Both the Appellant and the Applicant testified that they first met each other in February 2003 during festivities leading to the Appellant's cousin's wedding. Both the Appellant and the Applicant liked each other at that time but their respective parents did not agree to them getting married due to their young age at the time. Instead, a small ceremony was held at that time in India to allow the Appellant and the Applicant to continue with their communication in accordance with their shared traditions and religion.

[4] After the Appellant returned to Canada on or about March 27, 2003 the Appellant and the Applicant continued their relationship primarily with telephone conversations, which ultimately led to their marriage in India on February 2, 2005.

[5] Subsequent to the marriage the Appellant and the Applicant lived together in India for about seven days at which time the Appellant returned to Canada due to his ill health. The Appellant then filed a sponsorship application for the permanent residency of the Applicant, which sponsorship applications lock-in date was June 27, 2005. The Applicant was interviewed by the Visa Officer on November 2, 2005 which led to the Refusal now before me for determination.

---

[1] *Immigration and Refugee Protection Act,* S.C. 2001, c. 27.

[6] Since the marriage the Appellant has made a subsequent trip to India on October 2006 and has spent time with the Applicant there for about two months.

[7] Both the Appellant and the Applicant provided oral testimony at today's hearing. I have carefully considered the totality of the evidence in front of me, including the materials in the Appeal Record, additional documents tendered into evidence as Exhibit A-1, and testimony of the Appellant and the Applicant.

[8] The Visa Officer determined that the Applicant is not the Appellant spouse for the purposes of Canadian Immigration law. In particular, the Visa Officer disqualified the Applicant as the Appellant spouse under section 4 of the *Immigration and Refugee Protection Regulations* (the "*Regulations*").[2] Section 4 of the *Regulations* reads as follows:

> For the purposes of these regulations, no foreign national shall be considered a spouse of a person if the marriage is not genuine and if it was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[9] The issue which arises for determination on this appeal is whether or not the Applicant is excluded from consideration as the Appellant spouse by reason of section 4 of the *Regulations*.

[10] 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 that it 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*. The burden of proof is on the Appellant to prove, on a balance of probabilities, that the Applicant is not caught by section 4 of the *Regulations*.

[11] First and foremost, I find both the Appellant and the Applicant to be credible witnesses. They both provided their testimony in a forthright manner and without exaggeration. Second, the evidence before me is largely consistent with respect to the material facts at issue. There is no discrepancy other than a few small and insignificant ones with respect to the *indicia* of a genuine marriage. The evidence clearly establishes that the Appellant and the Applicant married each other both out of love and also on the basis of the approval of their families. They described the

---

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

development of their relationship in exact harmony in addition to providing detailed knowledge of each other's lives. For example, the Appellant displayed full knowledge of the Applicant's daily life activities and her interests, and the Applicant provided the same knowledge about the Appellant's life in Canada.

[12] In my determination of this appeal I have also given significant weight to the documents in Exhibit A-1, which documents corroborate in exact terms the *vive voce* testimony of both the Appellant and the Applicant today.

[13] Finally, I note that the Minister's counsel, while not consenting to the appeal, chose not to cross-examine the Applicant and did not provide any submissions at the conclusion of the hearing. As such, based on the totality of the evidence which is largely consistent, I find that the marriage is genuine and that it was not entered into primarily to gain admission to Canada for the Applicant. In conclusion, I find that on a balance of probabilities the Appellant has discharged his burden of proof and has established that his marriage with the Applicant is genuine. I also find that the marriage was not entered into primarily for the Applicant to acquire a privilege or status under the *IRPA*. I find that the Applicant is the Appellant's spouse and a member of the family class.

[14] Accordingly, the appeal is allowed in law. 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 decision.

[Edited for clarity, spelling, 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.

"Mojdeh Shahriari"
Mojdeh Shahriari

11 June 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.