

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

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## Reasons and Decision – Motifs et décision

### *Sponsorship*

**Appellant(s)**

**DALJEET SINGH NARWALL**

**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**

19 February 2007  
Vancouver, BC

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

**Date of Decision**

18 April 2007

**Date de la Décision**

**Panel**

Margaret Ostrowski

**Tribunal**

**Appellant's Counsel**

Massood Joomratty  
Barrister & Solicitor

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

**Minister's Counsel**

Judy Milne

**Conseil de l'intimé**

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## Reasons for Decision

[1] The appellant, Daljeet Singh NARWAL (the “appellant”), appeals from a refusal to issue a permanent resident visa to Gurmit Kaur NARWAL (the “applicant”) from India as his spouse, pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act* (the “Act”).<sup>1</sup>

[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 privilege under the Act contrary to Section 4 of the *Immigration and Refugee Protection Regulations* (the “Regulations”).<sup>2</sup>

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

1. That the appellant and the applicant are incompatible in terms of marital background. The arrangement of the marriage of a never-married young female to a divorcee is not generally contemplated.
2. It is highly unlikely that the applicant’s parents would not investigate the circumstances of the divorce or agree to a match just based on the information provided by the middleman nor that the family and sponsor are nice.
3. The appellant and applicant are incompatible in terms of age. The husband is two years younger than the applicant wife.
4. The marriage was organized and held in haste.
5. There was not time to develop a relationship with the sponsor prior to the marriage.
6. The marriage ceremonies are usually held at the bride’s usual place of residence and celebrated with a lot of pomp and show to give publicity to the union. The wedding was held far from the bride’s usual place of residence.
7. The applicant’s younger brother got married prior to the applicant and there was not a satisfactory reason provided.
8. This is not the first attempt of the applicant to try and go to Canada. She had three previous applications as a nanny that were 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.

[4] At issue in this case is whether section 4 of the *Regulations*<sup>3</sup> 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 EVIDENCE

[6] The appellant is a 29-year-old driver for a bakery company – Indian Life Food Corporation. He lives in Delta with his mother and father in their own home. He had previously been employed driving a dump truck but there was not enough work so he returned again to his job at the bakery. He makes approximately \$2,600 a month. His mother and father work on a farm. His father attended the hearing but was not called as a witness.

[7] He came to Canada in May 1995. His sister had sponsored his mother and father and he was included in that application as a dependent of his parents. His sister is still married to her husband and they have four children. He has another sister in Calgary married with one child.

[8] The appellant was previously married in an arranged marriage and he sponsored that wife to come to Canada and she arrived in September 1999 and she stayed with him until December 1999. He testified that she left him because he had been in an accident in approximately January 1999 when two fingers were badly injured and he was off work and he was depressed. He said that they were not getting along and fighting and that was the reason for the split. She went to live with relatives after that.

[9] He said the present marriage was arranged by the wife of the priest at the temple that he goes to in Vancouver and that she is a close friend of theirs and that he trusts her very much in finding a suitable wife for him. He said that it was his understanding that she could not find a wife for him in Canada and that the applicant was “very good”.

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<sup>3</sup> 4 For the purposes of these Regulations, a foreign national shall not 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.

[10] The appellant testified that he left everything up to the wife of the priest as the matchmaker and that he is extremely confident that the applicant will not leave him.

[11] The applicant and the appellant are in touch by phone every second or third day.

[12] He returned to India on December 5, 2005 and stayed until January 18, 2006 with his wife and stayed in her home. He did not stay in his own home because it was locked as there were no relatives to stay there anymore.

[13] They went to see many temples during the second visit and there were pictures in evidence of them on their excursions.

[14] He testified that the applicant is an honest, loving, sensitive woman who is respectful of her parents and obedient and will help take care of the house for them.

[15] He has sent her money for support and there were documents in the file corroborating that.

[16] The applicant is a 35-year-old housewife living with her parents. She confirmed that she had applied three times to come to work as a nanny for her uncle living in Calgary and that each time it had been turned down because her English was not good enough. She said that her uncle has now hired a nanny, from her understanding, from South Africa. She talks to this maternal uncle three or four times a year.

[17] She testified that the reasons for the appellant's first marriage breakdown was because of his injured fingers and that his first wife left him. She gave testimony in English of some of the English words she knows and can read from the appellant's letters, such as "I love you" and "I miss you".

[18] She testified that when she comes to Canada she will clean and cook and work in the husband's home and outside the home.

[19] She testified that the wedding was held outside her village because there was no palace in her village to hold that number of people. They had approximately 500 people come to the palace.

[20] Both the applicant and the appellant testified that they will continue reapplying if the appeal is not granted and that the appellant will go back to India to live.

[21] She did not understand that her husband had looked for marriage matches in Canada.

## ANALYSIS

[22] In order for a foreign national to be disqualified by section 4 of the *Regulations* 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 in the *Act*. In order to succeed on appeal the appellant need only establish that one of the prongs has not been met.

[23] Assessing the genuineness of a marriage and determining if it was entered into for the primary purpose of acquiring a status or a privilege under the *Act* is often difficult as the panel does not have access to the inner thoughts and feelings of the parties and also visa officer have traditionally relied on indicia of genuineness and sincere intent and looked at such factors as compatibility, interest in each other, explanations for contradictions or lack of knowledge etcetera. Some contradictions go to the heart of the matter. Some contradictions are just a result of our inexact memories. All of the circumstances in evidence must be weighed and looked at as a whole so the decision is a reasonable conclusion flowing from the facts presented. Credibility of the parties is often in issue. The general test for the credibility of a witness' evidence was established by the Supreme Court of Canada in the case of *Faryna v. Chorny*,<sup>4</sup> wherein the Court said that "the real test of the truth of the story of a witness ... must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

[24] After listening carefully to the testimony of the witnesses, I find the appellant to be a credible witness. For the most part I am persuaded by the submissions of his counsel that the appellant was not as articulate as he could be in giving reasons for the breakdown of his first marriage in just describing that he was depressed and that there were breakouts with his wife over small things. However, I am persuaded that he was truthful regarding his first marriage because the scenario he presented was plausible that he could have very easily been depressed because of his accident and that could have created discord. It was clear he did have an accident

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<sup>4</sup> *Faryna v. Chorny* [1952] D.L.R. 354.

(he showed his hand with damaged fingers) and there was no issue taken with the fact that he had been off work for two years. It would have been helpful to have more details to corroborate that the appellant approached the first marriage in a genuine fashion.

[25] The lack of proper investigation by both the parties' families was explained by the great reliance on the matchmaker, the wife of the priest at the appellant's temple in Vancouver. Whether that reliance is warranted or not, I am convinced by the appellant's testimony that he had placed great reliance on her judgment in selecting the applicant.

[26] The Minister's counsel was also concerned that it was not satisfactorily explained why the marriage was held so far out of the bride's village. I have considered that point and am willing to accept the testimony of both the appellant and the applicant that the bride's village did not have a palace and that there was an attempt to find a location so both families would have to drive some distance. It was not challenged by Minister's counsel that 500 people had attended and there was adequate description given in testimony as to how the villagers from the applicant's village travelled to the marriage as well as an explanation as to how the attendees from the appellant's village travelled to the wedding.

[27] The factor that is of most concern here and that was still a concern of the Minister's counsel was the three attempts by the applicant to come to Canada as a nanny. This was also referred to in the refusal letter.

[28] I have given this factor considerable thought and I think what makes this particular decision somewhat more difficult is that I am of the opinion that there is an intention to come to Canada by the applicant and, indeed, in the appellant's counsel's submissions that is not denied. I have to determine the weight to assign to that factor in comparison with the applicant's intention to live permanently as husband and wife with the appellant.

[29] As I stated earlier, I found the appellant to be credible for the most part and the testimony between the two of them was generally consistent in the details of their relationship, of their marriage, and of their continued contact.

[30] I also had some concerns that the applicant may be coming merely as a housekeeper to the home of the appellant as the appellant had testified that she would be taking care of his parents, being respectful to them and obedient to them. However, in further testimony it was

clarified that each member of that household would be helping with – with chores and duties at various times – and I was persuaded that her role was beyond that of a mere housekeeper or nanny in that home.

[31] In weighing the evidence that was before me in support of the genuineness of the marriage, I saw credibility exhibited by both the appellant and applicant and there was consistency, for the most part, in their testimony and the appellant's answers were sufficient in explaining the troublesome areas in the refusal letter. There is also unrebutted evidence of sufficient contact, a post marriage visit, financial support, and I found the parties exhibited sufficient knowledge of each other. I find that the sum of those factors are sufficient to satisfy the burden of proof in spite of the persistence of the applicant to come to Canada. I give the applicant's intention to come to Canada as having less weight than the other positive aspects shown to me in support of a genuine marriage.

[32] I have weighed the *indicia* of the genuine marriage presented in the evidence and I find the evidence satisfies the burden of proof required. The relevant concerns of the visa officer and the Minister's counsel were met at the hearing by the evidence presented by the appellant and the applicant and I find that the marriage is genuine and it was not entered into for the purpose of acquiring a status or privilege under the *Act*.

[33] The appellant, Daljeet Singh NARWAL, is not excluded by provisions of Section 4 of the *Regulations*. The appeal, Daljeet Singh NARWAL, 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.

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**"Margaret Ostrowski"**  
**Margaret Ostrowski**

\_\_\_\_\_  
**18 April 2007**  
**Date (day/month/year)**

<p><b>Judicial review</b> – 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>
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