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) / **Appelant(s)**

RAJNEIL PRASAD

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**

January 16, 2007
Submissions February 20, 2007
Vancouver, BC

Videoconferencing held in / **Fait par videoconference à**

Calgary, AB

Date of Decision / **Date de la Décision**

February 22, 2007

Panel / **Tribunal**

Deborah Lamont

Appellant's Counsel / **Conseil de l'appelant(s)**

Massood Joomratty

Minister's Counsel

Randal Hyland / **Conseil de l'intimé**

Reasons for Decision

[1] Rajneil PRASAD (the "appellant"), appeals the decision of an immigration officer overseas not to issue a Canadian permanent resident visa to his spouse, Jagtej Kaur PRASAD (the "applicant") from India. The application was refused pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the "*Regulations*").[1] The details of the refusal are set out in the refusal letter and the CAIPS notes.

[2] In order for a foreign national to be caught by section 4 of the *Regulations*, the preponderance of reliable evidence must determine that the marriage is not genuine and was entered into primarily for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act* (the "*Act*"). The onus is on an appellant to demonstrate that the applicant is not caught by the excluding section of the *Regulations*.

[3] As brief background, the appellant is 23-years-old. He was born in Canada and is a Canadian citizen. His family's ancestral country is Fiji, however his grandparents, parents and siblings all live in Canada.

[4] The applicant is 24-years-old. She was born in India and continues to live there today with her parents and brother. The appellant and applicant married on 8 December 2004.

PRELIMINARY MATTER

[5] The hearing was adjourned on 16 January 2007 due to a fire alarm in the Vancouver office. Written submissions were received by both parties on 20 February 2007.

ANALYSIS

[6] I have heard the testimony of the appellant and the applicant, reviewed the documentary evidence in the Record, as well as the additional documentary evidence that was submitted, and I considered written submissions of counsel. I determined the visa officer's concerns and the

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

Minister's Counsel's concerns were not adequately addressed. I found the many discrepancies in the evidence before me and the unreasonable explanations for them seriously undermined the overall credibility of the appellant and applicant. As a result, I found on a balance of probabilities this marriage was arranged so that the applicant could obtain permanent resident status in Canada and so that the appellant could obtain a care-giver for his mother, and their marriage is not genuine.

[7] The appellant and applicant are compatible in the following ways: their age; marital background; and they can both communicate in Hindi. However I considered the visa officer's concerns related to their incompatibility in terms of the following: their education, the applicant has two more years of education than the appellant including university training; their religion, the applicant is Sikh and the appellant is Hindu; and their social background, the appellant was born and raised in Canada, his ancestors are from Fiji, and the applicant is from rural Punjab. The applicant explained that her family did not have any concerns that the appellant lived in Canada or that he has a different religion as she stated there have been other inter-religious marriages in their family. Further she claimed the matchmaker was satisfied and neither she nor her parents had any concern that the appellant was more educated than her. The applicant also claimed she had exchanged photographs with the appellant in October 2004 before he traveled to India and she was happy with the marital recommendation. I found her explanations unsatisfactory. First I noted the appellant is not more educated than the applicant, the applicant has university training and the appellant has Grade 12. In addition, the appellant contradicted the applicant's evidence on the photographs as the appellant claimed he did not provide a photograph for the applicant before he traveled to India, and that the applicant did not know what he looked like until after he arrived in India. Further it is reasonable to expect the applicant and her parents would want to investigate the appellant thoroughly in light of their incompatibilities rather than simply making inquiries of a family member through marriage. I am concerned that the applicant's parents showed indifference by not investigating the appellant more carefully, and no satisfactory explanation has been provided to alleviate this concern. It is reasonable to assume the applicant's family would investigate the appellant to confirm whether or not the appellant is compatible and the match desirable. Even if the appellant is highly recommended as a suitable matrimonial partner by an intermediary, one would assume the family of the applicant would investigate the perspective partner independently. As a result, I am not satisfied this

marriage is genuine and is intended to be a long lasting marriage. I also made this finding after considering the following.

[8] At hearing the appellant explained he wanted to get married and he wanted to marry "a good girl" from India. He claimed he wanted to find a girl to take care of his mother, "a homey type", and someone who would agree to live with him and his parents in Canada. The appellant also testified he grew up amongst people of mixed backgrounds and religion and that he was comfortable with people of the Sikh faith. Further he testified he lives in Delta and worked for a number of years with Punjabis who are Sikhs. He also testified his mother is suffering from diabetes, arthritis, and high blood pressure. He stated his mother is on medication and needs someone to take care of her, and the applicant knew from the beginning about the appellant's mother's illnesses and his mother's need for assistance. Further he claimed friends of his are having problems with Canadian women because of their differing views on family and he did not want to go through the same problems. After considering the appellant's testimony at hearing, I found on a balance of probabilities the appellant was looking for a care-giver for his mother rather than a wife for himself. This would explain why the appellant did not have any concerns related to the applicant being more educated than him, or why he would marry a Sikh when he is a Hindu, or why he would search for a wife in rural Punjab even though he was born in Canada and his ancestors' immigrated from Fiji. This finding was further troubling after considering the following.

[9] The appellant testified his boss at JMP Electrical, Jugraj Singh, suggested he marry a girl from Punjab India after the appellant explained his situation. Allegedly his boss told him "good girls" are in India and his boss further recommended the applicant, his wife's cousin. The appellant claimed he trusted his boss and therefore marital discussions began in October 2004. Further he claimed his boss obtained a photograph of the applicant and provided it to the appellant. In addition, he testified his boss traveled with him to India in order to arrange introductions. I considered the discrepancies in the appellant's evidence in this regard. The appellant testified at hearing he began his work at JMP and for Jugraj Singh in the summer of 2004. He also testified he did not know his boss previously. However I noted within the appellant's sponsorship application he stated he only began his employment with JMP on 15 February 2005, two months after he married the applicant. The appellant was asked to explain

and he testified the JMP accountant assisted him with his sponsorship application as he had never filled out such a document before and he needed help, and he does not know why the accountant filled out his employment the way he did. I found this explanation completely unreasonable. First I noted the appellant claimed he was present when the accountant filled out the form, and that he provided the answers to the questions posed. Therefore he should have been able to provide accurate information on his employment. In addition, he acknowledged he signed the sponsorship application and it was his duty to make sure the contents of the form were correct. The appellant graduated from Grade 12 in Canada and therefore he should have been able to understand a column in the form listing his employment. I also noted neither the appellant nor the accountant, completed the accompanying form that asks for information on who assisted with its completion. The appellant testified he did not know why it was not filled out. It is the appellant's responsibility to submit an accurate sponsorship application form.

[10] Finally I do not accept the appellant's explanation as it is reasonable to assume the accountant for JMP would have been aware of the appellant's employment with JMP before February 2005. I noted the appellant testified he worked for JMP and Hallmark Engineering beginning in the summer of 2004. Allegedly the owners of JMP and Hallmark are brothers and the appellant was sent to jobs for both companies whenever and wherever he was needed the most, however he claimed his salary was paid by JMP. Again I noted Hallmark was not listed at all in his sponsorship application form. As a result there is no possibility his employment with Hallmark could have confused his starting date with JMP on the application form. No reasonable explanation was proffered to explain why his employment with JMP was not listed on the sponsorship application form before 2005.

[11] In light of all of the above, I do not accept as credible the appellant worked for JMP before his marriage to the applicant or that "his boss" made the marital introduction. This finding undermined his overall credibility. The appellant claimed his boss recommended the applicant, his boss started the negotiations between the appellant and the applicant's family, his boss told him the applicant is "a good girl", and he trusted his boss so he agreed to travel to India and meet the applicant and her family. Further he claimed he agreed to the match before he met the applicant because he liked her family when he met them on 28 November 2004, and he trusted his boss. As I do not accept the appellant's "boss" was involved in the matchmaking at

all, this finding completely undermined all of his allegations, and that of the applicant who corroborated Jugray Singh's involvement. I agree with the Minister's Counsel's submissions that the story of the appellant's connection to the applicant via the matchmaker was merely presented to provide a credible bridge between the appellant's family and the applicant's family who are otherwise from different communities in terms of countries of origin and religion. Further I agree with the Minister's Counsel's submissions that the contradictory evidence suggests that the applicant's relatives in Canada facilitated a marriage between the appellant and the applicant, but the appellant has actually had little contact with those relatives of the applicant because this is a marriage of convenience.

[12] This finding that the appellant did not work for JMP before 2005 is further troubling as the appellant alleged he was only able to stay two days after the wedding because his boss, Jugraj, told him they had to return to Canada for work. Therefore he claimed he returned to Canada with his boss a week and half before he had planned. As I do not accept the appellant worked for Jugraj before he went to India or in the month of December 2004, and therefore he did not have to return to Canada for work, this further questioned the genuineness of his marriage. It is reasonable to assume a recently married man would remain in India for longer than two days after his marriage if he was in a committed genuine relationship. I am not satisfied the appellant's marriage is genuine.

[13] Further I considered the discrepancy in the appellant's evidence at hearing as to when he agreed to the match. The appellant testified he agreed to the match after he met the applicant's family on 28 November 2004, and before he met the applicant on 2 December 2004. However he also testified he was 70% sure he would marry the applicant before their first meeting on 2 December 2004 but he needed to see her first before he was "sure", and after he met her he was sure. The appellant was asked to explain this discrepancy as the 2 December 2004 date was not only the first meeting for the appellant and applicant but also the engagement ceremony. The appellant was not able to provide a reasonable explanation for this discrepancy. He simply repeated his evidence that he was 70% sure when he agreed. I found the appellant not to be a credible witness.

[14] In addition, I considered the concerns identified by the visa officer regarding the differences in religion. The applicant explained that her family did not have any concerns in this regard as she stated there have been other inter-religious marriages in their family. I noted the applicant's evidence that one relative in her family married a Hindu. The appellant also testified the difference in religion was not of a concern to him as he grew up in a mixed culture in Canada, some of his classmates were Hindu and others Sikhs. He testified religion was not a "big topic" for him. Further both the applicant and the appellant testified that when they have children they would be brought up accepting both religions. The wedding ceremony was performed in a Sikh temple according to Sikh rituals. The appellant testified however when the applicant comes to Canada they will plan "something" according to the Hindu religion. The appellant also acknowledged no one in his family is Sikh or married to a Sikh. In light of all of the concerns articulated in these reasons I am not satisfied the concerns with respect to the difference in their religion have been adequately addressed.

[15] Even though the appellant had only met the applicant six days before their marriage, he stayed in India only two days after their wedding, and there was no official honeymoon, I noted he did not visit the applicant until January 2006. It is reasonable to expect the appellant would want to reunite with his wife quickly after their marriage, especially in light of the limited time they had together as a couple. Having not done so, raises the question why the appellant married the applicant so quickly in 2004. No satisfactory explanation was provided to address the necessity in arranging the marriage with such haste. I am not satisfied this concern has been adequately addressed as such it further puts in question the genuineness of their marriage. Further I noted the appellant traveled to India only after his wife's sponsorship application was refused and the visa officer raised concerns that the appellant and applicant had not spent enough time together. After considering all the evidence in this appeal, I found on a balance of probabilities the appellant traveled to India in January 2006 because of the refusal and because of the visa officer's concerns as articulated, and not because he missed the applicant as he alleged.

[16] Their haste in marrying is further unexplained as neither the appellant's parents nor his brothers attended his wedding. According to the applicant only the appellant's paternal uncle and distant relatives of the appellant attended the wedding. The applicant claimed the appellant's mother was sick and therefore his family remained in Canada to take care of her. The

applicant was asked to explain why no one was able to attend, and she then explained his brothers had to work and/or attend school. The appellant testified everyone was working and/or studying and taking care of his mother. He was asked at hearing if his father could not have taken time off work to attend the wedding and he claimed his father would need to notify his employer months before he took holidays. If timing was a problem, again I see no valid reason as to why the marriage was arranged in such haste. It is reasonable to expect his immediate family members would want to attend the appellant's wedding, the first marriage of the siblings. Their failure to do so, further undermined the genuineness of the marriage including whether the couple were making a life-long commitment. The appellant also testified it was a quiet time at work and that is why he traveled to India when he did, and got married. Again I do not accept this explanation as I do not accept the appellant was working as he alleged before he traveled to India. In addition I noted the applicant's response when asked at interview "why wasn't the wedding planned such that some of them could attend", and she claimed they wanted a very quick wedding because the appellant's mother was ill and they wanted someone to help with the chores. This response implies the appellant's family was looking for a care-giver, not necessarily a wife for the appellant. This further put in doubt the genuineness of their marriage.

[17] It is also notable that no one in the appellant's immediate family has traveled to India to meet the applicant, even though the appellant and the applicant have been married for more than two years. It is reasonable to assume the appellant's family at least his father would have been interested enough to travel to India and meet the appellant's wife his daughter-in-law, if the marriage was a genuine marriage and expected to last long-term.

[18] I also considered the visa officer's concerns that the applicant at interview demonstrated a lack of knowledge regarding the appellant and/or his family. Again I am reminded she did not know the appellant's level of education, and further she did not know the following: how the appellant got his present job which was obtained after their marriage; any of his friends' names; or what the appellant does in his spare time. She could not recall any anecdote that happened in the appellant's life even though she alleged they talk for one to two hours, four times a week. Considering the alleged contact the appellant and applicant have had since their marriage it is reasonable to expect she would have been able to answer the above questions at interview. I am not satisfied the appellant and applicant have made efforts to develop a genuine spousal

relationship which is intended to last long term, nor am I satisfied that the applicant intends to reside permanently with the appellant in Canada.

[19] The appellant and applicant testified with respect to contact and communication with each other since the marriage. Documentary evidence was provided in this regard however most of this evidence is documented after the refusal in October 2005. The visa officer noted limited evidence of contact was tendered between the appellant and applicant after the marriage until the refusal. I find that the evidence, on a balance of probabilities, does not demonstrate the development of a genuine spousal relationship. After considering all the evidence I found on a balance of probabilities the evidence of communication that was tendered after the refusal was more likely produced for immigration purposes rather than a reflection of genuine communication between spouses. I am not satisfied that the appellant and applicant have made efforts to develop a genuine spousal relationship which is intended to last long-term.

[20] I also made this finding after determining there was insufficient credible evidence submitted to rebut the immigration officer's assessment that this marriage was entered into for immigration purposes. I find that determination can be made on the issues I have already discussed. Further I considered the evidence before me that the applicant has family in Canada, her cousin and her cousin's husband, her paternal uncle and his family including her closest cousin. I also noted her testimony at hearing that "since the beginning she wanted to marry someone from Canada." When questioned on this acknowledgment she clarified she wanted a good family too. I found on a balance of probabilities the applicant entered into this marriage primarily to gain a status or privilege under the *Act.* After considering all the evidence in this appeal, and since this is a *de novo* hearing, I found the appellant failed to establish that the marriage was not entered into primarily for immigration purposes.

Conclusion

[21] I find that the appellant has not met the onus of proof. On a balance of probabilities, based on the evidence before me, I find this marriage is not genuine and was entered into primarily to gain a status or privilege under the *Act*. Therefore, the appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

"Deborah Lamont"
Deborah Lamont

22 February 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.