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## Reasons and Decision – Motifs et décision

### *Sponsorship*

**Appellant(s)**

**HARMANPREET KAUR SANDHU**

**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**

03 October 2007  
Vancouver, BC

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

**Date of Decision**

13 November 2007

**Date de la Décision**

**Panel**

Renee Miller

**Tribunal**

**Appellant's Counsel**

Massood Joomratty  
Barrister & Solicitor

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

**Designated Representative**

Nil

**Représentant désigné**

**Minister's Counsel**

Jennifer Brown

**Conseil de l'intimé**

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## Reasons for Decision

### INTRODUCTION

[1] These are the reasons and decision in the appeal of Harmanpreet Kaur SANDHU (the “appellant”) who appeals the refusal to approve the permanent resident application made by her spouse, Jasvir Singh SANDHU (the “applicant”), to immigrate to Canada as a member of the family class. The couple married in India on December 16, 2005 and the appellant subsequently filed an application to sponsor her husband for immigration to Canada. On July 31, 2006 the applicant was interviewed by a visa officer at the Canadian Embassy in New Delhi, India. On September 1, 2006 the application for a permanent resident visa was refused, pursuant to section 4 of the *Immigration and Refugee Protection Regulations (IRPA Regulations)*,<sup>1</sup> because the visa officer concluded that the marriage was not genuine and was entered into primarily for the purpose of acquiring status or privilege under the *Immigration and Refugee Protection Act* (the “Act”).<sup>2</sup>

[2] The visa officer set out the grounds for refusal of the application in a letter.<sup>3</sup> The visa officer was concerned about the genuineness of this marriage because:

- The couple appeared to be incompatible as the appellant is three years older, divorced with two children, has more education than the applicant and has lived in Canada for the past 12 years, while the applicant had never married and has never lived outside of the Punjab;
- The marriage was arranged in haste without sufficient background checks given the incompatibilities;
- The applicant’s mother and brothers did not attend the wedding;
- The applicant had insufficient knowledge of the applicant’s history and life in Canada;

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<sup>1</sup> S.C. 2001, c.27.

<sup>2</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the “Act”).

<sup>3</sup> Record, Refusal Letter, pp.83.

- The applicant was unable to read the English letters sent to him by the appellant; and
- The applicant was not credible as he admitted wanting to come to Canada and gave evasive answers to the visa officer.

[3] The appellant contends that the refusal is not valid in law, while the Minister of Citizenship and Immigration (the Respondent) asks me to dismiss the appeal.

[4] Both the appellant and applicant testified. The appellant also filed documentary evidence in the form of Exhibits A-1 and A-2, which included various documents such as photographs, telephone records, letters and cards, photocopies of the appellant's complaints to the police regarding her first husband, receipts for jewellery, and a letter from the appellant's psychiatrist Dr. Harrad.

## ISSUE AND DECISION

[5] To succeed on appeal the appellant must show either that the marriage is genuine or that it was not entered into for the purpose of the applicant gaining privilege under the *Act*; that section 4 of the *Regulations* does not apply. In my view the appellant has met the burden of proof in this appeal. The appeal is allowed.

## BACKGROUND

[6] By way of background the appellant is 33 years old, was born in India and immigrated to Canada as a sponsored spouse. The appellant had two children with her former husband, a son age 10 and a daughter age 5. She separated from her former spouse in 2003 and was divorced in May of 2005. The applicant is 30 years old, was born in India and is a citizen of that country. The appellant met the applicant for the first time on December 15, 2005 and they were married on December 16, 2005.

## ANALYSIS

[7] In assessing the genuineness of a marriage I must consider a broad range of factors including: how the couple met, how the relationship evolved, the duration of the relationship, the amount of time spent together prior to the wedding, the nature of the engagement/wedding

ceremony, the intent of the parties to the marriage, the evidence of ongoing contact and communication before and after the marriage, the spouses conduct after the wedding, the level of knowledge of each others past, present, and daily lives, the provision of financial support, the partners families' knowledge of and involvement in the relationship, and their plans and arrangements for the future.

[8] I accept the evidence presented by the appellant and applicant regarding when they met for the first time, who made that introduction, how they each knew the introducer, the appellant's marital history, why each of them decided to marry at that time, their communication prior to meeting, when they met for the first time, what each of them liked about the other, and the involvement of family members. I also acknowledge that they have performed the necessary ceremonies to be legally married and the fact of their marriage is non-contentious.

[9] Documentary evidence was presented to show some ongoing contact between the spouses since their marriage. Those documents did not show the same degree of telephone contact as indicated in their oral testimony, but they also said that they used telephone calling cards. The appellant has not been back to India to visit her husband since the marriage, but I accept as reasonable her explanation that she cannot afford another trip. She does not earn a lot of money and supports herself and two children here in Canada. The documentary evidence is neither strongly supportive, or against allowing the appeal.

[10] I have looked at the evidence presented by the couple to show the depth of their communication; whether or not there has been a meaningful exchange of information between the spouses which is indicative of a genuine and intimate husband-wife relationship. The couple were able to show full knowledge of their spouses history, family, work arrangements, earnings, ongoing contact with the middle-person, their spouse's motivation for entering the marriage, their current living arrangements, the daily lives of the appellant's children, the status of the appellant's court case for custody of her son, where extended family members live, and the appellant's current medical status and medication. The bulk of the evidence presented by the couple was consistent and showed an exchange of information which went beyond the superficial level.

[11] However, the evidence was not entirely consistent. In direct examination the appellant said that she and her husband stayed in a hotel for two nights on their honeymoon. She said that they travelled with her niece and the niece's husband, although each couple had their own room. The receipt provided by the appellant from the hotel shows that the applicant paid for two rooms, one night.<sup>4</sup> When confronted by this information, by counsel for the respondent, the appellant changed her testimony and said that they only stayed in the hotel for one night and spent the other night with relatives. The appellant did not know why both rooms appeared on one bill, why there was a notation the rooms were adjoining, and why she did not know about the room service on the day of arrival. When asked, the applicant said that they only stayed in the hotel one night; that they returned home the second day to his village. He was positive they stayed in Chandigarh only one night and did not spend any time with relatives in Chandigarh. When confronted by the fact that the applicant wrote on his application form that they spent two nights in Chandigarh on their honeymoon the applicant had no explanation. Nor could he explain the information on the receipt from the hotel. No reasonable explanation was provided for these discrepancies.

[12] Counsel for the respondent argued that there were also implausibilities in this relationship, which taken in combination with the discrepancy over the honeymoon, indicate that this relationship was not genuine. Counsel argued that the applicant agreed to marry the appellant when he had not met her two children; he agreed to the marriage knowing the appellant was being treated for depression and had been threatened by her former husband's family; that the applicant delayed marriage because of his inability to prove himself financially yet married the appellant before achieving that financial status; and that the applicant showed prior interest in leaving India. Counsel for the respondent argued that these implausibilities remained unexplained by the applicant.

[13] Counsel for the appellant argued that the applicant was quite candid in stating that he wanted to come to Canada because of the financial opportunities he would have here. However, the applicant was also clear that this was not his only reason for entering the marriage, that he had looked at other marriages in India, and that despite his interest in going abroad he never actually tried to leave India previously. Counsel for the appellant argued that taking those

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<sup>4</sup> Record, p. 82.

explanations into account, and in combination with the amount of evidence which was consistent and corroborative and showed the extent of the couple's knowledge of each other, the evidence indicates the marriage is genuine.

[14] I agree with counsel for the appellant. There are circumstances which raise questions regarding why the applicant entered this marriage. However, he was asked about those circumstances and he provided a reasonable explanation; he explained his own behaviour and choices. As well, although he clearly sees coming to Canada as advantageous, it is only one of his stated motivations for marriage to the appellant. The gaining of a status or privilege in Canada can be one of multiple motivations for marriage. It only undermines the ability to meet regulation 4 if that motivation is the primary motivation for the marriage. In this appeal the bulk of the evidence before me was credible. Other than the one unexplained discrepancy over the honeymoon the couple showed a mutual and extensive knowledge of each other's past and daily lives, as well as the lives of their family members. That exchange of information indicates that the couple have a meaningful husband-wife relationship. As well, the applicant had never actually tried to leave India previously, regardless of his interest. I found these factors persuasive in concluding that the marriage was not entered into primarily for the purpose of the applicant's immigration to Canada.

[15] Therefore, in my view the concerns of the visa officer were adequately addressed in the documentary and oral evidence before me; the appellant has met the onus upon her to establish that this relationship is genuine. After assessing all the evidence in the appeal and for the reasons stated above I find, on a balance of probabilities, that the marriage is genuine. Although there is evidence which shows that coming to Canada was one of the applicant's motivations for the marriage, the evidence showed that the marriage was not entered into primarily for the purpose of the applicant acquiring a status or privilege under the *Act*.

## **CONCLUSION**

[16] Accordingly I find that the refusal was not valid in law and the appeal 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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**"Renee Miller"**  
**Renee Miller**

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**13 November 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.