



IAD File No. / N° de dossier de la SAI : VA7-00341

Client ID no. / N° ID client : 3621-1844

## Reasons and Decision – Motifs et décision

### SPONSORSHIP

<b>Appellant(s)</b>	Amreeta GILL	<b>Appelant(s)</b>
<b>and</b>		<b>et</b>
<b>Respondent</b>	<b>The Minister of Citizenship and Immigration</b> Le ministre de la Citoyenneté et de l'Immigration	<b>Intimé(e)</b>
<b>Date(s) and Place of Hearing</b>	18 February 2008 Vancouver, BC	<b>Date(s) et lieu de l'audience</b>
<b>Date of Decision</b>	28 March 2008	<b>Date de la décision</b>
<b>Panel</b>	Renee Miller	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	Massood Joomratty Barrister and Solicitor	<b>Conseil(s) de l'appelant(e) / des appelant(e)s</b>
<b>Counsel for the Minister</b>	Jennifer Brown	<b>Conseil du ministre</b>

## Reasons for Decision

[1] These are the reasons and decision in the appeal of Amreeta GILL (the “appellant”) who appeals the refusal to approve the permanent resident application made by her spouse, Ranbir Singh GILL (the “applicant”), to immigrate to Canada as a member of the family class.

[2] The appellant and applicant married on November 5 (a Hindu ceremony) and November 9, 2003 (a Sikh ceremony), and then again on January 20, 2006 (a civil ceremony), in India. The appellant’s initial application to sponsor her husband for immigration to Canada was refused by a visa officer and her appeal dismissed. This is her second application following the civil marriage. On December 11, 2006 the applicant was interviewed by a visa officer at the Canadian Embassy in New Delhi, India. On January 9, 2007 the application for a permanent resident visa was refused, pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the “*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>

[3] 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 was divorced, is Fijian and Hindu, while the applicant had never married previously, has more education, is Indian, and Sikh;
- The marriage did not seem genuine as the couple agreed to marry prior to meeting despite the incompatibilities, and the appellant had previously been abused in her first marriage and therefore ought to have been cautious; and
- The applicant was not credible as this is his fourth attempt to immigrate to Canada, he previously submitted a false application with fraudulent documents and he made statements to the visa officer which contradicted his earlier statements to the respondent.

---

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

<sup>2</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>3</sup> Record, Refusal Letter, pp. 73.

[4] 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.

[5] Both the appellant and applicant testified. In addition, the appellant filed documentary evidence in the form of Exhibits A-1 and A-2, which included various documents such as photographs, telephone records, medical records, a birth certificate for a daughter born December 27, 2006 (Richa Ria Namrata GILL), cards and letters, passport pages and confirmation of a visit to India from October 18 through November 25, 2007. In addition the Respondent filed Exhibit R-2, a copy of the prior decision of the Immigration Appeal Division, dismissing the first appeal which considered this relationship.

## PRELIMINARY MATTERS

[6] Prior to the commencement of the appeal argument was made by counsel for the Respondent that this appeal is *res judicata*. Written submissions were requested and received by both counsel. As well, both counsel made oral submissions at the appeal hearing. Prior decision makers have established that a matter is *res judicata* where the same question has been previously decided, the former decision is final, and it is the same parties as in the former proceeding. All three criteria are met in this appeal. However, I have jurisdiction to allow the appeal to proceed in special circumstances where there is decisive new evidence. The Federal Court of Canada has ruled that the existence of a child is not determinative evidence of the genuineness of the parents’ relationship.<sup>4</sup> In this case the new evidence is the birth of a child of the marriage. I agree that such evidence is not determinative of an appeal, but it is important new evidence which is capable of altering the former decision when weighed against all other relevant factors and as such I agreed to exercise my discretion to allow the appeal to proceed to an oral hearing.

---

<sup>4</sup> *Sahota v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 125.

## ISSUE AND DECISION

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

## BACKGROUND

[8] By way of background the appellant is 32 years old, was born in Fiji and immigrated to Canada in March of 2001 as a sponsored spouse. She and her first husband separated in February of 2002 and divorced in April of 2003. The applicant is 35 years old, was born in India and is a citizen of that country. The applicant has applied to come to Canada previously. His first application for a visitor's visa was refused. His second application was as a fiancé. That application was refused because the fiancé was a cousin and such a marriage was prohibited by the laws of consanguinity. His third application was also as a fiancé, intending to marry the friend of his cousin. His fourth application was under a false name (Bobby Gill), with accompanying fraudulent documents (Passport, school certificates), as the husband of the appellant. That application was refused by the visa office and the appeal dismissed in June of 2005 by another member of this Tribunal. The appellant subsequently remarried the applicant on January 20, 2006. She also gave birth to a daughter on December 27, 2006. It is the visa officer's refusal of the second application to sponsor the applicant that is the subject matter of this appeal.

## ANALYSIS

[9] Counsel for the appellant argued that the evidence of the couple, in particular with regard to their child, is persuasive and credible. He argued that this evidence shows the genuineness of the marriage and ought to outweigh the other evidence which undermines the credibility of this husband and wife. Counsel for the appellant acknowledged that the applicant entered the

marriage primarily for the purpose of immigrating to Canada, and therefore only the genuineness of the marriage is at issue.

[10] Counsel for the Respondent argued that the appellant and applicant are so lacking in personal credibility that the evidence surrounding the birth of the child of the marriage cannot, on its own, establish the genuineness of the marriage. Counsel for the Respondent pointed out that the evidence of the couple was not consistent at the oral hearing, or with the documentary materials filed in support of this recent application for sponsorship, or with their testimony at the former appeal where they apparently “came clean” with this Tribunal.

[11] 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 intention of the couple in marrying, the evidence of ongoing contact and communication before and after the marriage, the spouses conduct after the wedding, the depth 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.

[12] I accept the evidence of the couple regarding who made the introduction between them, who arranged the marriage, the fact that they married in 2003 and 2006 and that they are legally married under their proper names. I also accept the evidence presented with regard to the child of the marriage to be credible and reliable. When asked details about the child’s conception, birth and first year of life the couple were knowledgeable and consistent in their description of these events. Documentary evidence corroborated ongoing communication between the couple since meeting in the fall of 2003, and they have had a child together. They are familiar with each other’s work circumstances and personal histories. Despite the fraud perpetrated in the marriage in 2003, there seems to have been full disclosure between this husband and wife at this time. That is evidence which is favourable to them in considering this appeal.

[13] However, I found the appellant and applicant so lacking in personal credibility that I am not prepared to accept that this marriage is genuine. Although there was some consistency in the evidence of the couple regarding their work circumstances, living circumstances and the circumstances of their child, there were too many other unexplained or insufficiently explained contradictions in their evidence to find the evidence generally credible and reliable.

[14] An example of this lack of personal credibility are the contradictions between the appellant's testimony before me and her testimony before this Tribunal at the previous appeal. Both sets of testimony were under oath, yet they differed on substantive points. For example, the appellant told this tribunal previously that she only learned of the applicant's use of the false name, "Bobby", at that appeal. However, she told me that the applicant told her of his use of the false name the day after their wedding in November of 2003 and that she agreed to go along with submitting a fraudulent application for sponsorship. Similarly, the appellant told this Tribunal under oath that she moved in with the applicant's Aunt and Uncle in Canada shortly before the previous appeal was heard (in 2005), yet she told me that she moved in with the Aunt and Uncle immediately after her return to Canada in January of 2004 because his Aunt and Uncle were akin to her in-laws. Despite stating that she had "come clean" to this Tribunal previously, it appears as though the appellant lied to this Tribunal either in 2005 or now. That is not a factor which is favourable to the appellant when considering her personal credibility.

[15] The appellant and applicant both testified that they used the false name and documents in their former application for sponsorship, because the applicant had three prior refusals in his attempts to come to Canada and he was worried he would be refused again. However, their evidence regarding how they used that false name was inconsistent and was not sufficiently explained. For example, the appellant told me that the use of the name Bobby was for the purpose of immigration and everyone calls the applicant by his given name "Ranbir". Yet, the middle person in this arranged marriage is related to the appellant by marriage and told her from the outset that the applicant was called Bobby. Similarly, the appellant has known the applicant's Aunt and Uncle for years, via this middle person, and they also referred to the applicant as far back as 2002 as Bobby. Apparently as far back as 2002, before the appellant was even divorced from her first husband, the applicant's family members were using the false name.

As well, despite her evidence that everyone in India calls the applicant Ranbir, she and her husband said their guests to the Sikh wedding in November 2003 (according to their application form there were 250 guests at that wedding) all called the applicant Bobby. The Priest at that ceremony used the name Bobby and the applicant's father was introduced to the appellant and her mother under a false name "Joginder". The applicant also said that the invitations to that November 2003 wedding were in the name of Bobby, son of Joginder. When asked how his guests knew who was getting married given that his name is Ranbir and his father's name Guriqbal, he said that he had two sets of invitations printed and sent out both of them to the guests. This is an elaborate arrangement undertaken by the applicant and his family, in order to facilitate a marriage to a woman who was not yet divorced and had apparently not even been approached regarding a marriage. As well, it is completely implausible that all of the guests to the wedding, including the Priest who conducted the wedding, were coincidentally using the name Bobby, instead of Ranbir.

[16] When asked similar questions the evidence of the applicant was different. He said that he used the name Bobby as a nickname and everyone in India calls him Bobby; contradicting his wife's evidence. He said that his father was unaware of the use of the fraudulent name and tore up the passport issued in the name of Bobby after his father learned of the applicant's actions. Initially the applicant agreed that he introduced his father to the appellant under the name "Joginder". When asked what his father's response to that was, given that the father apparently was unaware of the applicant's fraud, he changed his evidence and denied ever introducing his father as "Joginder". The applicant also said at first that the priest at the Sikh wedding used both Ranbir and Bobby, but announced Ranbir softly so the appellant did not notice that she was marrying a man named Ranbir rather than a man named Bobby. When questioned about this explanation in more detail he then changed his evidence and said that the Priest did not use the name Ranbir in the ceremony, only the name Bobby. The applicant's evidence was so contradictory and insufficiently explained that it was not reliable.

[17] The evidence provided by the appellant and applicant regarding how that first marriage in November of 2003 took place, the circumstances regarding the marriage, when the appellant found out about the use of the false name, when the applicant's father found out, and the

participation of the applicant's family and wedding guests in the fraud is so elaborate it is implausible and so filled with unexplained contradictions that it is not credible or reliable. As well, the contradictions between the two witnesses today and the applicant's willingness to change his evidence and inability to explain his answers undermines the personal credibility of both the appellant and applicant.

[18] In addition to the lack of credible and reliable evidence surrounding the genesis and development of the relationship, there were inconsistencies between the oral testimony and the documents filed in support of this application and appeal. In the application for sponsorship following the 2006 re-marriage, the application forms again said that there were 250 people at the Sikh wedding in 2003.<sup>5</sup> However, in oral testimony the appellant said there were only 70 people, and the number 250 people was a lie. When asked the same question the appellant said there were 150 people, and both the forms and the applicant were wrong. In the application forms it states that the appellant met the applicant's mother in November 2003, and both his parents arranged the marriage on his behalf.<sup>6</sup> In oral testimony both the appellant and applicant said the applicant's mother was deceased in the mid 90's, although they could not agree on when. However, in letters and emails submitted to show the ongoing communication between the couple since their marriage in 2003, the applicant referred repeatedly to his Mom.<sup>7</sup> When asked about one such reference the applicant said he called his maternal Aunt "Mom". He went on to tell me that his mother was one of three sisters, two of whom are now deceased, and he calls the remaining maternal Aunt "Mom". He said that he did not call anyone else "Mom". When it was pointed out that one of his emails referred to his Mom going to Chandigarh with her sister, and at another email visiting her sisters,<sup>8</sup> he said at first that the "sister" referred to was his Aunt's daughter-in-law without explaining why he would make such a reference, and then changed his evidence and said that he also calls his paternal Aunts "Mom". At one point he said that he calls all his Aunts "Mom". He also confirmed that he has no Aunts who live in Chandigarh. No reasonable or credible explanation was provided by the applicant for the diversity of his evidence on these points.

---

<sup>5</sup> Record, p. 29.

<sup>6</sup> Record, p. 28.

<sup>7</sup> Exhibit A-1, p. 64-68, p. 145.

<sup>8</sup> Exhibit A-1, p. 68, p. 148-149.



[19] Lastly, I considered the appellant and applicant's history and their willingness to be untruthful. The applicant admitted that he made three failed attempts to come to Canada before marrying the appellant. He said that each application was intended to get him to Canada and he had no intention of marrying or living with either former fiancé. He also admitted that he married the appellant solely to get to Canada, although he asserts that this is now a genuine marriage. In an effort to be successful the applicant constructed the elaborate plan for marriage to the appellant under a false name, applied for a passport and other identity documents under that false name, and apparently conscripted the cooperation of many family members, friends, neighbours and religious officials to marry the appellant under that false name. Both he and the appellant pursued that false application through the immigration process and to a hearing before this Tribunal. They were willing to lie to officials of the respondent and either lied to this Tribunal previously or to me. When asked what prompted the applicant to tell his wife about his false name, he said that he had married her in a temple before God and his conscience did not allow him to continue lying to her; although it apparently did allow him to lie to the respondent and this Tribunal. Even when given the opportunity to come clean to this Tribunal neither the appellant nor applicant appears to have done so. Given that history of pursuing falsehood rigorously, it is not inconceivable that the appellant and applicant would conceive a child to try and shore up the applicant's chances to immigrate on this application.

[20] Counsel for the appellant argued that there will be mistakes and inconsistencies in the evidence, because the former application and appeal was based on lies. He urged me to focus not on the lack of credibility the couple have demonstrated in the past, but on the credible evidence which shows their present state of mind and their efforts to create a genuine marriage. Unfortunately, I cannot agree. In my view the evidence which undermines the credibility and reliability of the evidence presented to demonstrate all of the factors necessary to establish a genuine marriage is so persuasive, and reflect such a lack of personal credibility on behalf of both the appellant and applicant, that there is insufficient credible and reliable evidence remaining which would establish that this marriage is genuine. Although the evidence regarding the conception, birth and raising of their daughter was consistent and credible, it is not sufficient

to override the totality of the remaining evidence which does not establish this marriage as genuine and does not establish these two people as credible or truthful.

[21] As the Federal Court held in *Singh*,<sup>9</sup> positive evidence with regard to a child of the relationship is not determinative of genuineness and must be balanced against other relevant factors. Those relevant factors are the long history of credibility concerns about this couple, and the lack of additional credible and reliable evidence which would demonstrate the genuineness of the relationship.

[22] Counsel for the appellant also argued that I should consider the best interests of the child. I agree with the Federal Court that no separate assessment of the best interests of the child is required of me, and would inappropriately redirect attention away from the evidence presented to demonstrate the genuineness of the marriage.

[23] In conclusion, in my view the concerns of the visa officer were not adequately addressed in the documentary and oral evidence before me; the appellant has not 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 not genuine and was entered into primarily for the purpose of acquiring a status or privilege under the *Act*. As such, the applicant is not among the categories of foreign nationals identified in subsection 117(1) of the *Regulations* as a person who may be sponsored to Canada as a member of the family class. Section 65 of the *Act* precludes any consideration in this appeal of humanitarian and compassionate grounds.

## CONCLUSION

[24] Accordingly I find that the refusal was valid in law and the appeal is dismissed.

---

<sup>9</sup> *Singh v. Canada (M.C.I.)*, 2006 FC 565.

## NOTICE OF DECISION

The appeal is dismissed.

(signed)

**“Renee Miller”**

---

**Renee Miller**

**28 March 2008**

---

**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.