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 : VA8-02485

Client ID no. / N° ID client : 2338-5946

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Parveen Kumar SAINI	**Appelant(e)(s)**
Respondent	**The Minister of Citizenship and Immigration** Le ministre de la Citoyenneté et de l'Immigration	**Intimé(e)**
Date(s) and Place of Hearing	4 December 2009 **Vancouver, BC**	**Date(s) et lieu de l'audience**
Date of Decision	4 December 2009 (rendered orally) 20 January 2010 (written decision)	**Date de la décision**
Panel	**Kashi Mattu**	**Tribunal**
Counsel for the Appellant(s)	Massood Joomratty **Barrister and Solicitor**	**Conseil(s) de l'appelant(e) / des appelant(e)(s)**
Counsel for the Minister	Gregory Zuck	**Conseil du ministre**

Canada

Oral Reasons for Decision

[1] These are the reasons and decision of the Immigration Appeal Division (the "IAD") in the appeal made by Parveen Kumar SAINI (the "appellant") of the refusal of the sponsorship application for a permanent resident visa of his spouse, Paramjit Kaur SAINI (the "applicant"), from India. The application was refused pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the "*Regulations*").[1]

[2] A twofold test must be applied in order to disqualify a spouse under section 4 of the *Regulations*. The two elements of the test are whether the marriage is genuine and whether the marriage was entered into primarily to gain a status or privilege under the *Immigration and Refugee Protection Act* (the "*Act*").[2] The determination is made at this hearing but, given the nature of marriage as a relationship between a husband and wife, I find the determination and existence of a genuine marriage includes a mix of the past, current and future state of affairs of the relationship. In a marriage, the status or privilege that can be acquired is that the spouse can be granted permanent resident status through membership in the family class. The onus of proof is on the appellant to show, on a balance of probabilities, that the applicant is not disqualified as a spouse.

[3] The appellant and applicant testified at the hearing and additional documents were submitted at the hearing. I have considered and reviewed the testimony and the documents. There were significant discrepancies and inconsistencies in the evidence for which satisfactory explanations were not provided and it undermined the credibility of the witnesses and the other evidence submitted. I will provide some examples.

[4] In addition, the couple is not compatible in age, marital background or social background. There were no satisfactory explanations provided as to why this couple would enter into a marital relationship, given the significant difference in age, the fact that the appellant had been

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1 *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.
2 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

twice previously divorced and having lived in Canada for such an extended period of time and yet marrying someone so young from a village in India.

[5] There were inconsistencies and discrepancies in the evidence from the time of the interview and at this hearing. At the interview, the applicant did not even know about the appellant's first marriage. Today there were discrepancies with respect to the alleged reasons for why the appellant's second marriage broke down. The current knowledge shared between the couple here is not indicative of what would be expected in a genuine spousal relationship. For example, the appellant was not aware, or did not indicate, that the applicant had a miscarriage before he returned to Canada after the marriage visit, although the document purporting to that was put before him.

[6] There were discrepancies with respect to where the applicant currently resides and why; with respect to the nature and extent of the appellant's work and activities, particularly over the last few months; with respect to events that have occurred in the respective families since they have been married; and with respect to future plans if this appeal is not successful.

[7] Moreover, the appellant has not returned to visit his new bride for well over three years. There was no satisfactory explanation provided as to why he did not take the time and effort to visit his wife. Given the appellant's circumstances, that is not indicative of the intent for his to be a lasting spousal relationship.

[8] Given the apparent incompatibilities of the couple, the lack of a visit over such an extended period of time and the significant discrepancies and inconsistencies in the evidence, despite the alleged extent of contact and communication, I find, on a balance of probabilities, the marriage is not genuine.

[9] The question of whether or not this marriage was entered into primarily for the purpose of acquiring a status or privilege under the *Act* is also determined from the evidence on the issues I have already discussed. It is not necessary for me to reiterate the evidence as clear inferences can be made from the evidence already set out that it is more likely that this spousal relationship

was arranged primarily for the applicant to acquire admission to Canada. In fact, when asked by Minister's counsel, the applicant said that the fact that the appellant was Canadian was an important factor. Further, it appears the applicant's circumstances are such that it was likely a primary factor in this marriage. Therefore, I find that the marriage was entered into primarily for the purpose of the applicant acquiring status in Canada as a member of the family class.

[10] Based on the evidence before me, I conclude that the appellant has not met the burden of proof. 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*. The applicant is disqualified as a spouse and, therefore, the appeal is dismissed.

[Edited for clarity, spelling, grammar and syntax]

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Kashi Mattu"**

Kashi Mattu

20 January 2010

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.