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 : VA9-03709

Client ID no. / N° ID client : 5138-1299

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Satjinder Kaur SAINI	**Appelant(e)(s)**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	23 August 2010 24 August 2010	**Date(s) de l'audience**
Place of Hearing	**Vancouver, BC**	**Lieu de l'audience**
Date of Decision	29 October 2010	**Date de la décision**
Panel	**Larry Campbell**	**Tribunal**
Counsel for the Appellant(s)	Massood Joomratty **Barrister and Solicitor**	**Conseil(s) de l'appelant(e) / des appelant(e)(s)**
Designated Representative(s)	N/A	**Représentant(e)(s) Désigné(e)(s)**
Counsel for the Minister	Gregory Zuck	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons for the decision in the appeal of Satjinder Kaur SAINI (the "appellant"), who appeals the refusal to approve the permanent resident application made by her spouse, Kirpal Singh BASRA (the "applicant"). The sponsored application for a visa was refused because the visa officer found the applicant to be inadmissible to Canada in that he did not meet the requirements of the *Immigration and Refugee Protection Act* (the "*Act*").[1]

ISSUE

[2] At issue in this appeal is whether section 4 of the *Immigration and Refugee Protection Regulations* (the *Regulations*)[2] applies, thereby excluding the applicant from consideration as a member of the family class. The test articulated in the *Regulations* is two-pronged, namely, that a foreign national shall not be considered a spouse if the marriage is not genuine or was entered into primarily for the purpose of acquiring any status or privilege under the *Act*. The *Regulations* were changed on September 30, 2010. Under the former *Regulation* 4, to succeed in appeal, the appellant must only demonstrate that one of the two prongs does not apply to the relationship. Under the current *Regulation* 4(1) the appellant must show that neither of the two prongs applies.

DECISION

[3] I have come to the conclusion that the appellant has established that section 4 of the *Regulations* does not apply. This decision would be the same whether the former or current *Regulation* is applied. The appeal is allowed for the following reasons.

BACKGROUND

[4] The appellant is 31 years of age. The applicant is 31 years of age and lives in India. The appellant was previously married. This is the applicant's first marriage.

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

ANALYSIS

[5] The visa officer interviewed the applicant and appellant in New Delhi on May 4, 2009. Among the concerns the visa officer addressed at the interview, as shown in the interview notes and in the letter of refusal of June 24, 2009 were the following:

- The appellant and applicant and were not compatible with regard to marital background;
- the photographs submitted did not indicate a celebratory atmosphere;
- neither the appellant's nor applicant's fathers attended the wedding;
- there was a lack of knowledge by both the appellant and applicant;
- there were inconsistent statements and the visa officer had concerns about credibility; and
- phone bills submitted by the appellant were on the applicant's sister's telephone number.

[6] The genuineness of a marriage can be affected by a number of different factors which can vary from appeal to appeal. They can include but are not limited to such factors as:

- compatibility;
- development of the relationship;
- communication between the appellant and applicant;
- knowledge of each other;
- visits by the appellant to see the applicant;
- existence of family of applicant in Canada; and
- birth of a child

[7] The second prong of the test – whether the relationship was entered into primarily for the purpose of acquiring any status or privilege under the *Act* – is self-explanatory. The advantage

sought in spousal appeals is generally entry to Canada and the granting to the applicant of permanent resident status as a member of the family class.

[8] The appellant and applicant are compatible in terms of age, social, cultural, ethnic and educational background. While the appellant has been previously married and the applicant has not, this is not a significant area of incompatibility.

[9] The appellant and applicant provided consistent evidence about the development of the relationship. This was an arranged marriage and they provided generally consistent details regarding the arrangement. The appellant and applicant provided a reasonable explanation for the absence of their fathers from the wedding. The appellant and applicant provided testimony at the hearing in this regard that was consistent with each other, although not consistent with that given at the visa office interview. This discrepancy was not adequately explained.

[10] There was both *viva voce* and documentary evidence with regard to ongoing communication. The documentary evidence submitted by the appellant with regard to telephone communication was less compelling as the appellant resides with the applicant's family and uses that telephone. However, the level of knowledge demonstrated by the appellant and applicant is compatible with the claimed frequency of communication.

[11] The appellant and applicant provided a generally consistent and reasonable level of knowledge regarding each other's life work and other circumstances. This included details relating to the appellant's surgery. While there were some areas of minor inconsistency, I find that these were outweighed by the areas of consistent testimony.

[12] The appellant and applicant provided consistent testimony with respect to their plans for life in Canada. While the plans were not detailed, they were consistent. The appellant and applicant were also consistent with respect to their plan for the appellant to return to India if the appeal is unsuccessful.

[13] The appellant made two trips to visit the applicant since the time of the marriage: one in 2009 and one in 2010.

[14] The applicant's entire family resides in Canada. He was the only one left in India. He had applied to immigrate to Canada in 2002 and in 2006. There is a pull factor in this regard. The appellant was candid in admitting that this was a factor in looking for a match. The applicant said that there had been two other potential matches, both of whom were from Canada.

[15] Counsel for the respondent submitted that the presence of the applicant's family in Canada was a large factor in this relationship. The applicant had been candid in admitting that this was a reason for his marriage. Counsel submitted that this was in fact the primary reason for the marriage. Counsel submitted that there were a number of minor inconsistencies that, when taken in combination, called into question the genuineness of the relationship. Counsel submitted that the concerns of the visa officer had not been adequately addressed and that the lack of detailed planning was also significant in this case.

[16] The oral evidence was given under affirmation and the appellant and applicant presented, on balance, in a direct and straightforward manner. I am satisfied that the testimony was credible. There were some inconsistencies in the testimony of the appellant and applicant, which have not been satisfactorily explained. However, I find that these areas of inconsistency are outweighed by the significant areas of consistent testimony. With respect to the reason for the marriage, I find that the appellant's status in Canada was a consideration in the match but not the primary reason. I find, on the balance of probabilities, that the appellant has met the onus to establish that the marriage is genuine and was not entered into primarily to gain a status or privilege under the *Act*.

CONCLUSION

[17] I am satisfied that there is sufficient credible evidence before me to find the marriage is genuine and was not entered into primarily for immigration purposes. 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 an officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

(signed) **"Larry Campbell"**

Larry Campbell

29 October 2010

date

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.