



IAD File No. / N° de dossier de la SAI : VB0-04373

Client ID no. / N° ID client : 4632-2452

## Reasons and Decision – Motifs et décision

### SPONSORSHIP

<b>Appellant(s)</b>	Chhinder Pal Kaur BRAR	<b>Appelant(e)(s)</b>
<b>Respondent</b>	The Minister of Citizenship and Immigration	<b>Intimé(e)</b>
<b>Date(s) of Hearing</b>	14 June 2011	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Vancouver, BC	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	5 July 2011	<b>Date de la décision</b>
<b>Panel</b>	Erwin Nest	<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>Designated Representative(s)</b>	N/A	<b>Représentant(e)(s) Désigné(e)(s)</b>
<b>Counsel for the Minister</b>	Gregory Zuck	<b>Conseil du ministre</b>

## REASONS FOR DECISION

[1] Chhinder Pal Kaur BRAR (the “appellant”) appeals from the refusal to approve the permanent resident visa application for her spouse Harwinder Singh BRAR (the “applicant”) from India. The visa officer found that the applicant is a person caught by the exclusionary provision of section 4 of the *Immigration and Refugee Protection Regulations* (the “*Regulations*”).<sup>1</sup>

[2] The application was refused because in the visa officer’s view the marriage between the appellant and the applicant is not genuine and was entered into primarily for the purpose of the applicant acquiring any status or privilege under the *Act*.

[3] Section 4 of the *Regulations* was amended effective September 30, 2010.<sup>2</sup> The wording of the test is the same in the new subsection 4(1)<sup>3</sup> of the *Regulations*; however, the amendment affects whether one or two of the elements of the test must be applied in order to disqualify a spouse as a member of the family class. The amendment to the *Regulations* does not change the outcome of this appeal.

[4] The test under former section 4 of the *Regulations* had two prongs. To succeed on appeal the appellant had to prove 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 *Immigration and Refugee Protection Act* (the “*Act*”).<sup>4</sup> To dismiss the appeal the panel had to find that the marriage is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the *Act*.

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

<sup>2</sup> *Regulations amending Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

<sup>3</sup> **4(1) Bad Faith** - For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, or a conjugal partner if the marriage, common-law partnership, conjugal partnership

(a) was entered into primarily for the purpose of acquiring any status or privilege under the *Act*; or  
(b) is not genuine.

<sup>4</sup> *Immigration and Refugee Protection Act* (the “*Act*”), S.C. 2001, c.27.

[5] The test under the new subsection 4(1) of the *Regulations* also has two prongs. To succeed on appeal the appellant must prove, on a balance of probabilities, that the marriage to the applicant was not entered into primarily for the purpose of acquiring status under the *Act* and that it is genuine. To dismiss the appeal the panel must find that the marriage was entered into primarily for the purpose of acquiring any status or privilege under the *Act* or that is not genuine.

[6] As noted the two elements of the test are: whether the marriage is not genuine and whether the marriage was entered into primarily for the purpose of acquiring a status or privilege under the *Act*. At the hearing, the panel is required to determine whether or not the marriage is genuine; nonetheless, given the nature of marriage, as a relationship between a husband and wife, the existence of a genuine marriage is a question of fact and includes a mix of the past, current and future state of affairs in the relationship. Moreover, in circumstances of a marriage the status or privilege that can be acquired under the *Act* is that the spouse is granted permanent resident status in Canada through membership in the family class when the spouse qualifies to be sponsored to Canada.<sup>5</sup> The onus of proof is on the appellant to show, on a balance of probabilities, that the applicant is not disqualified as a spouse.

[7] In coming to her/his conclusion, the visa officer took the following factors into consideration:

- in the visa officer's opinion, the applicant provided evasive answers at the interview concerning his marriage to the appellant, his sister's marriage and divorce, and his brother's marriage to his sister's husband's relative. The applicant had difficulty to explain the time line of the development of his relationship with the appellant, including when and how the marriage was arranged, when the couple first met in person and when the engagement ceremony was held;
- in the visa officer's opinion, the match was fixed before the appellant arrived in India;

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<sup>5</sup> Subsections (11)1, 12(1) and 13(1) of the *Act*.

- though some guests as seen in the photographs of the marriage and the engagement ceremony are dressed for the occasion, the photographs lacked the solemnity, a spirit of celebration and festivity customarily seen in the marriages in Punjab. The appellant and the applicant do not appear to be comfortable with each other as to be expected in a newly wed couple. All photographs were taken on two to three separate occasions and showed the couple posing in various locations;
- the applicant could not remember the date of their honeymoon;
- the applicant demonstrated little knowledge of the appellant and her circumstances in Canada;
- the appellant does not live with the applicant's family members, despite that his entire family of origin resides in Canada;
- the applicant has tried to come to Canada before. The applicant's first wife did not sponsor him to Canada because after his sister sponsored her brother, his application for permanent residence was refused. Later, the applicant's sister divorced the applicant's first wife's brother;
- in the visa officer's opinion, the respective marriages between the appellant and the applicant, the applicant's sister and her second husband, the sister's second husband's sister and the appellant's brother are interconnected and do not appear to be a coincidence;
- the applicant's sister's wedding and the appellant's shagun ceremony were held on the same day at the same time. According to the visa officer, it is customary for a brother to take a responsibility in his sister's wedding and the functions, such as shagun and the marriage ceremony cannot be held at the same time. In the visa officer's opinion, the applicant's shagun ceremony was held to take photographs with all the guests present for his sister's wedding.

[8] Before arriving at her/his decision the visa officer asked the applicant to address her/his specific concerns with respect to the relationship between the couple but was not satisfied with the answers provided by the applicant.

## BACKGROUND

[9] The appellant is a 35 year-old citizen of India. She was granted permanent residence status in Canada in October 2004 after being sponsored by her first husband.

[10] The applicant is a 39 year-old citizen of India.

[11] The appellant and applicant were introduced through the appellant's relative, the broker in this marriage, and first met in person when the appellant visited India in December 2009. Their marriage was solemnized on January 1, 2010<sup>6</sup> and celebrated with the wedding reception on the same day.<sup>7</sup>

[12] The applicant was married previously and divorced his first wife in 2009 in India.<sup>8</sup> There was one child born of his union with his first wife, a son, five years old at present.

[13] The appellant married first time in 2001. Her marriage did not last and after the separation in February 2005, the divorce from her first husband was finalized in June 2005.<sup>9</sup>

[14] The applicant's parents and three sisters are living in Canada. Since May 2011 the appellant has been living with her parents-in-law and with the three sisters-in-law in Toronto.

[15] The appellant is pregnant at present. She is expected to deliver a child in September 2011.<sup>10</sup>

[16] Prior to the appellant's marriage to the applicant in January 2010, the appellant's brother Atamjeet Singh married Gurwinder Kaur on December 27, 2009. Gurwinder Kaur's brother Jaswinder Singh married the applicant's sister Rupinder Kaur on December 30, 2009. All three marriages were solemnized and celebrated in India.

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<sup>6</sup> Record, page 62.

<sup>7</sup> Record, page 74.

<sup>8</sup> Record, pages 45-58.

<sup>9</sup> Record, pages 8-17.

<sup>10</sup> Exhibit A-1.

[17] The appellant has returned to India to visit the applicant from October 21, 2010 to January 20, 2011.<sup>11</sup> She stays in touch with him through letters and telephone calls.

## DECISION

[18] Based on the evidence before me, I conclude that the appellant has met the onus upon her. I find on a balance of probabilities, the marriage is genuine. Also, I find the marriage was not entered into primarily for the purpose of acquiring any status or privilege under the *Act*. Therefore, the appeal is allowed.

## ANALYSIS

[19] I have considered all the testimony adduced at the hearing *de novo*, the contents of the Record, the appellant's disclosure and the oral submissions from the counsel for the appellant and from the Minister's counsel.

[20] The appellant testified in person in the hearing. The applicant testified by phone from India.

[21] There are strengths and weaknesses in this appeal. The strengths are as follows.

[22] I found the appellant credible. She testified in a clear and straightforward manner. She was spontaneous and detailed in her responses to questions. When asked if she feared that her husband was using her to simply join his family in Canada, she answered that she decided to have a child with the applicant because she does not believe that he is deceiving her as to the *bona fides* of her intentions.

[23] With respect to the motivation for the marriage, I am satisfied that witnesses' testimony was consistent regarding the basic factual events leading to the marriage proposal. I find that the appellant provided credible information regarding the genesis of the relationship between the

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<sup>11</sup> Exhibit A-1.

applicant and the appellant. I find the appellant's testimony credible with respect to her family's motivation to find a suitable marital partner for her following failure of her first marriage. She testified that her father and her brothers were increasingly worried and were strongly motivated to find her a candidate for marriage. I also find her explanation satisfactory regarding her family's efforts to ensure success of her second marriage, thought the investigation of the applicant's background and circumstances. During the marriage discussions, the applicant provided a copy of the judgment from the district Judge in Moga to the appellant's brother and her father. The judgment contained details of the applicant's petition for divorce from his first wife and the reasons for granting the divorce. I am satisfied that the appellant's father, her brother and her family investigated circumstances of the applicant's background and divorce, and the appellant was apprised of these particulars before giving consent to the arrangement of the marriage. I find the appellant's explanation satisfactory regarding her priority at the time of her visit in India in December 2009, and I accept that she only decided to get married after meeting the applicant in person.

[24] The couple's respective families made inquiries and conducted an investigation with the assistance of the broker. I am satisfied with the explanation, provided that there was sufficient consideration to the appellant's personal background and circumstances prior to entering into this marriage.

[25] On the facts of this appeal, immigration is probably a factor in the applicant wanting to marry a Canadian, but the evidence as a whole does not support a finding that it is the primary factor.

[26] There was evidence of the nature of their common interests and why it was this man with one failed marriage was attractive to her. She testified she was attracted to the applicant at first because she found him to be handsome, good natured. She described him as a person, who makes everybody comfortable around him and ready to help anybody. She said that she loves him and has no problem with the fact that he is divorced and has a child after he told her the reasons for the failure of his previous relationship. I find that from her perspective his explanations about the circumstances for his divorce addressed her concerns.

[27] I find that there are many areas of compatibility between the witnesses, including language, age, marital status, and religion.

[28] Furthermore, both come from a similar socio-economic background, being from agrarian families originating in rural Punjab, India. I find that these commonalities from a sufficient impetus to consider an arranged marriage in all the appellant and applicant's circumstances. I find that the hallmarks of a genuine arranged marriage, as borne out by the credible testimony of both witnesses, are present in this case.

[29] The applicant encouraged the appellant to establish a strong relationship with his parents and his sister in Canada in order to facilitate successful integration of the appellant into the applicant's family when he comes to Canada. The appellant currently resides with the applicant's parents and his sisters in Canada, and she relies on the financial support from the applicant's parents during her pregnancy. I find this to be indicative of her intent to live together with applicant and is evidence of the relationship consistent with what one might expect in a genuine relationship.

[30] While both witnesses articulated general statements of intent to reside together permanently. I am satisfied that the appellant discussed future plans with the applicant, and I find that the couple had developed a foundation for their future lives together in the context of a relationship with the genuine spousal purpose. I find in this case, there were statements indicating that specific and detailed planning had taken place, including the expected employment of the applicant.

[31] I am satisfied that the applicant and the appellant testimony at the time of the hearing was consistent with respect to the motivation of the parties to enter into the relationship, the details of the marriage arrangements, the circumstances and the background of arranging and finalizing the appellant's brother's and the applicant's sister's respective marriages in 2009, the applicant's employment history and the particulars of his life in India since his parents' immigration to



Canada in 2003, and periods and details of cohabitation in India, their respective families' composition and circumstances, the applicant's social life and hobbies. In my opinion, this suggests a development in the relationship between the appellant and the applicant consistent with the conclusion that the marriage is genuine.

[32] The applicant's knowledge at the hearing about the appellant's employment situation, work plans, residency, daily routines, entertainment preferences and her health issues during the pregnancy, suggest that these areas speak to a development in the relationship consistent with the conclusion that the marriage is genuine. Further, the appellant and applicant have demonstrated sufficient knowledge that I would have expected in the development of a genuine spousal relationship.

[33] The marriage was a well-attended and well-publicized celebration. Important members from each side of the family participated including the applicant's parents and his sister from Canada. Numerous photographs corroborate that they spent time together with family members and friends. As a whole, the photographs depict scenes of spontaneous happiness and closeness.<sup>12</sup>

[34] The witnesses confirmed that the applicant's parents will move to Abbotsford as soon as the applicant is allowed to come to Canada for the purpose of living in a joint family home with them. The applicant testified that after the application for permanent residence was refused, he invited the appellant to come and live with him permanently in India. When asked about the future plans for the couple in the event the appeal is dismissed the applicant confirmed that he wants the appellant to return to India with their child to live with him. I am satisfied there has been discussion between the couple as to their future in India should a permanent resident status visa be denied.

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<sup>12</sup> Exhibit A-1

[35] I find credible the evidence that the witnesses cohabited as husband and wife after the marriage. The panel found that the un rebutted evidence of the additional visit by the appellant to visit the applicant in India since their marriage and the evidence of very frequent communication between them corroborate the genuineness of the marriage. I find credible the evidence that the witnesses cohabited as husband and wife in the applicant's home during the appellant's return visit to India. I find credible that the appellant is expecting a child of her union with the applicant. I find that there is sufficient credible evidence to prove on the balance of probabilities that this is a genuine relationship.

[36] The panel found that both the applicant and appellant to be honest and sincere in their answers even though sometimes there were minor inconsistencies.

[37] It appears that the applicant was unaware that the appellant found four days after her arrival in Canada about her first husband's infidelity. The applicant was familiar with the reasons for the appellant's divorce from her husband and the length of time they lived together in Canada before the separation. I find the applicant's lack of knowledge when the appellant discovered first husband's relationship with another woman is not of such a nature as to generally undermine his credibility.

[38] The main weakness in this appeal is the discrepancy between the appellant's and the applicant's testimony concerning whether they had discussions about their respective finances. I agree with the Minister that it is the type of information that spouses usually share.

[39] This discrepancy has not been adequately explained. In the context of the evidence as a whole, I do not find this inconsistency sufficient to outweigh the entirety of the other evidence supporting a genuine marriage.

[40] With respect to any inconsistency or lack of knowledge that was demonstrated at the hearing today, I find that they are not of such a nature as to generally undermine the credibility of these witnesses. Based on the evidence before me and on the balance of probabilities, I find there was sufficient evidence demonstrated as would be expected in a genuine spousal relationship.

[41] While there could be a draw factor for the applicant to want to come to Canada, because his entire family of origin resides in Canada, I am not of the opinion that this is the primary reason for his marriage and that the evidence is supportive of the view, on balance of probabilities, that the applicant and the appellant intend to remain as husband and wife in Canada. They are in regular contact with each other, they know each other's family, the appellant has visited him since the wedding, the applicant wants to spend his future with her and they have a common plan for a life together.

[42] Accordingly, the concerns of the visa officer and the Minister's counsel at the hearing regarding the genuineness of the marriage were overcome at this hearing by the evidence from the appellant and the testimony of the applicant. Any concerns that remain outstanding are not significant in light of the panel's impressions of the witnesses at the hearing and its overall assessment of the evidence. The appellant has met the onus of demonstrating on a preponderance of reliable evidence that the marriage was not entered into primarily for the purpose of acquiring any status or privilege under the *Act* and is genuine.

[43] Accordingly, 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.

(signed)

**“Erwin Nest”**

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**Erwin Nest**

**5 July 2011**

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**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.