



IAD File No. / N° de dossier de la SAI : VB0-01353

Client ID no. / N° ID client : 4018-5403

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s) Muraleeswary MARIYADAS **Appelant(e)(s)**

Respondent The Minister of Citizenship and Immigration **Intimé(e)**

Date(s) of Hearing 15 March 2011
04 April 2011
26 April 2011 **Date(s) de l'audience**

Place of Hearing Vancouver, BC **Lieu de l'audience**

Date of Decision 02 May 2011 **Date de la décision**

Panel Erwin Nest **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 David Macdonald **Conseil du ministre**

REASONS FOR DECISION

[1] Muraleeswary MARIYADAS (the “appellant”) appeals from the refusal to approve the permanent resident visa application for her spouse Shugumar ARUNASALAM RAMSINGH (the “applicant”), from Malaysia. 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*”).¹

[2] Section 4 of the *Regulations* was amended effective September 30, 2010.² The wording of the test is the same in the new subsection 4(1) 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.

[3] 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 *Act*. 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*.

[4] The test under the new subsection 4(1)³ 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

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

4 Bad Faith – For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.

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

³ **4(1)** 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.

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.

[5] 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. The onus of proof is on the appellant to show, on a balance of probabilities, that the applicant is not disqualified as a spouse.

[6] The application was refused because after review of the material submitted by the applicant in support of his application and the information he provided at the interview, the visa officer concluded that the marriage between the appellant and applicant is not genuine and was entered into primarily for the purpose of the applicant acquiring any status or privilege under the *Act*.

[7] 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

[8] The appellant is a 43-year-old Canadian citizen, originally from Sri Lanka. The applicant is a 48-year-old citizen of Sri Lanka. The applicant claims that since 2006, he has been residing in Malaysia.⁴ According to the appellant, she met the applicant for the first time in person in the People's Republic of China (the "PRC") in November 1999. The appellant testified that her

⁴ Record, page 2, page 11, page 19.

marriage to the applicant was registered on January 27, 2009 at the High Commission of Sri Lanka in Malaysia,⁵ followed by the wedding reception at the restaurant on the same day.

[9] This is a first marriage for the applicant. The appellant was married previously and she divorced her first husband on March 20, 2008.⁶ The appellant has one child born of her relationship with her first husband, a daughter, 24 years old at present.

[10] The appellant testified that her daughter came to Canada in 2000. The appellant's daughter was married in 2004. She lives with her husband and their three children in Toronto.

[11] The applicant confirmed that he has one sister living in Montreal, one brother living in Toronto and two of his brothers live in Germany and the other two brothers reside in the U.K.

[12] The applicant's mother lives in Sri Lanka.

[13] The appellant testified that she has returned to Malaysia to visit the applicant in May 2010, staying with him for one month. She claimed that she has sent money to the applicant, and she stays in touch with him through telephone calls.⁷

[14] The appellant filed documentary evidence, Exhibits A-1 through A-2, which included various documents such as: a copy of her Canadian passport, confirming her recent travel to Malaysia; a copy of supplementary credit cards in the applicant's name; a copy of the medical report from Dr. M.M. Garrey regarding the appellant's "incomplete abortion" in May 2007; telephone records; receipts for money transfers; and photographs.

DECISION

[15] Based on the evidence before me, I conclude that the appellant has not met the onus upon her to prove, on the balance of probabilities, that the marriage to the applicant was not entered

⁵ Record, page 48, page 49.

⁶ Record, page 10.

⁷ Exhibit A-1.

into primarily for the purpose of acquiring status under the *Act* and that it is genuine. Therefore, the appeal is dismissed.

ANALYSIS

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

[17] The appellant testified in person. The applicant testified by phone from Malaysia.

[18] I am dismissing the appeal for the following reasons.

[19] The appellant did not testify in a clear or persuasive manner. She was not able to provide detailed answers and thus her answers were vague, evasive and sometimes contradictory.

[20] The witnesses' testimony with respect to the origin of the relationship was inconsistent with the information provided previously to immigration officials, and contained a number of discrepancies concerning key areas of knowledge between the spouses, therefore raising the issue of credibility.

[21] The assessment of the genuineness of the relationship begins with the foundational documents of the sponsorship application and the application for permanent residence forms that are attested as true by the parties and continues through the applicant's interview and through the testimony at the hearing and where additional documentary evidence can be introduced and any clarification of information can be provided.

[22] The witnesses' testimony was consistent with respect to the date and the circumstances of their first meeting in person in the PRC. During the interview conducted on March 3, 2010,⁸ the applicant told the visa officer the reason he gave his phone number to the appellant, a married

⁸ Computer Assisted Immigration Processing System ("CAIPS") notes, pages 213 -216.

woman, in 1999 was because they became friends. He claimed that after the appellant travelled to Canada in 1999, she maintained contact with him by phone. The CAIPS⁹ notes reflect the applicant's view that the reason the appellant phoned him from Canada was because she was interested in him.

[23] The applicant testified that the appellant did not tell him the reason she was in the PRC in 1999. He claimed that she did not share with him any details about her marital status and the existence of the child of her union with her first husband during their first meeting in person. The applicant confirmed that he only learned about her past marital history after she phoned him, a month after her arrival in Canada in 1999. Later in his testimony the applicant confirmed that the appellant told him during their first meeting in person that she is married and has a child from her first marriage. He claimed that the appellant was laughing when she told him about her marital status and the existence of a child of her union with her first husband during their first meeting in person, causing him to disbelieve her. I find not believable the applicant's testimony that he was unaware why the appellant was in the PRC. The absence of credible explanations for the applicant's self contradictory oral evidence concerning the first time he learned from the appellant about her past marital history and about the existence of her daughter, undermines his credibility and detracts from his claim that the marriage is genuine.

[24] The applicant confirmed that the appellant initiated and continued the phone contact with him from Canada, sharing with him the details of her married life and the unhappiness she experienced in her previous relationship. The applicant testified that he advised the appellant during their phone conversations to resume contact with her husband with the view to seek reconciliation with him. It was never adequately explained why the applicant gave the advice to the appellant after 2000 to reconcile with her husband, given that the appellant was separated from her husband since 1992, and she was not aware of his whereabouts. The applicant testified that the appellant's husband was an alcoholic who physically abused her, and he understood that she suffered a lot while married to her first husband. The applicant admitted that he is unaware if the appellant followed his advice by making efforts to reconcile with her husband.

⁹ CAIPS - Computer Assisted Immigration Processing System.

[25] The witnesses' testimony was consistent with respect to nature of their relationship from 1999 to 2006, claiming that they considered themselves to be friends during this period. The applicant testified that the appellant expressed her feelings for him on the phone from Canada in 2006. The appellant confirmed that she proposed marriage to the applicant on the phone from Canada, and he told her that he needs to consult with his mother prior to accepting the marriage proposal. The appellant claimed that after the applicant consulted with his mother during her visit with him in Malaysia in August 2006, he communicated his acceptance of the marriage proposal to her when she phoned him in Malaysia. This information is contradicted by the applicant's testimony confirming that while he was surprised by the appellant's marriage proposal made on the phone, he claimed that he accepted the marriage proposal immediately after it was made. No credible evidence was adduced at the hearing to explain the inconsistency in the witnesses' testimony concerning the circumstances of the marriage proposal and acceptance.

[26] I note that the witnesses' oral evidence confirming that the appellant made a marriage proposal to the applicant in 2006 is contradicted by the information in the Sponsored/ Spouse questionnaire¹⁰ indicating that the appellant proposed marriage to the applicant in 2007 in Singapore. I find the discrepancy between the witnesses' testimony and the information previously provided to the Canadian immigration authorities with respect to the date and the circumstances of the appellant's marriage proposal to the applicant inconsistent with the conclusion, on the balance of probabilities, that the marriage is genuine.

[27] No credible evidence was adduced at the hearing to explain why the appellant's marriage proposal was made and accepted before her marriage to the first husband was finalized.

[28] The applicant told the visa officer that the reason the appellant did not sponsor her first husband to Canada was because she did not like him. At the hearing, the witnesses' testimony was consistent about the nature and circumstances of the appellant's first marriage. I note that the applicant's interview took place close to the date of the events and circumstances canvassed by the visa officer. I find not credible that the witnesses' matching testimonies in an important

¹⁰ Record, page 41.

area of knowledge between the spouses two years and three months after their marriage would be substantially different from what the applicant told the visa officer, approximately a year and three months after the marriage.

[29] I agree with the Minister's counsel that the applicant provided no credible explanations for why he would choose to marry a woman who has not finalized her divorce from her first husband before making the marriage proposal to him given that he advised her to reconcile with her first husband and to look for a match in 2006. It appears that the applicant had no interest in marrying the appellant before she made the marriage proposal to him in 2006. He did not provide any significant factors to offset the incompatibility between him and the applicant in terms of marital status. The fact of the incompatibility in terms of marital status with no credible explanation, combined with the other weaknesses described above, all combine to undermine the genuineness of the marriage and the intentions of the applicant in marrying the appellant.

[30] It was never adequately explained why the appellant and the applicant did not use any method of protection when they had their first sexual relations in 2007, resulting in the appellant's "incomplete abortion" in May 2007, given that they planned not to have children together after their marriage. The applicant provided detailed testimony, explaining the reasons he married for the first time at the age of 46. He described his mother's efforts to find a suitable candidate for a marriage for him in Sri Lanka. No credible evidence was adduced at the hearing why the applicant chose to marry for the first time without an intention to have children from his union with his wife. The absence of credible explanations why the applicant had no plans to have children with the appellant after their marriage detracts from his credibility and is inconsistent with the conclusion, on the balance of probabilities, that his marriage to the appellant is genuine.

[31] I find not adequate the evidence to support the conclusion, on the balance of probabilities, that the applicant was aware of the details of the appellant's history before his relationship with the appellant changed from that of between friends to the relationship leading to the marriage proposal and acceptance. I find that much evidence in this case, including most of the testimony

of the witnesses in significant areas regarding their initial encounters and overall development of the relationship from 1999 to 2006, lacks cogency.

[32] In describing the development of his relationship with the appellant in the Sponsored/Spouse questionnaire¹¹ the applicant stated the following:

In April 11/07, she came to Singapore and I met her there. We decided to spend our future together and she traveled to Malaysia with me. We decided to tell our families of our decision and to keep the marriage registration ceremony in Malaysia. From Malaysia, she went to India to meet her family and my mother. I followed her to India on April 29/07. We told both families, our decision and got their blessings.

[33] It was never adequately explained why the appellant's daughter's and her husband's alleged disapproval of the appellant's second marriage, on the grounds that it is contrary to the customs and tradition in the community that both the appellant and the applicant come from, was neither disclosed in the application for permanent residence nor at the interview with the visa officer.

[34] Based on the totality of the evidence before me, I find it more likely than not, that the applicant wanted to increase the chances of the approval of his application for permanent residence, by creating an impression with the Canadian immigration authorities that his marriage to the appellant is genuine, by suggesting the couple's marriage was supported by his and the appellant's respective families.

[35] The appellant confirmed that her daughter was aware that she had contact with a man outside of Canada from 2000 until she moved out of the appellant's home in 2004 after her marriage. The appellant claimed that she informed her daughter in 2006 that she is in love with the applicant and her daughter stopped contact with her for six months. She admitted that she has not yet informed her daughter of the fact of her marriage to the applicant.

¹¹ Record, page 40.

[36] I am not persuaded by the appellant's explanation that her marriage to the applicant will cause a rift and a trouble in the relationship between her and her daughter's family, given that the appellant and the applicant sought and received support and consent to their marriage from the senior immediate members of their respective families. I find not credible the appellant's explanations that the appellant's daughter is willing to cut contact with her mother and prevent her from contacting with her grandchildren because she married a man she is allegedly in love with, given that her daughter knows about the appellant's unhappy marriage to her father, and about the details of her life in Canada as a single mother. The applicant confirmed that since his marriage to the appellant, he has never tried to contact the appellant's daughter or the appellant's son-in-law in an effort to prevent a family feud and to establish a close familial relationship between him and the appellant's daughter, the person the appellant is closest to in Canada.

[37] I am satisfied that the applicant has not taken active steps in trying to integrate his wife into his family in Canada, and I find that the evidence with respect to the contact between the appellant and the applicant's family is inconsistent with the conclusion that the marriage is genuine.

[38] At the time of the interview, held on March 3, 2010¹² the applicant was not aware of:

- the names and gender of the appellant's grandchildren. He provided incorrect date of birth for the appellant's youngest grandchild (she does not like to talk with him about her grandchildren);
- the date the appellant acquired permanent residence in Canada;
- the reason the appellant was in the PRC when he met her in 1999;
- if the appellant owns a house in Canada, suggesting that maybe she sold the house already; and
- whether the appellant lives in a house in Canada and how many bedrooms are in the house.

¹² CAIPS – pages 213 -216.

[39] At the hearing, the applicant claimed that the appellant's daughter was married in 2006, contradicting the appellant's testimony that her daughter was married in 2004. The applicant confirmed that by the time of the hearing he had not seen photographs of the appellant's three grandchildren. It was never adequately explained why the appellant does not share with her life partner the details and photographs of the grandchildren she loves and is devoted to. The absence of credible explanations why she does not share with him her love for her grandchildren leads me to conclude, on the balance of probabilities, that the marriage is not genuine.

[40] The appellant's lack of knowledge at the hearing about the ownership of the business the applicant ran in Sri Lanka from 1990 to 2006¹³ and the reason he sold the family business and moved to Malaysia, the circumstances of the applicant's siblings leaving Sri Lanka and the particulars of their settlement in the UK, Germany and Canada, combined with the discrepancy between the witnesses' testimony regarding the extent and the dates of the appellant's financial support to the applicant, suggest that these areas speak to a lack of development in the relationship consistent with the conclusion that the marriage is genuine.

[41] I am not satisfied, on the balance of probabilities, that the appellant discussed future plans with the applicant, and I find that the couple has not developed a foundation for their combined future lives together in the context of a relationship with a genuine spousal purpose.

[42] The appellant and applicant did not provide sufficient credible evidence to demonstrate they have developed a genuine spousal relationship. I find there was not sufficient credible evidence to rebut the immigration officer's assessment, to overcome the Minister's counsel's concerns or to show the marriage was not entered primarily for the purpose of the applicant acquiring permanent resident status in Canada.

[43] The discrepancies in the evidence and inconsistencies in the testimony lead me to find the witnesses deliberately misrepresented particular facts to the panel at the hearing. I find the cumulative effect of their testimony seriously undermines the witnesses' credibility about the genuineness of the marriage between the appellant and the applicant.

¹³ Record, page 26.

[44] Documentary material was submitted evidencing the alleged contact between the appellant and the applicant in 2010. As it is, I am not persuaded that the couple's contact in the pre-marriage or post-marriage period is particularly meaningful or of the nature to be expected within the context of a genuine spousal relationship.

[45] Furthermore, the irreconcilable nature of the testimony of the witnesses leads me to conclude that the phone cards, copies of phone bills between the appellant and the applicant and the photographs tendered are not meaningful and not indicative of subsisting relationship.

[46] I am not persuaded that the photographs overcome the fact that the appellant has failed to establish, on the balance of probabilities, that she and the applicant have been sharing and developing a genuine and ongoing relationship from the time of their marriage to the present, as one would expect between spouses in a marriage intended to last.

[47] The applicant has family in Canada, a sister and a brother living in Montreal and Toronto respectively. The applicant has employment opportunities in Canada and can establish himself independently of the appellant. When the evidence is considered in its entirety, I conclude that the marriage was likely entered into for the purpose of acquiring a status or privilege under the *Act*.

[48] These factors, combined with credibility concerns arising at hearing, preclude the conclusion that the marriage was entered into for a legitimate spousal purpose.

[49] For the foregoing reasons, the appellant has not met her evidentiary burden of proving, on a balance of probabilities, that the marriage is genuine and that it was not entered into primarily for the purpose of acquiring any status or privilege under the *Act*.

[50] Accordingly, the appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

(signed)

“Erwin Nest”

Erwin Nest

02 May 2011

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.