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 : VB1-01554

Client ID no. / N° ID client : 6353-0576

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Mandeep DOSANJH	**Appelant(e)(s)**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	15 February 2012	**Date(s) de l'audience**
Place of Hearing	**Vancouver, BC**	**Lieu de l'audience**
Date of Decision	15 February 2012 (rendered orally) 21 February 2012 (written decision)	**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	Nadine Wu	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] I have considered the testimony and other evidence in this case, and I am ready to render my decision orally. I would like to add that written reasons will be issued and may be edited for syntax and grammar and references to applicable case law.

[2] These are the oral reasons for the decision in the appeal of Mandeep DOSANJH (the "appellant"), who appeals the refusal to approve permanent resident visa application made by his spouse, Jagdish KAUR (the "applicant"). The sponsored application for a visa was refused because the Visa officer found the applicant to be inadmissible to Canada and that she did not meet the requirements of the *Immigration and Refugee Protection Act* (the "*Act*").[1]

[3] At issue in this appeal is whether subsection 4(1) 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 under subsection 4(1) of the *Regulations* 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 a status or privilege under the *Act* and that it is genuine. To dismiss the appeal, the panel must find the marriage was entered into primarily for the purpose of acquiring a status or privilege under the *Act* or that it is not genuine.

[4] I have come to the conclusion, taking into account the consent of the Minister, that the appellant has established that subsection 4(1) of the *Regulations* does not apply. The appeal is allowed for the following reasons.

[5] As background, the appellant is 35 years of age; the applicant is 33 years of age and lives in India. The applicant was previously married and has one child. The appellant was not previously married. The visa officer interviewed the applicant in New Delhi on February 9, 2011. Among the concerns the visa officer addressed at the interview, as shown in the interview

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1 *Immigration and Refugee Protection Act*, S.C. 2001, c.27.

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

notes in the letter of refusal of May 4, 2011, are the following. The visa officer had concerns that the appellant and applicant were not compatible in terms of social background, prior marital status, and that the marriage had been arranged in haste and did not take place at the applicant's village. The visa officer felt there were concerns regarding the applicant's divorce from her ex-husband, given a previous temporary resident visa application, and there were concerns that there had been no honeymoon and that the appellant's parents had not participated in the marriage.

[6] The genuineness of a marriage can be affected by a number of different factors that can vary from appeal to appeal. They can include, but are not limited to such factors as compatibility, the development of the relationship, communication between the appellant and applicant, their knowledge of each other, visits by the appellant to see the applicant, existence of family of the applicant in Canada, and the birth of a child. The other 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.

[7] I find that the appellant and applicant are compatible in terms of age, ethnic and linguistic background. They are less compatible with regard to social background and prior marital status. The appellant and applicant provided generally consistent testimony relating to the development of the relationship and the appellant's lengthy relationship with the extended family of the applicant in Canada for a number of years. The appellant and applicant provided adequate explanation of why the relationship proceeded despite the apparent incompatibilities in this case related to social background and prior marital status.

[8] There is *viva voce* and documentary evidence regarding ongoing communication between the appellant and applicant. The appellant and applicant provided generally consistent testimony and demonstrated a good knowledge of each other's life, family and work circumstances, and the appellant demonstrated a knowledge of the applicant's child in India, which I find is compatible both with the claimed levels of communication and with the existence of a genuine relationship. The appellant and applicant gave generally consistent testimony regarding future plans, and the

appellant visited the applicant on one occasion subsequent to the wedding. I find that they provided an adequate explanation for the lack of a visit in 2011. The applicant does have extensive family in Canada and this is definitely a pull factor with regard to the appeal. However, I find that the evidence establishes that there was a consistent involvement between the appellant and the applicant's extended family in Canada for a number of years preceding any development of a relationship and I find that the applicant's family in Canada and rejoining them in Canada was not the primary purpose with regard to this relationship.

[9] In conclusion, I am satisfied, taking into account the consent of the Minister, that there is sufficient credible evidence before me to find that the marriage is genuine and was not entered into primarily for Immigration purposes. The appeal is allowed.

[Edited for clarity, spelling, grammar and syntax.]

NOTICE OF DECISION

After reviewing the information in this appeal, and the consent of both parties, the appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and an officer must continue processing the application in accordance with the consent of the parties.

(signed) **"Larry Campbell"**

Larry Campbell

21 February 2012

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.