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 : VB1-00699

Client ID no. / N° ID client : 2487-3054

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Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Jaspal Kaur JOHAL	**Appelant(e)(s)**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	22 November 2011	**Date(s) de l'audience**
Place of Hearing	**Vancouver, BC**	**Lieu de l'audience**
Date of Decision	2 February 2012	**Date de la décision**
Panel	Philippe Doré	**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 decision and reasons of the Immigration Appeal Division (the "IAD") concerning the appeal filed pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act* (the "*Act*")[1] by Jaspal Kaur JOHAL (the "appellant") from the refusal of the sponsorship application for a permanent resident visa made by her spouse, Singh GURMINDER (the "applicant") from India.

[2] The application was refused under section 4 of the *Immigration and Refugee Protection Regulations* (the "*Regulations*").[2]

ISSUE

[3] The immigration officer was not satisfied either that the marriage was genuine or that the primary reason for the marriage was other than for the purpose of the applicant gaining admission to Canada. The details are set out in the refusal letter[3] and in the electronic CAIPS[4] notes prepared by the immigration officer.[5]

[4] The appellant contends that the refusal is not valid and that the appeal should therefore be allowed, while the Minister of Citizenship and Immigration (the "respondent") submits that the appeal should be dismissed.

BACKGROUND

[5] The appellant is thirty-nine years of age and she is a Canadian citizen.[6] She was landed on July 16, 1990.[7] She states in her Questionnaire that this is her second marriage and that she

1 *Immigration and Refugee Protection Act* (the "*Act*"), S.C. 2001, c. 27, subsection 63(1).
2 *Immigration and Refugee Protection Regulations* (the "*Regulations*"), SOR/2002–227.
3 Record, pp. 270-273.
4 Computer Assisted Immigration Processing System.
5 Record, pp. 26-30.
6 Record, pp. 5-6.
7 *Ibid*.

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was widowed in January 2008. She has two children; a daughter aged twenty years and a son aged sixteen years.[8] She is unemployed.

[6] The applicant is twenty-seven years old and he is a citizen of India.[9] He states in his Application that he is employed in farming.[10] This is his first marriage; he has no children. His parents live in India as do his two siblings, both of whom are sisters.

[7] From the evidence,[11] this relationship has its origins in an introduction by a close family friend of the applicant, Gurmeet Singh, who informed him of the appellant's circumstances. The appellant journeyed to India in July 2009. The couple were introduced to each other at Mr. Singh's home on July 12, 2009; they had a conversation of about twenty minutes in duration. The applicant states that the couple met the following day for lunch and discussed in detail the circumstances of the appellant's family and of her first husband's death. The couple continued to meet daily and, the applicant states, their mutual feelings grew stronger and they agreed to marry on August 5, 2009, at Mr. Singh's home. They celebrated the occasion with a ring ceremony to which nearly twenty-five guests were invited.

[8] The appellant departed for Canada on August 22, 2009. She returned to India on January 18, 2010 and the couple were married on February 10, 2010. There was a small gathering of family members at the Gurdwara in recognition of the wedding followed by a reception at a nearby palace in Moga with approximately 200 family and friends. Neither the appellant's children nor her parents were present. The couple visited sites in Jaipur, Chandigarh and the Golden Temple as well as Wonderland. The appellant returned to Canada on March 28, 2010. She next visited the applicant from May 1 to May 22, 2010.

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[8] *Sponsor Questionnaire*, IMM 5540, Record, pp. 49-53. Unless noted otherwise all information concerning the appellant is drawn from this document.

[9] Record, pp. 4-5.

[10] *Application for Permanent Residence in Canada*, IMM 0008, Record, pp. 34-40. Except where noted otherwise all information concerning the applicant is drawn from this document.

[11] *Sponsored Spouse/Partner Questionnaire*, IMM 5490, Record, pp. 41-48. Unless noted otherwise all information concerning the relationship and its development is drawn from this document.

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ANALYSIS

Subsection 4(1) of the *Regulations*

[9] Section 4 of the *Regulations* was amended on September 30, 2010.[12] I note that although the immigration officer conducted his interview of the applicant, and signed the refusal letter, in February 2011, the ground of refusal was incorrectly based on the former section 4. This appeal was heard on the basis of the new provision, subsection 4(1), which deals with "bad faith" marriages, common-law partnerships and conjugal partnerships and which reads as follows:

> **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 of a person if the marriage, common-law partnership or conjugal partnership
> (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act: or
> (b) is not genuine.

[10] To succeed on appeal under the amended subsection 4(1) of the *Regulations* the appellant must prove both that the marriage was not entered into primarily for the purpose of the applicant gaining any status or privilege under the *Act* <u>and</u> that it is genuine. To dismiss the appeal the panel must find either that the marriage was entered into primarily for the purpose of acquiring any status or privilege under the *Act* <u>or</u> that it is not genuine. The amendment to the *Regulations* does not affect the outcome of this appeal.

[11] The status or privilege that can be acquired under the *Act* in respect of a marriage is that the applicant's spouse is granted permanent resident status in Canada through membership in the family class when the spouse qualifies to be sponsored to Canada.[13] The onus lies with the appellant to prove, on a balance of probabilities, that the applicant is not disqualified as a spouse. All applications for permanent residence have, of course, the goal of acquiring status under the *Act*. This broad intent must be distinguished from the disqualification set out in the *Regulations*. A disqualification is established when the evidence shows, on a balance of probabilities, that the *primary* purpose of the relationship is to acquire any status or privilege under the *Act*.

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[12] *Regulations*, SOR/2010 – 208, s. 1.

[13] *Act*, subsections 11(1), 12(1) and 13(1).

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[12] The second part of subsection 4(1), the genuineness of a marriage, is addressed by assessing the evidence and by considering rulings on this issue that have been established in the IAD and in the courts. The determination of whether the marriage is genuine is made at the time of the hearing. Marriage is a relationship between spouses. The existence of a genuine marriage is one of fact and comprises a blend of the past, current and anticipated circumstances surrounding the relationship. Each appeal is unique and the relative importance of the factors will be different in each. The degree of importance will depend upon the nature of the evidence as to the context and environment in which the relationship developed and in which it now exists.

The Immigration Interview

[13] The immigration officer expressed several concerns with the application. They are summarized in the refusal letter and in the CAIPS notes. The officer noted that: the couple do not appear to be compatible; the marriage undertaken in haste; the photographs suggest that the wedding was staged; the wedding did not occur in the applicant's home community; the appellant entered into the marriage very soon after having become widowed; no one from her family attended the wedding; there are no post-wedding photographs of the couple's respective relations; the applicant's knowledge of the appellant and her life in Canada was limited; there was minimal evidence that the couple regularly communicate with each other; and the marriage certificate does not appear to be genuine.

The Evidence

[14] Among the items of documentary evidence submitted on behalf of the appellant for this hearing were copies of: an amended marriage certificate; telephone records; extracts from the appellant's passport; travel documentation; medical documentation; greeting cards; and of miscellaneous receipts. There are also numerous photographs of the couple in informal settings.

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[15] The Appeal Record contains copies of: additional photographs and telephone records; hotel and restaurant receipts; wedding cards and announcements; the applicant's school certificates; a death certificate; the couple's marriage certificate; and of tax documentation for the appellant. Certified versions of documents in English are included as necessary.

[16] Photographs and telephone accounts are often provided in sponsorship appeals. Although they do not independently prove that a genuine relationship exists, they may provide supportive evidence when assessed in light of all of the circumstances and evidence.

[17] I have heard the testimonies of the appellant and of the applicant. I have studied all of the evidence carefully for any contradictions and inconsistencies that might not easily be reconciled. By themselves such irregularities might not necessarily determine whether or not the marriage is genuine; yet, they gain greater significance if they are prevalent and if, when scrutinized in the context of the documentary evidence, they reveal further anomalies.

The Genuineness of the Marriage

[18] The concerns of the immigration officer are substantial and it falls to the appellant, in this hearing, to answer them persuasively. I find that she has not done so for there remain significant deviations in the accounts given by the witnesses. I note that the applicant in particular was inclined on several occasions towards equivocation when he was faced with contradictions between his written statements and his testimony or between his testimony and that of the appellant.

[19] The origin of the relationship raises questions. The appellant testified that, at the outset, she was not interested in seeking a match and that it was only upon the advice of her parents and her children that she eventually decided to do so. She added that she did not consider exploring the possibility of a match in Canada because of her age. She offered no rationale for this comment; I find it odd that she should dismiss this possibility, apparently out of hand. She testified that she decided, during one of her journeys to India, that she would look into a match there.

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[20] The appellant testified that she journeyed to India twice after the death of her first husband. The first visit took place in 2008 and it was to visit a family friend and in January 2009, on the advice of her parents and her children to look into the prospects of finding a suitable match. She said that she called Mr. Singh during her second visit to express her interest. In view of the advice of her parents and children, I find that their absence from the marriage discussions, and especially from the wedding, is a significant anomaly. The appellant testified that she did not inform her parents and her children about the prospect of a match until the day of her first meeting with the applicant, on July 12, 2009. It is plausible that the parents might not be present at that meeting; however, it is not credible that the appellant waited until the meeting even to inform them given her testimony that she was "close" to her parents and that it was they, along with her children, who had encouraged her to seek someone.

[21] Notwithstanding the absence of the parents' involvement leading to the first meeting, it is incongruous that the decision should be taken to proceed with the proposal and the engagement ceremony without them. The engagement ceremony occurred on August 5, 2009, according to the applicant's Questionnaire;[14] this left little time for the appellant's parents and family to travel to India for the occasion; it is strange, therefore, that the event could not have been deferred to allow them to participate. Even more incongruous is the family's absence from the wedding. The appellant testified that she is close to her parents and there is nothing in the evidence that would suggest her relationship with her children is not the same. The reason given by the appellant in her testimony, that her son was involved in his studies and in hockey and that her parents were caring for the children is not credible; arrangements for her marriage and for her son's studies could have been reconciled, perhaps over a longer period, to allow for the family's participation.

[22] The witnesses' accounts of their first meeting are contradictory in several respects. The applicant states, in the attachment to his Questionnaire,[15] that the couple spoke to each other for twenty minutes. The appellant's testimony was consistent with his statement; she said that they talked alone for twenty to twenty-five minutes in an adjoining bedroom. The applicant's

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[14] Record, p. 43.

[15] Record, pp. 47-48.

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testimony, however, contradicted both that of the appellant and his written statement. He said that their conversation took place in the presence of everyone else; that is, the couple stayed in the same room as the others. He also said that the entire meeting lasted approximately one hour whereas the appellant had testified that the duration was from 30-45 minutes. When he was asked to explain these significant discrepancies he replied: "I answered that way because I was sleeping." The applicant's answer was not credible. He had indeed woken to receive the telephone call from the hearing; however, to this point, about ten minutes into his testimony, he had answered some twenty-seven questions with neither protest nor apparent difficulty. I consider his answer to have been an equivocation.

[23] There were further problems with the witnesses' testimony surrounding the origin of the relationship and the wedding. In referring to the period immediately after the first meeting, the applicant stated, in his Questionnaire: "The next day I called my Sponsor we went out for lunch."[16] The appellant, however, testified that the applicant had telephoned her but that they had not had lunch together. The applicant further stated: "We were meeting each other daily and we were going out together visiting the local attractions." He contradicted his statement, however, when he testified that the couple did not meet again in person until July 18, 2009, six days after their first meeting. The appellant confirmed this second version and, when asked about the discrepancy, she explained that the applicant had been mistaken in his written statement; she said that he had intended to write that the couple had had telephone meetings during the six days. I am not persuaded by this explanation; the applicant's written statement is unambiguous and it is set in context. It is clear that he wrote one version and testified to another.

[24] The narrative submitted by the witnesses is further undermined by their account of the proposal. The applicant states in his Questionnaire that the proposal took place on August 5, 2009, at Mr. Singh's house and that nearly twenty-five people attended. He testified, however, that the appellant told him, at some point after July 18, 2009, that she was agreeable to the marriage; he said he was unable to recall the precise date. It is not credible that he could not

16 *Ibid.*

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testify to the same date that he had stated in the form, especially in view of such a memorable event. His evidence was also at odds with that of the appellant who testified that the agreement to marry was made on July 13, 2009.

[25] The entire collection of evidence concerning the couple's first meeting through to the proposal is punctuated with fabrications masquerading as facts. I have little confidence in the credibility of the evidence.

[26] I consider that the agreement of the couple to marry was reached in haste, regardless of whether it occurred on August 5, 2008 as in the applicant's statement or at some time previous as the witnesses testified. The appellant testified that she had not contemplated marriage until she returned to Canada, from her second visit to India, in January 2009. She said that she had felt lonely and followed the advice of her parents and children to "find someone for you." Accordingly, she visited India again in July 2009; she spoke with Mr. Singh who arranged for her to meet the applicant on July 12, 2009. She testified that she reached the decision to marry the applicant on that day. By any contemporary standard, and allowing for variations in culture and tradition, her decision to marry was one taken in remarkable haste. This fact does not in itself determine the existence of a marriage in bad faith; however, when set in the context presented by the appellant herself, this was an extraordinary step for her to take. She said that she is close to her parents and to her two children of whom one is still an adolescent and it is reasonable to infer, therefore, that she would be prudent by reflecting longer on the prospect of marriage.

[27] There are other contradictions in the evidence. The applicant makes no mention in his written application forms of his previous experience as a teacher; he states only that he has been a student and that he has been involved in farming.[17] The appellant testified that the omission was an error even though, as she confirmed, both she and the applicant had reviewed the completed forms. Under cross-examination the applicant testified that he had taught school on a full-time basis during the year 2007-2008, which he described as a "gap year", and during the subsequent year as a tutor during the evenings. When asked about the omission in his forms, he

[17] Record, pp. 34, 37.

replied that his teaching employment was a private, rather than a government, job and added incongruously that he had been helping his father in farming. It is not credible that the applicant should omit any mention whatsoever, in two distinct fields of the application form, of his teaching experience. I consider his testimony to be an attempt to elaborate falsely on his employment experience.

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[28] The applicant equivocated when he was asked about the nature of his relationship with Mr. Singh. He first stated that Mr. Singh is his uncle. He then added that he and Mr. Singh had been teachers together. When the counsel for the respondent asked him if Mr. Singh is his mother's or his father's brother, the applicant replied: "My dad's." Counsel then pointed out that, in his Questionnaire, the applicant refers to Mr. Singh as a "family friend" upon which the applicant qualified his answers by stating that his father *considers* Mr. Singh to be a brother. This reflexive ambiguity typified the applicant's evidence to a notable degree and it casts significant doubt on his credibility overall.

[29] There are questions surrounding the couple's discussions concerning the possible sponsorship of the applicant's parents to Canada. The appellant testified that they considered the matter before their marriage whereas the applicant said that they did not do so until after the wedding. The difference in their testimonies is stark. The appellant was clear in stating that the couple had discussed that they would proceed with the wedding after which they would apply to sponsor the applicant's parents. The applicant, however, was equally clear that they had not discussed the matter and added, as the reason, that his parents are satisfied in India and that they do not wish to move to Canada. Aside from any speculation about the parents' preferences, the applicant's account is not a credible one. It contradicts the appellant's version, which reflects a reasonable inclination in the couple's circumstances at the time, with an account that is decidedly not credible.

[30] Beyond the questionable circumstances surrounding the origin and development of the relationship, the couple's shared knowledge is superficial. The applicant knew certain aspects of the appellant's children's lives; however, he could offer nothing about the son's favourite subject, a telling flaw given his apparent interest in teaching. There is nothing in the evidence to

show that the couple had the inclination properly to explore and understand each other's interests, concerns, perceptions, and general values let alone the complex emotions that lead to an incipient spousal relationship.

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[31] The appellant submitted photographs taken of the couple at the wedding and in various informal circumstances, some with the applicant's family. Although they suggest that the couple have spent time together a careful examination of the photographs does not conclusively show that the relationship is authentic. I note in this regard that, aside from those depicting the ceremony, most of the photographs show only the couple by themselves, in outdoor settings and they are effectively uniform in the limited conviviality depicted to the point of artificiality. I am unable to conclude that the photographs were not staged for the purpose of the application.

[32] The purpose of the hearing of this appeal is to assess the evidence presented against the precise test articulated in subsection 4(1) of the *Regulations*. The onus lies with the appellant to demonstrate that the marriage is a genuine one. To do so she must cross the threshold defined by the balance of probabilities. In weighing the evidence and testimony it is the sum of individual deductions, each determined from the full context of the relevant circumstances and measured against the scale of probability, that lead me to my decision. I have thus examined the factors in this case from the perspective of the entire framework of evidence so as to assess equitably their relative weight.

[33] The counsel for the appellant submits that the important discrepancies have been satisfactorily addressed. I must respectfully state that I do not share this view. Neither witness was sufficiently credible in explaining the discrepancies. Nor was there evidence of the mutual knowledge, the interdependence and the intention for a sustained future together that would be expected of a genuine marriage.

[34] A genuine spousal relationship between a couple is one of events, interactions and shared interests that develop more or less progressively from acquaintanceship until they reach the threshold of a lasting bond founded on mutual commitment. After carefully considering the evidence in its entirety I find that, on balance, this is not the prevailing characteristic of the

relationship between the appellant and the applicant. The evidence provided at the hearing was insufficient to refute the immigration officer's assessment. On the balance of probabilities, I find that the appellant has not demonstrated that the marriage is a genuine one.

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The Primary Purpose of the Marriage

[35] The question as to whether or not the marriage was entered into primarily for the purpose of acquiring any status or privilege under the *Act* is also answered by examining the evidence on the issues discussed above. The advantage sought in appeals of this nature is usually entry into Canada and the granting to the applicant of permanent resident status as a member of the family class. In this regard the term 'primarily' means that the objective of gaining admission must be "the dominant driving force"[18] behind the marriage for the applicant to be caught by subsection 4(1) of the *Regulations*. I find that this is the situation in this case. The findings from the evidence are consistent with a marriage arranged primarily to acquire a status or privilege under the *Act*; namely, to allow the applicant to gain admission into Canada. Clear inferences can be drawn from the evidence that this is the primary objective of the marriage between the appellant and the applicant.

DECISION

[36] After carefully considering all of the evidence, I find that the appellant has not met the burden of proof. She has not demonstrated, on the balance of probabilities, that the marriage is genuine and that it was not entered into primarily in order to acquire a status or privilege under the *Act*.

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[18] *Singh, Ravinder Kaur* v. *M.E.I.* (I.A.D. 86-10228), Chu, Suppa, Eglington (dissenting), August 8, 1988, at 5.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Philippe Doré"**

Philippe Doré

2 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.

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