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 : VB1-00846

Client ID No. / N° ID client : 2831-9184

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Sukhdeep Singh KHELA	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	July 04, 2012	**Date(s) de l'audience**
Place of Hearing	Heard by videoconference in Vancouver, BC and Calgary, AB	**Lieu de l'audience**
Date of Decision	July 09, 2012	**Date de la décision**
Panel	Maryanne Kingma	**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

INTRODUCTION

[1] These are my reasons and decision in the appeal of Sukhdeep Singh KHELA (the "appellant") from a refusal to approve the permanent resident application made by the appellant's spouse, Gurpreet Kaur KHELA (the "applicant"), a citizen of India.

[2] The application is for immigration to Canada as a member of the family class, i.e. a spouse, as permitted by the *Immigration and Refugee Protection Act* (the "*Act*").[1] It was refused because the officer found that the marriage was primarily for the purpose of immigration and was not genuine. Consequently, the applicant was not a member of the family class. The refusal is confirmed by letter,[2] with further explanation in the Computer Assisted Immigration Processing System ("CAIPS") notes.[3]

[3] The appellant contends that the appeal should be allowed while the Minister of Citizenship and Immigration (the "respondent") asks me to dismiss the appeal.

ISSUE

[4] The appeal is authorized by subsection 63(1) and governed by instructions set out in subsection 67(1) of the *Act*[4] as limited by section 65.[5]

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[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, subsection 13(1),[1] which provides as follows:
13(1) Right to sponsor family member - A Canadian citizen or permanent resident may, subject to the Regulations, sponsor a foreign national who is a member of the family class.

[2] Record pp. 233-234.

[3] Record pp. 28-31.

[4] **67(1) Appeal allowed** – To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time the appeal is disposed of,
(a) the decision appealed is wrong in law or fact or mixed law and fact;
(b) a principle of natural justice has not been observed; or
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

[5] **Section 65** In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.

[5] The refusal by the visa officer was pursuant to subsection 4(1), which provides 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.

[6] Although the two prongs of the test for bad faith are the same as the prior section 4 that was amended effective September 30, 2010,[6] the amended section replaces the previous conjunctive test with a disjunctive test for the bad faith assessment. In order to succeed on appeal in this case, the appellant must show that the marriage is not captured by either (a) or (b) of subsection 4(1).

DECISION

[7] For reasons set out below, the appeal is dismissed.

ANALYSIS

[8] In making this decision, I have taken into consideration the sworn testimony of the appellant in-person and the applicant by telephone, the documentary evidence and the submissions from both parties.

[9] The Immigration Appeal Division (the "IAD") has established various factors, confirmed by the courts,[7] to assist in the assessment of genuineness and primary purpose. All applications for permanent residence have, of course, the goal of acquiring status but that general intent is

[6] **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*.

[7] Including but not limited to such factors as:
the intent of the parties to the marriage; length of the relationship; level of knowledge of each other's relationship histories; amount of time spent together; conduct at the time of meeting, at the time of engagement and/or wedding; behaviour subsequent to the wedding; the evidence of contact, communication and interaction before and after the marriage; the depth of knowledge of and contact with extended families and activities of daily life; indicators of financial support; knowledge of and sharing of responsibility for the care of children brought into the marriage.

distinguishable from cases in which the evidence shows, on a balance of probabilities, that it was a *primary purpose* of the relationship to acquire any status or privilege under the *Act*.

[10] The appellant is a 31 year old man of Punjabi Sikh origin who was landed in Canada at about age 12 with his parents. The applicant is a 21 year old citizen of India who lives with her parents and two younger siblings in India. The couple alleges that this was a family arranged marriage facilitated by a friend of the appellant who is the applicant's aunt by marriage. They met in person on December 2009 a few days after the appellant traveled to India for the marriage, talked to each other for about five to ten minutes during that meeting at her parents' home, agreed to the match, and married on December 26, 2009. This is a third marriage for the appellant and the first for the applicant. There are no children of the relationship and neither of them has children from previous relationships.

[11] Some of the usual compatibilities sought in an arranged marriage exist between the couple: both are Punjabi Sikh with generally equivalent education; there was an introduction by a family friend/relative which is consistent with custom, and their plans for the future are to live with his parents, have a family and have the applicant be a homemaker. At the hearing each of them offered testimony that reflected knowledge of each other's family and daily life with relatively consistent descriptions of their interactions leading up to the match, after the marriage and during the appellant's recent trip to India. The respondent submits that there were material inconsistencies while the appellant argued that their testimony was materially consistent and as a whole is indicative of genuineness.

[12] The following features led the visa officer to conclude that the intent of this marriage was to facilitate immigration: the applicant was married at the age of 19, which is young by cultural norms, and has two sponsorable younger siblings. There is an almost ten year age difference between the appellant and applicant and the appellant is twice-divorced. Despite those relatively unusual factors, the match was agreed to quickly without evidence of background checks by the applicant's family to be assured that the appellant was a suitable match for their young eldest daughter. The onus was on the appellant to overcome those concerns in this appeal.

[13] I agree with the appellant's counsel that the assessment of genuineness and its corollary of a relationship primarily for immigration purposes are not intended to be in the nature of an examination by a series of questions that can simply be tallied to arrive at a conclusion. I agree with appellant counsel's submission that, on the one hand, too much similarity in evidence between the appellant and applicant may be interpreted as rehearsed evidence while, on the other hand, not enough consistency runs the risk of being interpreted as lack of knowledge. Rather, the focus of the assessment is to evaluate, objectively, whether the couple falls within the range of what is reasonable to expect between a married couple, taking into consideration circumstances such as cultural norms but without imposing subjective expectations. I find, in this case, that the testimony of the couple concerning knowledge of each other, their families and their living circumstances was, at first glance, within the range of what is reasonable to expect between a genuine couple. Whether that evidence was based on actual knowledge acquired from genuine relationship or simply well rehearsed information, is the more difficult assessment in this case. In addition, what tips the balance away from finding in the appellant's favour is that, despite the extensive opportunity to provide evidence about the relationship, the main concerns of the visa officer that led to the refusal were not satisfactorily addressed and resolved.

[14] The appellant testified that neither of his first two marriages was a family approved match and that, because he was getting older and wanted a family, he left it to his parents to make this match with the applicant. What was lacking in the testimony from the appellant and applicant is why information about his previous divorces was not explored by the family during the match talks. Similarly, there is little indication in the evidence of how the family resolved the age difference or that they sought other background information about the appellant's life in Canada to satisfy themselves enough to allow their daughter to leave her familiar home country and live with the appellant and his family, virtual strangers, in an unfamiliar country. Of significance is that the appellant has criminal convictions including a conviction on two counts of robbery when he was 16 and a conviction for assault causing bodily harm in 2003, which is information that, in addition to the two previous divorces, would reasonably be of interest and relevance to the applicant's family when considering him for a genuine match for their daughter. The applicant testified that the family agreed to the match and had no concerns because of assurances by the matchmaker that the appellant was a nice guy from a nice family. Both the appellant and applicant testified that the age difference was not a concern either and is within their cultural

norms. Each made reference to the applicant's parents as an example. The appellant testified that her parents differ in age by nine or ten years and the applicant said it was seven years. The birth date information in the applicant's Permanent Resident application does not support either of their suggestions as it indicates her parents differ in age by three years.[8]

[15] The appellant testified that the matchmaker knew everything about his background but on closer examination it became evident that her knowledge is based on the appellant's own economical depictions of his criminal and marital history. Even allowing for the understandable inclination to present one's self in a positive light, the lack of interest in or concern about the appellant's background was not reasonably resolved. I agree with the appellant's counsel that a criminal past and two failed marriages do not preclude entering into a genuine marriage relationship. It is, however, reasonable to expect that, in the case of a family arranged marriage to that individual, that there would be substantive resolution of such concerns. Both the appellant and applicant testified that concerns were alleviated because the appellant had changed since those events and was not at fault in the failure of his two previous marriages. While that may be true, the evidence presented for this appeal did not demonstrate how that conclusion was reached by the family. It is not sufficient for the appellant and applicant to simply suggest that there were no concerns or that the matchmaker conveyed all necessary information. The evidence provided at this hearing indicates that the matchmaker did not know much about the appellant's criminal and marital background and even if she did, the applicant knew little about those things prior to the marriage. Acquiring that knowledge post-marriage does not resolve questions around lack of background information that would ordinarily be acquired by a prospective bride's family before the match is confirmed.

[16] In addition to the unresolved issue of lack of background investigation, the evidence offered at the hearing about the appellant's background was vague and at times contradictory. For example, the applicant testified that she did not know about the reasons for the appellant's prior divorces but also said that prior to the marriage the matchmaker conveyed all the information about his past to her parents. Logically, she ought to have known that information at the time of the interview, but conceded that she did not. Nor was the applicant aware of the appellant's criminal history prior to the marriage. The appellant himself was vague and evasive about the

[8] Record, pp. 64 and 68.

details of the convictions, indicating that the first one was for theft and that he did not recall who he assaulted in the second event because he was drunk. He denied that he kicked a woman in the head as described in the police report.[9] In any event, regardless of how accurately the appellant has chosen to portray his past and making allowances for his understandable desire to present himself in a good light, the evidence indicates, on a balance of probabilities, that at most the background investigation by the appellant's family was cursory, which is more consistent with a marriage designed to facilitate immigration than genuine relationship.

[17] The appellant testified that the main matchmaker is a family friend who had approached the applicant's family already some time earlier. He was vague about when the first invitation for his match was presented but the applicant testified it was in 2007 when the matchmaker was visiting India. The appellant separated from his second wife in October 2007 and was not divorced until 2009, leaving an unresolved question as to why there would be talk of a marriage for him in 2007. The evidence about the history of match talks was unclear as to when the applicant's family, who initially declined because the applicant was too young, changed its mind and agreed to the match. The testimony of both witnesses was vague and evasive as to whether their families were actively searching for matches for each of them. Finally, based on the testimony, the appellant's parents were substantially uninvolved in this match notwithstanding his assertion that he "left it to them". His parents did not attend the meeting at the applicant's home on December 11, 2009 when the agreement was confirmed, his testimony did not disclose that there were discussions and communications by his parents with the applicant's parents in the time preceding that meeting, and they did not travel to India with him even though his trip was for the stated purpose of marrying the applicant. His parents arrived in India in time for the December 26, 2009 wedding. The applicant testified the appellant called the matchmaker in Canada on December 11, 2009 when the match was confirmed while the appellant was remarkably vague and uncertain about when he may have spoken with either the matchmaker or his parents to confirm that the wedding would take place two weeks later. All of this evidence indicates, on a balance of probabilities, that the match was not arrived at as a family arranged event conforming to usual processes, but is more consistent with a match that was to facilitate immigration, a purpose less likely to reflect those usual processes.

[9] Exhibit R-1, pg.

[18] As previously indicated, it is not the tallying of answers to an examination-like series of questions that generates a correct answer in this type of appeal. In this case, the extensive testimony of the appellant and applicant is notable for what it did *not* contain, which is direct, credible, convincing and plausible testimony about the origins of the match. Each of them provided similar and extensive testimony about each other, their plans for the applicant to be a housewife and have children after arriving in Canada, their travels together, and their living circumstances. Along with the photographs of the couple during the recent 2012 visit of the appellant, the recitation of these details is somewhat indicative of knowledge, intermingling of life affairs between the appellant and applicant, cohabitation and shared future plans. However, on closer examination and in consideration of the larger context of the evidence as a whole, their testimony was, on balance, lacking the level of depth and substance that is reasonable to expect between a genuine couple. Some examples include the following:

- the appellant testified that the plan for the generally unoccupied family home in India is for his parents to spend more time there in future: the applicant was asked about but did not know that;

- the applicant testified that she speaks with her in-laws every two days and that the appellant knew this while the appellant had no idea how often his wife and parents speak to each other despite living in the same home with his parents.

- the appellant seemed to think that the appellant recently started working in the family construction business since shutting down his kitchen cabinet business several months age: she stated "he is now working in the family business too" while the appellant testified that he has been involved in that business since before 2000. At the IVW, the applicant made no mention of the appellant working in the construction business. The applicant's questionnaire makes no mention of that employment.[10]

- the applicant indicated that the appellant's second marriage ended because his wife was not caring toward his parents and there were fights in the house: the appellant did not mention that but offered vague testimony that they didn't get along and it "just fell apart".

- the appellant stated that he is the only child currently living with his parents and his older brother lives elsewhere while the applicant testified that the older brother lives in the family home.

- the applicant stated that she completed her application forms by herself and asked her husband for information in person and by telephone to help with the answers: the appellant testified that it was probably the matchmaker who helped the applicant

[10] Record, pg 78.

complete the forms though he was unsure, but he did confirm that he did not participate and the applicant did not ask him for any information to complete the forms;

- the appellant conceded that he has a court date coming up in September in respect of charges for impaired driving and failure to provide a breath sample, and that he told the applicant about those outstanding charges. The applicant testified that there were no court dates outstanding and when the evidence was put to her, acknowledged the information and offered no further explanation.

CONCLUSION

[19] Based on the above analysis, I find on a balance of probabilities that the marriage in this case was entered into primarily for the purpose of acquiring any status or privilege under the *Act* and that it is not genuine. The concerns of the visa officer were not overcome and additional inconsistencies and credibility concerns emerged during the course of the appeal hearing.

DECISION

The appeal is dismissed.

(signed) **"Maryanne Kingma"**

Maryanne Kingma

July 09, 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.