



IAD File No. / N° de dossier de la SAI : VB1-03548

Client ID no. / N° ID client : 3609-0108

## Reasons and Decision – Motifs et décision

### SPONSORSHIP

<b>Appellant(s)</b>	Varinderjit Kaur MAAN	<b>Appelant(e)(s)</b>
<b>and</b>		
<b>Respondent</b>	The Minister of Citizenship and Immigration	<b>Intimé(e)</b>
<b>Date(s) of Hearing</b>	October 10, 2012	<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>	October 19, 2012	<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>	David Macdonald	<b>Conseil du ministre</b>

## REASONS FOR DECISION

[1] Varinderjit Kaur MAAN (the “appellant”) appeals from the refusal to approve the permanent resident visa application for her spouse Gurwinder SINGH (the “applicant”), from India. The visa officer found that the applicant is a person caught by the exclusionary provision of subsection 4(1) of the *Immigration and Refugee Protection Regulations* (the “Regulations”).<sup>1</sup> The application was refused because in the visa officer’s view 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 *Immigration and Refugee Protection Act* (the “Act”).<sup>2</sup>

[2] The test under the 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 the applicant acquiring any 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 the applicant acquiring any status or privilege under the *Act* or that is not genuine.

[3] 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

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<sup>1</sup> *Immigration and Refugee Protection Regulations*, SOR/2010-208, s. 1.

**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>2</sup> *Immigration and Refugee Protection Act* (the “Act”), S.C. 2001, c. 27.

sponsored to Canada.<sup>3</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.

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

## **BACKGROUND**

[5] The appellant is a 28-year-old Canadian citizen, originally from India. The applicant is a 31-year-old citizen of India.

[6] The appellant claimed, in October 2010, she and the applicant were introduced through Gurmail Singh (the broker in this marriage) who is a mutual friend of the appellant's biological father and of the applicant's father. The appellant confirmed she and the applicant first met in person on December 6, 2010 during the appellant's visit in India.<sup>4</sup>

[7] Their marriage was solemnized on December 8, 2010 and was registered on December 27, 2010.<sup>5</sup>

[8] This is the first marriage for the applicant.

[9] The appellant was previously married in 2006. Her first marriage did not last and after the separation in November 2008 she divorced her first husband in January 2010.<sup>6</sup>

[10] The appellant claimed she has returned to India to visit the applicant in November 2011 staying with him for approximately three months. The appellant confirmed she stays in touch with the applicant through telephone calls.

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<sup>3</sup> Subsections 11(1), 12(1) and 13(1) of the *Act*.

<sup>4</sup> Record, page 54.

<sup>5</sup> Record, page 45.

<sup>6</sup> Record, pages 37-43.

[11] The appellant also filed documentary evidence, Exhibit A-1, which included a copy of the appellant's Canadian passport, copies of the cards sent between the appellant and the applicant, copies of the phone bills and the photographs of the appellant's and the applicant's time spent together during her recent visit in India.

## **DECISION**

[12] Based on the evidence before me, I conclude that the appellant has not met the onus upon her. Therefore, the appeal is dismissed.

## **ANALYSIS**

[13] I have considered all the testimony adduced at the *de novo* hearing, the contents of the Record, the appellant's disclosure, and the brief oral submissions from the Minister's counsel asking to dismiss the appeal, because there was not sufficient credible evidence to overcome his concerns that the marriage between the appellant and the applicant is genuine and was not entered into primarily for the purpose of the applicant acquiring any status or privilege under the *Act*. The appellant's counsel chose not to make oral submissions.

[14] The appellant testified in person. The applicant testified by phone from India.

[15] The visa officer had a number of grounds for refusing the application, including the incompatibility between the appellant and the applicant in terms of marital status but there were other weaknesses such as the inadequacy of evidence of on-going contact and the applicant's lack of information about the appellant's background and circumstances and the details of her life in Canada. At the hearing, I do not believe these defects were remedied and new inadequacies were revealed.

[16] There were significant gaps, implausibilities and the lack of the witnesses' external consistency of the oral evidence in the key areas of knowledge between the spouses and the explanations provided for the gaps and the inconsistencies were not satisfactory and undermined the witnesses' credibility and the alleged genuineness of the marriage. Furthermore, the witnesses' testimony was inconsistent with information provided previously to immigration officials, raising the issue of credibility.

[17] 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. I found the testimony of both witnesses to be unreliable.

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

[19] The appellant confirmed the applicant retained a consultant in Jagraon, who assisted him in completing the relevant forms in the application for permanent residence. She claimed after the applicant provided the information to the consultant, he signed the application for permanent residence. The appellant testified the consultant did not interpret the content of the application for permanent residence to the applicant before he signed it.

[20] The interpreter declaration in the Sponsored Spouse/Partner Questionnaire ("Questionnaire"), located below the applicant's signature dated March 25, 2011, reflects the statement of the interpreter, Sahil Gupta, declaring that he faithfully and accurately interpreted in the Punjabi language the content of the application for permanent residence and any related forms to the person concerned.<sup>7</sup>

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<sup>7</sup> Record, page 60.

[21] It was never adequately explained why the witnesses' matching testimonies concerning their first contact by phone in October 2010 are inconsistent with the information provided by the applicant in the Questionnaire, confirming the only contact he had with the appellant in October 2010 was through the exchange of photographs, and he had no contact with her before meeting her first time in person on December 6, 2010.<sup>8</sup>

[22] The Questionnaire reflects the applicant's statement, confirming on December 6, 2010 the marriage to the appellant was finalized and the date of the marriage was chosen.<sup>9</sup> The appellant testified the date of the marriage was chosen before she travelled to India on December 5, 2010. The applicant claimed his marriage to the appellant was finalized on December 8, 2010. No credible evidence was adduced at the hearing to explain the external inconsistencies in the witnesses' oral evidence and the discrepancy between the oral evidence and the information previously provided to the immigration authorities concerning the timeline when the appellant's and the applicant's marriage was finalized and the date of their marriage was chosen. The absence of credible explanation for the external inconsistency of the witnesses' oral evidence and the discrepancy between the oral and documentary evidence in this important area of knowledge between the spouses undermines the appellant's credibility and detracts from her claim the marriage is genuine.

[23] The appellant testified her adoptive father travelled to India ten days before she departed from Canada on December 5, 2010 to look for the places to rent for the appellant's marriage.

[24] The Questionnaire indicates the appellant's father accompanied the appellant when she travelled to India for the marriage.<sup>10</sup> The applicant testified the appellant's adoptive father and her adoptive brother traveled with her to India on December 5, 2010. It was never adequately explained why the witnesses' oral evidence was externally inconsistent regarding the details of the appellant's travel to India in December 2010. I do not find the applicant's level of knowledge in this area to be of the quality one would expect in a genuine spousal relationship.

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<sup>8</sup> Record, pages 54 and 57.

<sup>9</sup> *Ibid.*

<sup>10</sup> Record, page 55.

[25] The applicant confirms in the Questionnaire the appellant's paternal uncle and aunt came to meet him on October 20, 2010 and to investigate the background and circumstances with the neighbors and villagers in the applicant's ancestral village.<sup>11</sup>

[26] No credible evidence was adduced at the hearing to explain why the appellant stated in the Sponsor Questionnaire that the applicant met her paternal uncle on December 8, 2010.<sup>12</sup> The appellant and the applicant previously provided inconsistent information to the immigration authorities concerning the date of the appellant's uncle meeting with the applicant, raising the credibility of the applicant's claim his background and circumstances were investigated by the appellant's family in India before the consent was given to the appellant's marriage to him. Based on all the evidence before me, I am not satisfied that the appellant's adoptive father and her natural parents and her paternal uncle investigated the applicant's background and circumstances, and the applicant was apprised of these particulars before giving consent to the arrangement of the marriage. I also find the appellant's explanation not satisfactory regarding her family efforts to ensure success of her second marriage.

[27] The witnesses' oral evidence was externally inconsistent concerning the first time the couple had sex relations. The appellant claimed it was on the date of their marriage and the applicant confirmed it was on the day after the marriage. This results in a failure to credibly establish that the appellant and the applicant have, in fact, shared an intimate relationship, as spouses.

[28] The witnesses' oral evidence was externally inconsistent confirming the applicant lied to the visa officer during the interview in 2011 when he claimed his mother did not accompany them on their travel to Chandigarh after the couple's marriage.<sup>13</sup> The appellant claimed, prior to the interview, the applicant's consultant in India, advised him to lie to the visa officer about the applicant's mother accompanying the couple on their travel to Chandigarh because by admitting her presence with the couple during their outing after marriage could raise concerns about the

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<sup>11</sup> Record, page 57.

<sup>12</sup> Record, page 63.

<sup>13</sup> Record, pages 31-32.

genuineness of the applicant's marriage to the appellant and could result in the refusal of the permanent resident visa.

[29] The applicant testified; he lied because he did not want to disclose the fact his mother travelled with him and the appellant on their honeymoon, so he told the visa officer what came to his mind, when questioned by the visa officer in this area. The applicant confirmed he did not act on anybody's advice when he lied to the visa officer about his mother's travel with him and the appellant to Chandigarh. The external inconsistencies in the witnesses' oral evidence concerning the reasons the applicant lied to the visa officer leading me to believe the witnesses deliberately misrepresented particular facts to the panel at the hearing. I find the cumulative effect of their oral evidence laced with inconsistencies seriously undermines the witnesses' credibility about the genuineness of their marriage.

[30] It was open to the witnesses to provide a consistent account of their history and demonstrate knowledge of each other's background and personal circumstances consistent with the level to be expected in a relationship with a genuine spousal purpose. They did not do so at this hearing.

[31] Although the applicant demonstrated improved knowledge at hearing in some of previously tested areas, given the witnesses claim of co-habiting twenty days after the marriage and the subsequent ongoing communication by phone for approximately eight months prior to the interview, the explanation provided for his previous poor performance does little to satisfy the panel that his present knowledge has been reasonably acquired over time as a result of regular discussion since the marriage as would be expected in the context of a genuine spousal relationship.

[32] I find that there has been no progression in the relationship of the parties, which is consistent with what one might expect in a genuine spousal relationship.



[33] I am satisfied the applicant has not taken active steps in trying to integrate his wife into his family, and I find 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.

[34] The witnesses testified they have maintained contact mostly by telephone in the post-marriage period. Documentary material was submitted evidencing the alleged contact between the appellant and the applicant from 2011 to 2012. The appellant provided copies of telephone invoices, which indicate a number of telephone calls to India. Based on the evidence before me, on balance of probabilities, I am not satisfied that the contact between the couple is meaningful and of the extent and nature to be expected in the context of a genuine spousal relationship.

[35] I am not persuaded the photographs overcome the fact the appellant has failed to establish, on balance of probabilities, 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.

[36] The witnesses' oral evidence was externally inconsistent concerning the plan of sponsoring the applicant's family to Canada. The appellant and the applicant were not persuasive in asserting that they have discussed their future plans together. 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 the genuine spousal purpose.

[37] The appellant and the applicant are incompatible in terms of marital status. This, in and of itself, is not fatal to the appeal. The applicant did not provide any significant factors to offset the incompatibility in terms of marital status. The fact of the incompatible 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.

[38] After weighing all the evidence in this appeal, given the circumstances surrounding the genesis of this relationship and the implausibilities, gaps and the external inconsistencies in the witnesses' oral evidence and the conflicts between the oral and documentary evidence, I find, on balance of probabilities, the evidence does not demonstrate the development of a genuine spousal relationship. Therefore, based on the evidence before me, on balance of probabilities, I find the marriage is not genuine.

[39] The question of whether or not the marriage was entered into primarily for the purpose of acquiring any status or privilege under the *Act* is also determined from the evidence on the issues already discussed. It is not necessary for me to reiterate the evidence as clear inferences and findings can be made from the evidence already set out that it is more likely that the marriage was entered into primarily for the applicant to acquire permanent resident status in Canada. I find the applicant has reasons to wish to immigrate to Canada, which do not involve a future life together with the appellant. These factors, combined with credibility concerns arising at hearing, preclude the conclusion that the marriage was entered into for a legitimate spousal purpose.

[40] I also consider it salient that the applicant has sponsorable parents. I find that the applicant has definite motivation to acquire status in Canada for both, himself and his immediate family members in the future.

[41] The appellant and the 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.

## DECISION

[42] Based on the evidence before me, I conclude that the appellant has not met the burden of proof. I find, on balance of probabilities, the marriage is not genuine and was entered into primarily for the purpose of acquiring a status or privilege under the *Act*. The applicant is disqualified as a spouse, and therefore, the appeal is dismissed.

## NOTICE OF DECISION

The appeal is dismissed.

(signed)

**"Erwin Nest"**

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**Erwin Nest**

**October 19, 2012**

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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.