



IAD File No. / N° de dossier de la SAI : VB1-03955

Client ID no. / N° ID client : 5715-4348

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Amritpal Kaur SANGHERA	Appelant(e)(s)
and		
Respondent	The Minister of Citizenship and Immigration	Intimé(e)
Date(s) of Hearing	July 30, 2012	Date(s) de l'audience
Place of Hearing	Vancouver, BC	Lieu de l'audience
Date of Decision	December 19, 2012	Date de la décision
Panel	Kashi Mattu	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	Kevin Hatch	Conseil du ministre

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (the “IAD”) pertaining to the appeal filed pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act* (the “Act”),¹ made by Amritpal KAUR aka Amritpal Kaur SANGHERA (the “appellant”), from the refusal of the sponsorship application for a permanent resident visa of her spouse, Makhan Singh SANGHERA (the “applicant”), from India.

[2] The application was refused under section 4 of the *Immigration and Refugee Protection Regulations* (the “Regulations”).² The details of the refusal are set out in the refusal letter and GCMS³ notes of the immigration officer.⁴

BACKGROUND

[3] The appellant is 30 years old and was landed in Canada on November 12, 2006.⁵ The appellant was previously married in February 2006 and divorced August 2010.⁶

[4] The applicant is 29 years old and lives in India. The appellant and applicant were married on February 18, 2011.⁷

ANALYSIS

[5] Two tests can be applied in order to disqualify a spouse under section 4 of the *Regulations*. Only one of the tests must be satisfied if an applicant is to be disqualified as a spouse. The two tests are: that the marriage is not genuine and that the marriage was entered into primarily for the purpose of acquiring a status or privilege under the *Act*. The determination of

¹ *Immigration and Refugee Protection Act* (the “Act”), S.C. 2001, c. 27.

² *Immigration and Refugee Protection Regulations*, SOR/2010–208, s. 1.

³ Global Case Management System, pp. 31-35.

⁴ Record, pp. 89-90; 267-270.

⁵ Record, pp. 33, 67.

⁶ Record, pp. 38-50.

⁷ Record, p. 81.

whether or not the marriage is genuine is made at the time of the hearing, nonetheless, given the nature of marriage, as a relationship between a husband and wife, I find 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.⁸ This determination is made at the time of the marriage. 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 appellant and applicant testified at the hearing and additional documentary evidence was submitted.⁹ Based on the evidence before me, I find the evidence does not, on a balance of probabilities, indicate a genuine spousal relationship between the appellant and the applicant. There were significant gaps, discrepancies and inconsistencies in the evidence for which satisfactory explanations were not provided and they undermined the credibility of the witnesses and the genuineness of the relationship. I will provide some examples.

[7] In addition, the appellant and applicant are not compatible in terms of marital background. The appellant is divorced. The circumstances of that marriage, including the fact the appellant's first husband was a divorcee and she did not know the reasons for his divorce or the fact that he was drinker, indicate it was more likely a marriage of convenience. While the lack of genuineness of the appellant's first marriage is not determinative of the genuineness of this marriage, when considered in the context of the other concerns raised in this relationship it is a relevant consideration and heightens the concerns about the genuineness of this marriage.

[8] There were significant gaps and discrepancies in the evidence between the documentary evidence, the statements at the applicant's interview and testimony of the witnesses related to the genesis and development of this relationship and the explanations provided for these gaps and discrepancies were not satisfactory and undermined the witnesses' credibility and the alleged genuineness of the marriage. For example, there were gaps and discrepancies as to: the date and

⁸ Subsections 11(1), 12(1) and 13(1) of the *Act*.

⁹ Exhibit A-1.

circumstances of their initial contact; how the first meeting of the families with the appellant and applicant was arranged; whether or when the appellant had taken any significant time off work; and the identity and presence of certain guests at the wedding. The applicant testified he did not know whether the appellant had any assistance in completing the forms and he simply signed the completed forms. The apparent indifference or neglect as to the accuracy or truthfulness of information provided to immigration officials and the panel regarding their relationship is not indicative of genuine spouses or the intent for this to be a lasting relationship but rather is more indicative of this marriage being entered into for immigration purposes.

[9] The assessment of the genuineness of the relationship begins with the foundational documents of the sponsorship application and questionnaires that are attested as true by the parties and continues through the applicant's interview and through the testimony at the hearing where additional documentary evidence can be introduced and any clarification of information in the documents can be provided. There were no satisfactory explanations as to why there were such significant discrepancies between the documents and the applicant's statements at his interview and the witnesses' testimony at the hearing. In addition, there were no satisfactory explanations as to why the applicant and his parents would agree to this match so quickly particularly given the appellant was divorced, the applicant is the eldest son and he had plans to continue to work in Dubai. These gaps and discrepancies related to the genesis and development of the relationship and they undermined the witnesses' credibility and the alleged genuineness of the spousal relationship.

[10] The appellant and applicant testified that they have maintained contact and communication with each other regularly and provided documentary evidence in support.¹⁰ The appellant has also returned to visit the applicant. However, despite this favourable evidence and while the appellant and applicant were able to provide more consistent testimony and knowledge of each other at the hearing, there were significant gaps and discrepancies in the evidence and it undermined their credibility and the alleged genuineness of their relationship. For example, there were discrepancies as to: the applicant's knowledge of details of the appellant's miscarriage, how long she lived with her first husband, who she lived with after she separated, how long she has

¹⁰ Record, pp. 99-266; Exhibit A-1.

been working in her current job and why her brother's spouse delayed their sponsorship application; and the appellant's knowledge of the applicant's father's medical condition and the applicant's employment circumstances in returning to Dubai after the marriage. Most disconcerting, there was a contradiction in the evidence regarding the use of birth control the first time they had sex. The appellant and applicant did not demonstrate the depth and extent of knowledge of each other and their circumstances as would be expected in a genuine spousal relationship given the extent of the alleged contact and communication. These circumstances and actions are not indicative of the intent for this to be a lasting spousal relationship.

[11] After weighing all of the evidence in this appeal, given the circumstances surrounding the genesis of this relationship and the gaps and discrepancies and inconsistencies in the evidence despite the alleged communication since the marriage, I find, on a balance of probabilities, the evidence does not demonstrate the development of a genuine spousal relationship. Therefore, based on the evidence before me and on a balance of probabilities, I find the marriage is not genuine.

[12] 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. The appellant and applicant did not provide sufficient credible evidence to demonstrate they have developed a genuine spousal relationship. In addition, the applicant has spent considerable time outside India for work and was previously refused a work permit to Canada which indicates a desire to live and work outside India.¹¹ I find there was not sufficient credible evidence to rebut the immigration officer's initial 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.

¹¹ Record, pp. 53-54, 93, 98.

DECISION

[13] Based on the evidence before me, I conclude that the appellant has not met the burden of proof. I find, on a 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)

"Kashi Mattu"

Kashi Mattu

December 19, 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.