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 : VB1-03197

Client ID no. / N° ID client : 5204-1859

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Mandeep Kaur SOHAL	**Appelant(e)(s)**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	May 16, 2012	**Date(s) de l'audience**
Place of Hearing	**Vancouver, BC**	**Lieu de l'audience**
Date of Decision	**August 9, 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	Jasbir Sandhu	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and the decision 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 Mandeep Kaur SOHAL (the "appellant") from the refusal of the sponsorship application for a permanent resident visa made by her spouse, Balkar Singh BRAR (the "applicant"), from India.

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

BACKGROUND

[3] The appellant is twenty-eight years old. She is a permanent resident of Canada and she was landed in 2008. She states in her Questionnaire that she is employed as a property supervisor.[3] She was married once previously and she was divorced in August 2004. She has one child, a son aged eight years.

[4] The applicant states that he is twenty-six years old and that he lives in Rajiana, Moga District, India, with his parents.[4] This is his first marriage. He has no children. The applicant states that he has two siblings, a brother who is married and who lives in Canada, and an adoptive sister, aged seven years.

[1] *Immigration and Refugee Protection Act* (the "*Act*"), S.C. 2001, c. 27, ss. 63(1).
[2] *Immigration and Refugee Protection Regulations* (the "*Regulations*"), SOR/2002–227.
[3] *Sponsor Questionnaire*, IMM 5540, Record, pp. 76-79. Unless noted otherwise all information concerning the appellant is drawn from this document.
[4] *Application for Permanent Residence in Canada*, IMM 0008, Record, pp. 63-69. Except where noted otherwise all information concerning the applicant is drawn from this document.

[5] According to the witnesses' testimony and the applicant's Questionnaire[5] the couple were introduced in September 2010 by Gurwinder Singh, the applicant's distant relation, who is also a family friend of the appellant. The appellant testified that her parents, who live in India, met the applicant at the gurdwara. After receiving a recommendation from the matchmaker, Gurwinder Singh, they considered the applicant to be a good prospect and so they introduced him to their daughter. The appellant said that, after having experienced a distressing and abusive first marriage, she was not confident of finding a suitable match for a second marriage in Canada and that she trusted her parents' judgement with respect to the applicant's suitability.

[6] The appellant testified that negotiations began in September although she and the applicant did not speak to each other until a few days before she departed for India, in December 2010. She said that their first conversation lasted for about fifteen to twenty minutes after which they and their families agreed to proceed with the marriage. The applicant proposed in person on December 16, 2010. The families held a ring ceremony the following day and the couple were married on December 18, 2010. The appellant stayed in India until January 15, 2011. She next visited the applicant from January 20 until March 18, 2012.

ISSUE

[7] The immigration officer was not satisfied either that the marriage is genuine or that its primary purpose was other than to acquire a status or privilege under the *Act*. The details are set out in the refusal letter[6] and in the electronic CAIPS[7] notes prepared by the immigration officer.[8]

[8] 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 pursuant to subsection 4(1) of the *Regulations*.[9]

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[5] *Sponsored Spouse/Partner Questionnaire*, IMM 5490, pp. 70-75. Except where otherwise noted all information concerning the relationship is drawn from this document.
[6] Record, pp. 203-204.
[7] Computer Assisted Immigration Processing System.
[8] Record, pp. 29-32.
[9] *Regulations*, SOR/2010 – 208, s. 1.

DECISION

[9] After carefully considering all of the evidence, I find that the appellant has not met the onus to demonstrate, on the balance of probabilities, that the marriage is genuine and that it was not entered into primarily to acquire a status or privilege under the *Act*.

[10] The appeal is dismissed.

ANALYSIS

Subsection 4(1) of the *Regulations*

[11] Subsection 4(1) of the *Regulations* deals with "bad faith" marriages, common-law partnerships and conjugal partnerships. It 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.

[12] 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* and 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* or that it is not genuine.

[13] The status or privilege that can be acquired under the *Act* in respect of a marriage is that the appellant's spouse is granted permanent resident status in Canada through membership in the family class when the spouse qualifies to be sponsored to Canada.[10] 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 it was a primary purpose of the relationship to acquire any status or privilege under the *Act*.

[14] The second part of subsection 4(1), the genuineness of a marriage, is addressed 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. It comprises a blend of the past, current and anticipated circumstances surrounding the relationship. The relative importance of the factors 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

[15] The immigration officer expressed several concerns with the application pursuant to *Regulation* 4(1) and they are set out in the CAIPS notes.[11] The officer noted that: a) the couple did not appear to be compatible; b) there was no credible explanation as to why the match was made and the marriage performed within two days of the couple's first meeting in person; c) the couple had little knowledge of each other; d) there were contradictions between them with respect to the applicant's adoptive sister; and e) their accounts concerning plans for a family were contradictory.

[10] *Act*, subsections 11(1), 12(1) and 13(1).
[11] Notes of the interview, Record, pp. 29-30.

The Evidence

[16] I have before me as evidence the documentation that the appellant provided on her behalf and that was entered as Exhibit A-1. Also before me is the appeal record provided by the Canada Border Services Agency (the "CBSA").

[17] I have heard the testimonies of the appellant and of the applicant. I have considered both the documentary evidence and the oral evidence carefully with particular attention to any contradictions and inconsistencies that might not easily be reconciled.

The Genuineness of the Marriage

[18] The narrative offered by the couple of their marriage presumes that they are compatible in several aspects. There are similarities as the counsel for the appellant submits: their ages are close (although the appellant is two years senior); and they have the same level of education. From the testimony, however, the appellant's previous marriage is a complicating factor within the couple's cultural environment, especially in their ancestral region where marriages involving a divorced person are typically regarded with some concern by the local community involved. This, when considered along with the protocol by which the man is normally two to five years older than his spouse, suggests that the couple's compatibility is somewhat tempered.

[19] There is a related aspect concerning the aptness of the match. The counsel for the appellant submits that his client's decision to seek a match in India was well-founded because the probability of success was greater for her there; however, I must respectfully question this proposition. It is reasonable to expect that the pre-marriage protocols that exist in India might be moderated in Canada, even when allowing for the continuing influence of Indian and Punjabi customs here. Thus, the appellant would have had at least a comparable chance of finding a suitable match in Canada. When the couple's compatibility is considered in its entirety I am unable to conclude that it is in any way unremarkable. It is not, in view of the minimal evidence in the matter, a determining factor.

[20] Credibility is the predominant issue in this appeal, especially with regard to the evidence given by the applicant. The documentary and oral evidence contain enough discrepancies and contradictions throughout to lead me to this conclusion. I address several significant examples below.

[21] The applicant was unable adequately to answer when the immigration officer asked him why he elected not to seek a prospective spouse who was four to five years younger than he, as is the custom in India. It is, in my view, understandable that someone in the applicant's situation might have preferred to disregard the custom because of his personal inclination. In that case, however, there is no reason for him to withhold an explanation from the officer; it might have been as simple as, "I don't care about the custom" or it might have been a more elaborated personal rationale. Regardless, his explanation would have brought him no disadvantage at the interview yet he was unable to answer the officer beyond the comment that he had considered three possible matches in India, two of whom where younger than he. Similarly, when asked by his counsel whether it is usual for a young man such as he to marry a woman who was never previously married, he replied obliquely, "No one has ever spoken against this relationship." His responses reflect on his credibility surrounding the origin of the marriage

[22] The steps taken separately by the couple leading to their agreement to marry were incongruous in certain respects. The appellant testified to the effect that she had no chance of finding a suitable spouse in Canada, even stating that she had no means of beginning to look whether on her own or through relations or friends here. It is possible that, after meeting some prospects here she might conclude there was none suitable; however, I do not find it credible that she could find no means by which to take even the most basic steps to enquire into the possibilities within her social circle here.

[23] In any event, she testified, her parents encountered the applicant; they received a recommendation from Mr. Singh and they then suggested the match to her. On its face this account is not unusual but closer examination indicates a telling incongruity. The appellant testified that she had experienced considerable neglect and physical abuse from her first husband and that the family's situation had deteriorated to the point at which social service authorities had

had to intervene even to the point of contemplating the removal of her son from the home. This was undoubtedly a dreadful situation for her and for her son. After her divorce, the appellant and her son lived by themselves for several years until, she testified, she considered it was time to seek a second spouse; her parents encouraged her to do so, she said. It is remarkable, therefore, that the appellant, by her testimony, first spoke with the applicant "a few days" before she left for India to meet him and that their conversation lasted for no longer than fifteen to twenty minutes. The evidence is that this was the only discussion that the couple had before they spoke next on December 16, 2010, the day on which they first met in person. The witnesses each testified that the agreement to marry was reached before the appellant left Canada; that is, on the basis of a brief telephone conversation between them together with the approval of the families.

[24] Notwithstanding the general protocols surrounding arranged marriages, it is not credible, in my view, that the appellant would not have been more cautious about entering into a second marriage, not only for herself but also for her young son. It is especially curious that she would have done so, first, without having met the applicant and, also, on what appears to be an extremely cursory investigation, one that relied solely on the assessments of a distant matchmaker and her parents. Further, the evidence is that her parents had been instrumental in arranging her first marriage which would reasonably have been caused for her to be very cautious in considering this second match.

[25] Beyond the question of the appellant's prudence are the practical considerations surrounding the arrangements for the marriage. The couple spoke for roughly forty minutes in total, twenty of which were over the telephone before they met; they formally agreed to marry on December 16, 2010; they held their ring ceremony on that day; they held and engagement ceremony on December 17, 2010; and they were married the day after that. This was an extremely hasty sequence of events. Moreover, according to the applicant's questionnaire there were 500 and 450 family and guests at the engagement and wedding ceremonies respectively. I share the observation of the counsel for the respondent that it is absurd that two families would be willing to arrange for such an important series of events affecting two families with so little

time either to consider or to prepare. I acknowledge the submission of the counsel for the appellant, in respect of the arrangements, that some steps can be taken in advance of such events, such as the preparation and posting of invitations. In this case, however, the couple testified that they took the formal decision to marry just two days before the wedding; it is unlikely, therefore, that invitations would have been issued before then.

[26] The distressing circumstances of the appellant's first marriage were also sufficient, in my view, to have been discussed at length by any couple in a genuine marriage. However, the immigration officer noted that, during the interview, the applicant could give little information about her first marriage beyond his comment that her former husband was a drunkard and that he took money from her. The interview was held in August 2011, eight months after the marriage. I do not find it credible that the applicant should have been so ill-informed about this crucial part of the appellant's life, one that also affected her son with whom, he testified, he has a close relationship. At the hearing the appellant testified that the matchmaker, Mr. Singh, had informed him of the appellant's first marriage and her child. The applicant added that he knew that her former husband had been an addict and that he had been physically abusive. The applicant's grasp of this information would have been more credible had he been able to provide it earlier, at the interview, especially in view of the appellant's testimony under cross-examination that the applicant knew everything about her former husband by the time of the interview.

[27] Another example of the questionable credibility in this appeal concerns the exchange of photographs between the couple. The appellant told the immigration officer that the couple had exchanged photographs of themselves before she left Canada. The applicant testified to this as well; he said that they had seen each other's photographs before the wedding. At the hearing, however, the appellant initially testified that the couple had *not* exchanged photographs before having met in person; when the counsel for the respondent reminded her of her answer to the immigration officer she changed her testimony, stating that she had in fact sent photographs to

the applicant. She said that he had never sent photographs. She then equivocated with yet another answer: that it was her parents who had sent the applicant the photographs. Her contradictory replies on a matter that should be completely straightforward leave doubt as to what actually happened.

[28] These examples characterize the questionable credibility surrounding the testimony and they raise doubts about the merits of the appeal in general. I have assessed the evidence in relation to the precise test set out in subsection 4(1) of the *Regulations*. In order to demonstrate that the marriage is a genuine one the appellant must cross the threshold defined by the balance of probabilities. Taken together, the issues of credibility are decisive. They are sufficient for me to conclude that the appellant has fallen well short of proving, on the balance of probabilities, that the marriage is a genuine one. The key issues raised were not adequately explained and the witnesses' testimonies were not credible in crucial aspects. I conclude that, on the balance of probabilities, the marriage is not a genuine one.

The Primary Purpose of the Marriage

[29] 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. The applicant gave rise to particular doubt in this regard at the interview when he told the immigration officer that his brother was in Canada and that ". . . his parents knew that he was going to Canada . . . ."[12] As the officer noted, the applicant realized almost immediately that he had unintentionally revealed his apparent intention. I note as well the applicant's testimony under cross-examination that he had tried to enter Canada previously as the adopted son of his unmarried uncle who lives here and that he had acquired a passport in 2008. The effort came to naught, he said, because the uncle subsequently married and decided to nullify the adoption in anticipation of having children of his own.

[12] Notes of the interview, Record, p. 29.

[30] 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"[13] behind the marriage for the applicant to be caught by subsection 4(1) of the *Regulations*. I find that, in this case, the findings from the evidence point to 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 that this is the primary objective of the marriage between the appellant and the applicant.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Philippe Doré"**

Philippe Doré

August 9, 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.

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