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

2016 CanLII 97342 (CA IRB)

IAD File No. / N° de dossier de la SAI : VB5-00483
Client ID no. / N° ID client : 3021-7967

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Yasmin Nisha MUNIFF	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	February 1, 2016	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	February 1, 2016 (rendered orally) February 11, 2016 (written decision)	**Date de la décision**
Panel	George Pemberton	**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	Laura Merriam	**Conseil du ministre**

Canada

REASONS FOR DECISION

2016 CanLII 97342 (CA IRB)

[1] These are the reasons and decision in an appeal by Yasim Nisha MUNIFF (the "appellant"), against the refusal of the sponsored application for permanent resident visa for her spouse, Ayaz Mahmood (the "applicant"), a citizen of India. The refusal was based on subsection 4(1) of the *Immigration and Refugee Protection Regulations* (the "*Regulations*").[1] The visa officer found that the common-law partnership between the appellant and the applicant is not genuine or was entered into primarily for the purpose of the applicant acquiring status under the *Immigration and Refugee Protection Act* (the "*Act*").[2]

[2] The appellant is a 41 year old citizen of Canada. The applicant is a 31 year old citizen of India. This is the third marriage for the appellant and the first for applicant.

[3] A previous application to sponsor the applicant was refused because there was no evidence that the marriage was legally valid. The appellant did not demonstrate that she was divorced from her second husband. This application was subsequently made as a common-law partnership.

[4] The appellant and applicant testified at the hearing. The appellant provided documentary evidence as did counsel for the Minister of Citizenship and Immigration. I have taken into consideration the witness testimony, contents of the Record, the documentary evidence and the submissions by the parties.

[5] At issue in this appeal is whether subsection 4(1) of the *Regulations* applies, thereby excluding the applicant from consideration as a member of the family class. The two tests set out in subsection 4(1) of the *Regulations* are that the common-law partnership:

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[1] *Immigration and Refugee Protection Regulations*, SOR/2010–208, s. 1.
[2] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

a. was entered into primarily for the purpose of acquiring any status or privilege under the *Act*, or

b. is not genuine.

[6] Only one test needs to be met to disqualify a spouse. The onus of proof is on the appellant to establish, on a balance of probabilities, that the applicant is not disqualified as a spouse.

[7] The appellant came to Canada in 1994 after being sponsored by her first husband. They separated in 2000 and divorced in 2005. The appellant and applicant testified that they first met in India in 2001. They met by chance. There was a spark between them. They exchanged phone numbers and the relationship grew from there.

[8] The applicant visited Canada for approximately six months in each of 2003, 2004 and 2005. In August 2007 he returned to Canada and remained here until 2012 when he was required to leave due to a failed refugee claim.

[9] The appellant visited India in March 2006. While there she married Mahabir Singh. Applications were submitted to sponsor Mr. Singh in February 2007 and March 2008. The first application was withdrawn in July of 2007. The second application was refused.

[10] The appellant provided proof of money transfers and some proof of communication. The witnesses testified they have lived together for extended periods and their testimony was consistent on that point. However, there was limited independent evidence to corroborate that testimony.

[11] The appellant testified that she had previously miscarried and that in 2011 a baby was stillborn. That sad outcome was confirmed by medical evidence. That alone is significant, though not conclusive, proof of the genuineness of the relationship.

2016 CanLII 97342 (CA IRB)

[12] At the hearing the couple demonstrated some knowledge of each other's lives. However, there were significant irreconcilable inconsistencies and gaps in the testimony. Appellant's counsel submitted that there were no unexplained silences in the testimony. I disagree. I find that both witnesses were often hesitant and vague in their testimony.

[13] On the basis of the significant irreconcilable inconsistencies and gaps, on the whole, I found the witnesses not credible. The inconsistencies and gaps in the evidence included evidence from both witnesses providing vague explanations of how they came to meet. The appellant testified that she could not recall how old the applicant was at the time. The applicant testified that he was 20 or 21 years old. In fact, he was 16 years old. The appellant was then 26. Given the applicant's young age I find it not credible that neither of them recalled that he was only 16 years old.

[14] An age difference of ten years is often not a bar to a genuine relationship. It is a concern that can generally be overcome. However, when one party is only 16 it takes on greater significance. I find there was no reasonable explanation for why the appellant, soon after leaving an abusive relationship, would see a 16 year old man as a suitable partner.

[15] They each testified that they saw each other four or five times during the appellant's 2001 visit. That is where the similarity in their story ends. The appellant testified that after the first meeting they would meet alone. The applicant testified that the appellant always brought along a friend. The appellant testified that she and the applicant visited the applicant's sister's home. The applicant testified that they only ever met in public places. The appellant testified that they had sex on more than one occasion on that 2001 visit; that they went to a hotel to do so. The applicant testified they did not have sex until he visited Canada in 2003.

[16] The witnesses testified that their relationship was exclusive and that even when the applicant returned to India after his visits to Canada, they remained in almost daily contact. Despite this close relationship, the appellant did not tell the applicant she was going to visit India

2016 CanLII 97342 (CA IRB)

in 2006. I find, that if the relationship was as the witnesses described, there was no reasonable explanation for not notifying the applicant of her travel plans and making arrangements to meet him.

[17] The couple did not marry until 2009. Given the purported nature of their relationship going back to at least 2003 there was no reasonable explanation for not marrying sooner.

[18] Rather than applying as a member of the family class, the applicant first attempted to remain in Canada by making a refugee claim. The appellant and applicant blamed this choice on flawed advice from counsel. There is no evidence that that counsel was notified of the concern or given an opportunity to respond. I therefore give the claim of having poor counsel little weight.

[19] I find that the above inconsistencies and gaps in the testimony are not consistent with what would be expected in a genuine relationship, especially when taken together with the other inconsistencies and gaps in the testimony. I find that the witnesses' testimony was not generally credible.

[20] Based on all the evidence before me, I find the appellant has not met the onus on her of establishing on a balance of probabilities that the common-law partnership is genuine and was not entered into primarily for the purpose of acquiring a status or privilege under the *Act*.

[21] I therefore find that the applicant, Ayaz Mahmood, is excluded as a member of the family class. The appeal is dismissed.

[Edited for spelling, grammar and syntax.]

2016 CanLII 97342 (CA IRB)

IAD File No. / N^{o} de dossier de la SAI : VB5-00483

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"George Pemberton"**

George Pemberton

February 11, 2016

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

2016 CanLII 97342 (CA IRB)