



IAD File No. / N° de dossier de la SAI : VB5-01550

Client ID no. / N° ID client : 4496-1072

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Subneez Zakia SATTAR	Appelant(e)s
and		et
Respondent	The Minister of Citizenship and Immigration	Intimé(e)
Date(s) of Hearing	April 27, 2016	Date(s) de l'audience
Place of Hearing	Vancouver, BC	Lieu de l'audience
Date of Decision	April 27, 2016 (rendered orally) May 10, 2016 (written decision)	Date de la décision
Panel	Tim Crowhurst	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	Ivy Scott	Conseil du ministre

REASONS FOR DECISION

[1] These are the oral reasons and decision in the appeal of Subneez Zakia SATTAR (the “appellant”), who appeals the refusal of the sponsored application for permanent residence in Canada of Anas KHAN (the “applicant”), from India.

[2] The applicant's application was refused because, in the opinion of the visa officer, the requirements of subsection 12(1) of the *Immigration and Refugee Protection Act* (the “Act”)¹ were not met, in that the applicant is a person caught by the exclusionary provisions of s. 4(1) of the *Immigration and Refugee Protection Regulations* (the “Regulations”). Subsection 4(1) of the *Regulations*² 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.

[3] To succeed on appeal, under subsection 4(1) of the *Regulations*, the appellant must establish, on a balance of probabilities, both that the marriage was not entered into primarily for the purpose of acquiring any status or privilege under the *Act* and that it is genuine. To dismiss the appeal, the panel must find that the marriage is not genuine or that it was entered into primarily for the purpose of acquiring any status or privilege under the *Act*.

[4] The appellant is a 37-year-old divorced woman, originally from Fiji, who was accepted as a Convention refugee and became a permanent resident in 2008, according to the Record.

[5] The applicant is a 27-year-old never-married citizen of India.

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

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

[6] The appellant was previously married for a short period in 2008. That marriage was not the subject of a sponsorship by the appellant.

[7] The appellant lives in Vancouver, B.C. with her two elderly parents who have numerous medical conditions.

[8] The application was refused by a visa officer in New Delhi on May 15, 2015. The reasons for the refusal are indicated in the refusal letter contained on the record and in the Global Case Management System (GCMS) notes.³

[9] Assessing the genuineness of a marriage to determine if it was entered into for the primary purpose of acquiring a status or privilege under the *Act* is often difficult as the panel does not have access to inner thoughts and feelings of the parties. The panels and visa officers have traditionally relied on indicia of genuineness and sincere intent and looked at such factors as compatibility, interest in each other, explanation for contradictions or lack of knowledge, et cetera. Some contradictions go to the heart of the matter; some contradictions are just part of being human. All the circumstances and evidence must be weighed and looked at as a whole so that the decision is a reasonable conclusion flowing from the facts presented.

[10] The visa officer was concerned, *inter alia*, with the haste with which the marriage was entered into, with the applicant proposing to the appellant after one month, the quick nature of the marriage one week after the proposal, the absence of the appellant's parents and the applicant's father at the wedding ceremony, the ten-year difference in age and the fact that the applicant has an elder sister who was not married prior to the applicant.

[11] These issues were presented to the appellant and the applicant, who both testified under solemn affirmation. Some issues were satisfactorily explained to the satisfaction of the panel with what I found to be reasonable responses. Others were not, as I will detail a bit later.

³ Exhibit R1, the Record, pages 1 to 51.

[12] Credibility is essential of a witness and credibility must weave throughout the evidence and oral testimony in order for the panel to render a positive decision.

[13] The genesis of the relationship, according to testimony of the appellant and the applicant, is that they both joined a matrimonial website (shaadi.com) around December 2012 to January 2013. Each of the appellant and the applicant only communicated with two other persons until October 8, 2013. According to testimony, after 10 months they were determined by the website to be a "perfect match".

[14] Their communication moved, that day, off the website onto email or Skype. The record at page 135 provides a copy of the initial email communication between the appellant and the applicant. This email consists of a "Hi-How-are-you" exchange. Pages 136, 137, 141 provide screen shots of attempted calls between the two, starting October 19, 2013. Pages 123 to 133 provide ten pages of missed calls on October 23 to 24, from the applicant, to a person he has entered into his directory as "Canada Subneez."

[15] Testimony in evidence indicates that the applicant then proposed on November 8, 2013, and the appellant flew to India on November 15. The applicant met the appellant at the Delhi Airport with roses. They drove to a hotel in Dehradun, six hours north.

[16] A Nikah ceremony was held in a hotel with a few persons present. The applicant's father was not present, as he was opposed to this marriage happening prior to his elder daughter being wed and in such haste.

[17] The appellant testified that she has since spoken with the applicant's father to request his forgiveness for the haste and that now he is in favour of the match.

[18] The panel was very concerned by evidence that the appellant booked her ticket to India on October 18, 2013, some 10 days after initial contact and some 21 days prior to the applicant proposing marriage. This issue was put by the panel to the appellant and after several times

repeating the question, the appellant stated that it was just a booking and not a reservation because she felt a proposal was coming and wanted to save money. I do not find this to be a remotely credible response.

[19] Moreover, when the applicant was questioned as to when the appellant booked her ticket, he stated it was two to three days after the proposal.

[20] There is no evidence or testimony which, in my finding, point to a credible reason for the appellant to book a trip to India for a wedding that has not yet had a proposal nor even been discussed, according to testimony of the applicant. I find it not credible that some 200 hours after initial communication, that a Muslim woman would plan to travel to a remote area of northern India to marry someone that she had never met and without any common acquaintances.

[21] I found the appellant and the applicant to be intelligent and straightforward witnesses. Their responses were direct and spontaneous.

[22] In my finding, and on a balance of probability, this does not translate into a positive credibility finding. Rather, I find them to be simply very well-rehearsed.

[23] At the conclusion of testimony, Minister's counsel submitted that the Minister's position had changed and that the appellant's burden of proof had been satisfactorily discharged and that the Minister was consenting to the appeal being allowed in law.

[24] In the final analysis, when all the evidence is weighed with the testimony provided at today's hearing, I find the credibility of the witnesses and the credibility and plausibility of the genesis and development of this relationship simply do not support the finding, on a balance of probabilities, that this is a genuine marriage. I find it was entered into for the purposes of securing the applicant's permanent resident status.

[25] That being said, the Minister's consent in law is different from that of a joint recommendation, which the panel is not bound to accept. The panel has no authority, then, but to accept the Minister's position that the appeal be allowed.

[26] The appeal is therefore allowed.

[Edited for spelling, grammar and syntax.]

NOTICE OF DECISION

After reviewing the information in this appeal and the consent of the Minister, the appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and an officer must continue to process the application in accordance with the consent of the Minister.

(signed)

"Tim Crowhurst"

Tim Crowhurst

May 10, 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 for this application.