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: VB6-02523

Client ID no. / N° ID client: 6430-4144

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Ramandeep Kaur GILL (also known as Ramandeep Kaur MUNDI)	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	June 12, 2017	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	July 7, 2017	**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	Kevin Hatch	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (the "IAD") in an appeal by Ramandeep Kaur GILL (also known as Ramandeep Kaur MUNDI) (the "appellant") against the refusal of the sponsored application for a permanent resident visa for her spouse, Parveer Singh MUNDI (the "applicant"), a citizen of India.

BACKGROUND

[2] The refusal was pursuant to subsection 4(1) of *the Immigration and Refugee Protection Regulations* (the "*Regulations*").[1] The visa officer found that the marriage between the appellant and the applicant is not genuine and was entered into primarily for the purpose of the applicant acquiring status under the *Immigration and Refugee Protection Act* (the "*Act*").[2]

[3] The appellant is a 32-year-old permanent resident of Canada. The applicant is a 30-year-old citizen of India. Theirs is an arranged marriage. They first met March 1, 2014, and married on March 21, 2014. They both testified at the hearing. I have considered their testimony, the materials in the Record, additional material produced by the appellant,[3] and the parties' submissions.

ISSUES

[4] The issue is whether subsection 4(1) of the *Regulations* applies, thereby excluding the applicant from consideration as a member of the family class. The tests set out in subsection 4(1) of the *Regulations* are whether the marriage:

> (a) was entered into primarily for the purpose of acquiring any status or privilege under the *Act*; or,
> (b) is not genuine.

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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.
[3] Exhibits A-1 and A-2.

[5] 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.

DECISION

[6] I find the appellant has not met the onus on her of establishing, on a balance of probabilities that the marriage is genuine and was not entered into primarily for the purpose of acquiring a status or privilege under the *Act*. I find that the applicant is not a member of the family class. The appeal is dismissed.

ANALYSIS

[7] The visa officer's concerns included that the couple is incompatible in age and education, they tried to conceal the relationship with the middleman, haste of the marriage, discrepancies in the history of the relationship including when the marriage was agreed and when they discussed living in Canada, the applicant lacked knowledge of the appellant's brother, and they were not making efforts to have a child. Many of the concerns were addressed in testimony and/or are not material. However, some concerns remain including inconsistent explanations of the genesis of the relationship and lack of knowledge of each other in key areas.

[8] There is evidence that the marriage is genuine, including, the appellant has paid return visits to India, including two visits for extended periods; the appellant provided phone records evidencing communication; and, there are photos of the couple together.

[9] The appellant provided evidence that she is undergoing fertility treatments in an effort to have a baby. Ordinarily that would be evidence of genuineness of the relationship. The appellant and applicant both told the visa officer that they intended to wait until the applicant was in

Canada before trying to have a child. They both confirmed in their testimony that the efforts to have a baby only began after the application was refused. According to the doctor's notes made January 30, 2017, the couple had been trying to conceive for 2-1/2 years.[4] That was not correct. The appellant testified that the doctor must have made a mistake. However, the information recorded by the doctor must have come from somewhere. The length of time a couple has been trying to conceive would be an important consideration for a medical doctor to make a diagnosis regarding infertility. The most reasonable explanation for the notation is that the appellant falsely told the doctor she had been trying to conceive for 2-1/2 years. The appellant testified that she is no longer taking fertility medication. The applicant testified that she is continuing to take medication. If the couple is making genuine efforts to have a baby it is not credible that they would not have a consistent understanding of the treatment regime. For these reasons I give the fertility treatment little weight as evidence of genuineness of the relationship.

[10] The couple gave the visa officer inconsistent information regarding when and how the marriage was agreed. The applicant said the decision was made March 1, 2014, the first day the couple met. The appellant said the families met again on March 2, 2014, and it was on that day that the marriage was agreed. The application form states that the families met again on March 2, 2014, and the applicant proposed to the appellant at that time.[5] In their testimony the couple claimed that they had no contact of any kind between March 1 and March 5, the date of the engagement ceremony. The appellant testified that the agreement to marry was conveyed by telephone through the middleman. The appellant and applicant now have their stories straight but there is no reasonable explanation for the inconsistencies in their interviews with the visa officer or the explanation in the application form. It is not credible that in a genuine relationship that the couple would not have a more consistent recollection of such significant events.

[11] At the interview with the visa officer the applicant said that the couple discussed where they would live after marriage a couple of days after the marriage was agreed. He said they had a telephone discussion about it. The appellant said there were no discussions on the issue. She

[4] Exhibit A-1, p. 2.
[5] Record, p. 66.

confirmed that in her testimony. At the hearing the applicant testified that what he told the visa officer was wrong and he was just confused. The appellant lives in Canada; the applicant lives in India. It is not credible that in the pre-marriage discussions no thought was given to where they would live after marriage. I find the claims that there were no such discussions, and the inconsistent information provided by the applicant, are indicative of efforts to conceal the fact that gaining status in Canada was a consideration in the marriage.

[12] The applicant testified that he studied in England for 13 months starting in 2008. The application forms state that he has always lived in India.[6] The forms do not disclose that he lived in England. The appellant testified that the applicant has never studied outside India. The couple has been married over three years. If they have been together for the lengthy periods suggested by the appellant's return travel to India, and in frequent communication suggested by the phone records, it is not credible that the applicant would never have mentioned that he spent over a year living in a foreign country.

[13] The application forms state that the appellant worked as a janitor beginning in July 2014.[7] She confirmed that in her testimony. The applicant testified that the appellant has worked at a plywood mill, and nowhere else, for as long as he has known her. If the couple is in constant communications as they claim, it is not credible that the applicant would be unaware that the appellant began work as a janitor shortly after her return to Canada from the marriage trip.

[14] There were other gaps and inconsistencies in the evidence, for example, the duration of visits to the appellant's parent's home; the timing of first contact between the families; how and where the forms were signed; and plans if the appeal is unsuccessful. Individually the other inconsistencies and gaps are immaterial. Examined in the context of the above irreconcilable inconsistencies they take on greater significance.

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[6] Record, pp. 61 and 62.
[7] Record, p. 74.

CONCLUSION

[15] Despite the appellant having satisfied some of the visa officer's concerns, and despite there being some evidence of genuineness of the marriage, there remain significant, irreconcilable inconsistencies. The appellant has not met the onus of establishing, on a balance of probabilities, that that the marriage is genuine and was not entered into primarily for the purpose of acquiring a status or privilege under the *Act*. I therefore find that the applicant is excluded as a member of the family class.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"George Pemberton"**

George Pemberton

July 7, 2017

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.