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: VB7-04439

Client ID no. / N° ID client: 5112-4041

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Moh'd Hashim AL-TURUKMANI	**Appelant(e)(s)**
and		
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	August 10, 2018	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	October 9, 2018	**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	Laura Merriam	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and decision in the appeal by Moh'd Hashim AL-TURUKMANI (the Appellant), from the refusal to approve the permanent resident visa application made by his spouse Sumaia Mahmoud Mohammad ALQEDRH (the Applicant), from Jordan.

[2] The application for a permanent resident visa was refused pursuant to section 4.1 of the *Immigration and Refugee Protection Regulations* (the Regulations).[1] The details of the refusal are set out in the refusal letter and Global Case Management System notes.[2]

BACKGROUND

[3] The Appellant is 56 years old and living in Canada. The Applicant is 50 years old and living in Jordan.

[4] The Appellant and Applicant were previously married to each other in 1986 and divorced in June 2008.[3] They have five adult children from that marriage.[4]

[5] The Appellant married his second wife in August 2008. She sponsored the Appellant and he became a permanent resident of Canada in April 2010.[5] The Appellant and his second wife separated in July 2010 and divorced in January 2012.[6]

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[1] *Immigration and Refugee Protection Regulations*, SOR/2002–227.
[2] Record, pp. 49–59; 607–608.
[3] Record, pp. 242.
[4] Record, p. 252.
[5] Record, p. 50.
[6] Record, pp. 63; 75.

[6] The Appellant sponsored his children to Canada in 2012.[7] The Appellant and Applicant were re-married in Jordan in March 2013.[8] The Appellant's children became permanent residents of Canada in June 2016.[9]

ANALYSIS

[7] Section 4.1 of the Regulations states:

> **4.1 New relationship** – 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 foreign national has begun a new conjugal relationship with that person after a previous marriage, common-law partnership or conjugal partnership with that person was dissolved primarily so that the foreign national, another foreign national or the sponsor could acquire any status or privilege under the Act.

[8] The Appellant and Applicant testified at the hearing, counsel made submissions and additional documentary evidence was submitted.[10]

[9] Based on the evidence before me, I find the evidence demonstrates, on a balance of probabilities, the Applicant's initial marriage with the Appellant was dissolved primarily so the Appellant could acquire permanent resident status in Canada and the Applicant began a new conjugal partnership and has subsequently married the Appellant. Therefore, the Applicant is a person described in section 4.1 of the Regulations.

[10] The witnesses testified at the hearing about their initial marriage, the reasons for the breakdown of that marriage, the Appellant's second marriage and the breakdown of that marriage, the rekindling of the relationship between the Appellant and the Applicant after the

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[7] Record, p. 50.
[8] Record, p. 83.
[9] Record, p. 57.
[10] Exhibit A–1.

Appellant's immigration to Canada and the breakdown of the Appellant's second marriage and the relationship after their re-marriage. When considering together all the documentary evidence, the statements at the interview and the testimony at the hearing, I find there were gaps and credibility concerns in the evidence and they seriously undermined the credibility of the witnesses in relation to the breakdown of their initial marriage and the Appellant's second marriage.

[11] The witnesses explained that the reason for the breakdown of their first marriage was the Applicant's family and the frequency and length of their visits. They testified this caused problems in the marriage and caused the divorce. Based on the evidence and particularly that they had been married for over 20 years, still had young children and testified they did not have personal problems, I find they did not provide satisfactory explanations as to the reasons for the breakdown of their marriage given their cultural context. Further, the timing of the refusal of the family's application to immigrate to Canada and the refusal of the visitors' visa applications in relation to the timing of the divorce raise concerns about the motivation for and genuineness of the divorce. Moreover, there was limited credible evidence and no satisfactory explanations as to why the Appellant would enter into a second marriage that would take him away from his children within two months of divorcing the Applicant. These issues undermined the credibility of the witnesses' testimony regarding the breakdown of their marriage and reasons for their divorce.

[12] I have also considered the evidence surrounding the development and breakdown of the Appellant's second marriage. On a balance of probabilities, I find that marriage was more likely a marriage of convenience. There was limited credible evidence regarding what the Appellant and his second spouse had in common and how or why the relationship developed to marriage so quickly after the Appellant's divorce. Further, the Appellant separated from his second wife within a short period of time after obtaining status in Canada and sponsored his children to Canada in 2012. Moreover, the Appellant remarried the Applicant within months of his divorce

from his second wife. However, he did not sponsor the Applicant immediately after they remarried because he was barred from sponsoring her for five years from the time he immigrated to Canada.

[13] The witnesses submitted documentary evidence and testified regarding their relationship both prior to the Appellant's immigration to Canada and subsequent to his immigration to Canada. Based on the evidence and on a balance of probabilities, I find the Appellant and Applicant were in a genuine spousal relationship prior to the Appellant's immigration to Canada, the Appellant's marriage to his second wife and her sponsorship of the Appellant to Canada was primarily for immigration purposes and the Appellant and Applicant are now in a genuine spousal relationship.

[14] Based on the evidence and on a balance of probabilities, I find that the Appellant and Applicant dissolved their first marriage in order to enable the Appellant to gain admission to Canada. The relative speed with which the Appellant entered into his second marriage after his divorce from the Applicant, ending his marriage with his second wife relatively quickly after gaining admission to Canada, and then sponsoring his children and remarrying the Applicant soon after divorcing his second wife also support the conclusion that the Appellant dissolved the initial marriage with the Applicant to gain admission to Canada as a step towards reuniting with the Applicant with him and their children in Canada in the future.

[15] Section 4.1 of the Regulations was enacted to prevent persons in a conjugal partnership from dissolving the relationship to free them to gain admission to Canada only to turn around and resume their previous relationship.

CONCLUSION

[16] Although I have no doubt the Appellant and the Applicant currently have a genuine spousal relationship, the Appellant has not met the onus of proof. Based on the evidence before me and on a balance of probabilities, the Applicant is caught by section 4.1 of the Regulations. The Applicant is not considered a spouse because the initial marriage with the Appellant was dissolved primarily to allow the Appellant to acquire permanent resident status in Canada and the Applicant began a new conjugal relationship and re-married the Appellant. Therefore, the appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Kashi Mattu"**

Kashi Mattu

October 9, 2018

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.