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: VB6-04471

Client ID no. / N° ID client: 3411-8765

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Gurbir Singh DHILLON	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	June 5, 2018	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	June 15, 2018	**Date de la décision**
Panel	George Pemberton	**Tribunal**
Counsel for the Appellant(s)	Massood Joomratty Ravneet Rakhra Barristers and Solicitors	**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	Carla Medley	**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 Gurbir Singh DHILLON (the "appellant") against the refusal of the sponsored application for a permanent resident visa for his spouse, Bakhshinder Kaur DHILLON (the "applicant"), from 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 36-year-old permanent resident. The applicant is a 29-year-old citizen of India. Theirs is an arranged marriage. They met in March 2013 and married approximately eight days later. The appellant sponsored the applicant shortly after the marriage then withdrew the sponsorship in October 2014. In September 2015 a new application was submitted. It is the refusal of that application that is under appeal.

[4] The appellant, the applicant and the appellant's niece, Harbhawandeep Kaur TATLA ("Ms. Tatla") testified at the hearing. I have considered their testimony, the materials in the Record, additional material produced by the appellant,[3] and counsel for the Minister of Citizenship and Immigration (the "respondent"),[4] and the parties' submissions.

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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] Exhibit A-1.
[4] Exhibit R-1.

ISSUES

[5] 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.

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 him 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 found it not credible that the applicant's family would agree to this match given the incompatibilities, including the difference in the couple's educations, the mental challenges faced by the appellant and the appellant's prior divorce. The visa officer found that the applicant had limited knowledge of the appellant and that the couple failed to provide a reasonable explanation for the withdrawal of the original sponsorship application.

[8] Appellant's counsel submitted that the visa officer's judgement was clouded by preconceptions about the appellant's cognitive challenges and disbelief that the applicant would marry someone with such a disability. He submitted that people with mental disabilities have the right and ability to enter into marriage. People with mental disabilities are entitled to marry (subject obviously to the legal condition that they have the mental capacity to enter into marriage). Many enter into fulfilling and lasting marriages. That does not mean however that visa officers should ignore red flags.

[9] There was evidence of genuineness of the marriage including:

a) The appellant has made lengthy return visits to India.
b) At the hearing the applicant demonstrated reasonable knowledge of the appellant.
c) The appellant provided some proof of financial support.
d) The applicant has undergone fertility treatments.
e) The appellant provided phone records evidencing contact.
f) Religious compatibility.

[10] The appellant and applicant testified that they speak about twice per week. At the interview with the visa officer the applicant said they speak about twice a month. The phone records are more consistent with the latter estimate. The calls are infrequent and usually of short duration. That pattern is consistent with the applicant's statement to the visa officer that the appellant cannot talk much or manage a conversation.

[11] The appellant provided evidence that the applicant underwent fertility treatment starting in February 2017. That is a positive indication of the genuineness of the marriage but the weight I give it is mitigated by the fact that the treatments began after the application was refused.

[12] The visa officer identified the difference in the couple's education as an incompatibility. According to the application form, the applicant completed a Bachelor of Science degree in 2011.[5] The appellant completed grade seven in India, but could not complete grade eight despite several tries. Ordinarily a difference in educational backgrounds is an easily explained incompatibility. In this case the efforts to explain the incompatibility created more problems. The appellant's knowledge of the applicant's education was vague and confused. Ms. Tatla testified that she has known the applicant for many years. She testified that the applicant attempted a college course but could not complete it. The applicant initially gave similar testimony. She twice testified that she began a course in Information Technology but could not complete it. When confronted with the application form stating she had completed her degree, she changed her testimony. If she has a degree, there is no reasonable explanation for the testimony that she did not. The most reasonable explanation is that she and Ms. Tatla provided misleading evidence to counter the visa officer's concern. That impugns the credibility of both witnesses. If the applicant does not have a degree, then she modified her testimony to overcome an inconsistency in the application form. In that case, the applicant's credibility is impugned. Either way, the appellant's case is undermined.

[13] The appellant presents as mentally challenged. His testimony was often vague and confused. He had no recollection of key facts such as whether he and the applicant ever spoke privately at their first meeting. At times he had the appearance of being disengaged or confused. Appearances are, of course, sometimes deceiving.

[14] The appellant provided letters from two doctors. The first, Dr. Gurwant Singh, reports that the appellant is "mentally challenged, although fully functional. He is independent with his daily activities…".[6] The second, from Dr. D. Claire, describes the appellant as having a learning disability. He states, "Although not formally tested, we estimate his IQ to be in the lower normal range or just below the normal range".[7]

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[5] Record, p. 95.
[6] Exhibit A-1, p. 75.
[7] Exhibit A-1, p. 76.

[15] The appellant was medically examined for his own permanent resident application. He was diagnosed with mental retardation, a specific medical assessment. He was assessed as M3 for immigration purposes, that is, suffering a medical condition not expected to place excessive demand on health or social services. Ms. Tatla and the applicant testified that the appellant cannot leave the house alone. He is always accompanied by family members. Important decisions are made for him by family.

[16] Given the testimony that the appellant cannot leave the house alone and the prior medical diagnosis that the appellant suffers mental retardation, it is not clear on what basis Dr. Singh believes that the appellant is fully functional and independent. There are standardized tests for cognitive ability. Dr. Claire has not subjected the appellant to those tests, yet offers an opinion inconsistent with the specific medical diagnosis. I give limited weight to the information provided by Doctors Singh and Claire. I accept the diagnosis made at the time of the appellant's application for permanent residence. That diagnosis is consistent with the testimony of the applicant and Ms. Tatla and consistent with how the appellant presented at the hearing.

[17] At the interview with the visa officer the applicant stated that she knew a "little bit" about the appellant's condition before marriage, but that her parents knew everything. She told the visa officer that the appellant cannot talk much or manage a conversation, but is a nice man. That is consistent with how the appellant presented at the hearing. At the hearing, the applicant and Ms. Tatla's testimony created the impression that the appellant's main problem is his epilepsy, a condition controlled by medication. The applicant is either unaware of the appellant's cognitive challenges, or was intentionally minimizing the issue. If she is unaware, that is a clear indication that the marriage is not genuine and was entered into primarily for the purpose of immigration. If she was shading her testimony, that impugns her credibility.

[18] The respondent queried why the applicant did not make enquiries about the appellant's cognitive abilities prior to marriage. Appellant's counsel submitted that no normal person makes such enquiries about a potential partner. Ordinarily that is true. However, the appellant presents as having significant challenges. It may be that those challenges are not as significant as they first appear, but any normal person would have concerns and make enquiries. The appellant has not reasonably explained why, in the circumstances, the applicant and her family agreed to the match.

[19] A significant issue is the appellant's withdrawal of the sponsorship application. He applied to sponsor the applicant in November 2013. He withdrew that application on October 27, 2014. The new application was filed on September 8, 2015. The appellant provided a letter with the application attempting to explain the prior withdrawal.[8] The letter states, "I and my spouse had some personal differences…". All the witnesses went to pains to explain that the appellant and applicant never had any differences. The withdrawal had nothing to do with them. Appellant's counsel submits that little weight should be given to the letter. He submits that because of his mental challenges the appellant just does what he is told. That is probably true. More likely than not, a family member was responsible for the contents of the letter. That family member should have known the truth. If the testimony was truthful, then there is no reasonable explanation for the statement in the letter.

[20] At the interview with the visa officer, the applicant stated that the withdrawal was because of a dispute between her aunt and the appellant's sister (Ms. Tatla's mother). She later said the troubles were started by the appellant's sister and there were issues about dowry. The appellant was also interviewed by the visa officer. He had little knowledge of the withdrawal. He attributed it to the applicant's aunt causing trouble and his mother therefore withdrew the sponsorship.

[8] Record, p. 130.

[21] Despite repeated questioning of the three witnesses, getting a clear explanation of the withdrawal proved impossible. The appellant claimed to have limited knowledge of what caused the problem. He testified that while he and his father staying with Ms. Tatla's mother in India, the applicant's uncle, Talwinder Singh, and aunt (the matchmakers) visited. The aunt said something bad that angered the appellant's father. Despite this, the applicant remained living with the appellant, his father and Ms. Tatla's mother. There were reportedly no problems. The appellant and his father returned to Canada in May 2014. The application was withdrawn five months later.

[22] Ms. Tatla's testimony was particularly problematic. She too attributed the withdrawal to actions of the applicant's aunt. Other than a vague explanation that the applicant's aunt was disrespectful towards the appellant's father, she could not, or would not, explain the details.

[23] The applicant testified that the withdrawal was caused by a dispute between the elders. She professed little knowledge of what caused the conflict. She claimed not to know what was happening between October 2014 and the re-application in September 2015. She asked the appellant but he did not know. She asked Talwinder Singh. He said he would try straighten it out, but did not tell her what caused the problem. She did not enquire further. If this marriage is genuine and was not entered into primarily for the purpose of immigration, it is not reasonable that the applicant did not, in nearly a year, make efforts to find out what it was that had ruined her life.

[24] Ms. Tatla's mother, reportedly a principal to the dispute leading to the withdrawal, now lives in Canada. She did not testify. No explanation was provided for her not testifying. The appellant's mother was present at the hearing. According to the appellant, she was the one who made the decision to withdraw the application. She did not testify. No explanation was provided for her failure to testify. Instead we are left with the testimony of three witnesses, all of whom profess to know little about the situation.

[25] The withdrawal, and the lack of a reasonable explanation for it, was identified as a problem by the visa officer. Under the circumstances, the withdrawal would cause any reasonable person to question the genuineness and primary purpose of the marriage. The appellant knew, or ought to have known, that this was an issue that needed to be addressed at the hearing. It remained unresolved at the end of the hearing.

[26] Appellant's counsel submitted that many marriages go through difficult times and the fact this couple has reconciled is evidence of the genuineness of the relationship. Many couples separate for a time but successfully reconcile. In those cases, the couples can generally explain the reasons for the marital difficulties and how they were resolved. The appellant and applicant are unable to provide reasonable explanations. I find that the withdrawal of the original application and the failure to provide a reasonable explanation indicates that the marriage is not genuine and was entered into primarily for immigration purposes.

[27] The appellant's first marriage was clearly a marriage of convenience, at least from his wife's side. Despite the divorce documents not being consistent with the explanation of when the marriage failed, I draw no adverse inference from the circumstances of the appellant's first marriage.

CONCLUSION

[28] There is some evidence of genuineness of the marriage. However, there are significant issues for which the appellant has not provided reasonable explanations. The balance of the evidence establishes that the marriage is not genuine and was entered into primarily for the purpose of the applicant acquiring status. 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.

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NOTICE OF DECISION

The appeal is dismissed.

(signed) **"George Pemberton"**

George Pemberton

June 15, 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.