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: VB8-00623

Client ID no. / N° ID client: 2718-9089

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Sanjiv Kumar MUTNEJA	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	April 12, 2019	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	May 10, 2019	**Date de la décision**
Panel	Mark Ferrari	**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	Stephanie Naqvi	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (IAD) in an appeal by Sanjiv Kumar MUTNEJA (Appellant) from the refusal of the sponsorship application for a permanent resident visa for his spouse, Anjali MUTNEJA (Applicant).

BACKGROUND

[2] The refusal was pursuant to subsection 4(1) and subparagraph 117(9)(c)(i) of the *Immigration and Refugee Protection Regulations* (IRPR).[1] The details of the refusal are set out in the refusal letter and Global Case Management System (GCMS) notes of the immigration officer.[2]

[3] An interlocutory decision was made regarding the refusal pursuant to subparagraph 117(9)(c)(i) of the IRPR. The appeal on this ground was allowed.[3] The focus of the hearing and this decision is the refusal pursuant to subsection 4(1) of the IRPR.

[4] The Appellant is a 47-year-old Canadian Citizen who was landed in Canada in 1991. The Appellant was previously married and has two children from this relationship. The Applicant is a 32–year-old citizen of India. The Applicant has been married twice before and has a daughter from her second marriage. Apart from the children from previous relationships, the Appellant and Applicant have a son together.

[5] The Appellant knew the Applicant's brother and mother before he began a relationship with the Applicant. In April 2012 the Appellant was searching for a partner and asked the Applicant's mother if she knew of a good match. The Applicant was in the process of separating from her second husband, who is also the Appellant's cousin, and suggested her.

[6] The Appellant and Applicant began to communicate in May 2012. They met in person on October 26, 2012 and were married on June 15, 2014. Their son was born on March 7, 2015. The Appellant has visited India often since the marriage.

ISSUE

[7] At issue in this appeal is whether subsection 4(1) of the IRPR applies, which would exclude the Applicant as a member of the family class. The two tests set out in subsection 4(1) of the IRPR are that the marriage:

a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

b) is not genuine.

[8] Only one test needs to be met to disqualify a spouse. The onus of proof is on the Appellant to show, on a balance of probabilities, that the Applicant is not disqualified as a spouse.

[9] The relevant timeframe to be considered in the determination of the primary purpose of the marriage is when the marriage was entered into. Evidence prior to and subsequent to the marriage can be considered in making the determination of the genuineness of the marriage. In addition, evidence relevant to the determination of one test may also be relevant to the determination of the other test.

DECISION

[10] Based on the evidence before me, I find that on a balance of probabilities, the marriage is not genuine. The appeal is dismissed.

ANALYSIS

[11] The Appellant and Applicant testified at the hearing and documentary evidence was provided by the Appellant and Respondent.[4] I have considered the testimony, the materials in the Record, the documentary evidence and the parties' submissions. Overall there were significant gaps, discrepancies and inconsistencies in the evidence demonstrated by the witnesses for which satisfactory explanations were not provided. I will provide some examples.

[12] The Appellant and Applicant testified that they have maintained contact and communication with each other regularly since they met. Nonetheless, there were many instances where the Appellant's and Applicant's responses were inconsistent, or there were internal contradictions, in important areas that would not be expected if they were in a genuine spousal relationship with the extent of alleged contact and communication. For example, the Applicant testified that she separated from her second husband as they frequently fought and her then mother-in-law was causing problems. However, the notes from the visa officer interview she stated that she separated from her second husband as he was not gainfully employed, was suspicious of her and would take money from her parents.[5] The Applicant testified that since 2014 she has been living in the same home which is in a close-knit community. The Appellant has been to this home several times, staying on average one week each time. The Applicant also testified that she has introduced the Appellant to her neighbours, especially since their son was born. She testified that everyone in the community knows one another. This contrasts sharply with the results from a field investigation which found that none of the Applicant's neighbours had ever met the Appellant and they did not know about him.[6] There was little evidence provided to explain these incongruences. I find that this evidence does not support the finding of a genuine relationship.

[13] The Appellant and Applicant were able to provide some consistent knowledge of each other at the hearing. That said, there were many instances where the Appellant or Applicant lacked knowledge of important elements of each other's lives which, again, would not be expected in a genuine relationship with the degree of alleged communication. For instance, the Appellant was not clear why the Applicant has no custody of her daughter from her second marriage and testified that he never asked the Applicant how she felt about this. Further, even though the Applicant's second husband was his cousin, he could not provide any specific details why the marriage did not work. The Appellant also testified that he only heard of the Applicant's first marriage during the process of sponsoring her to Canada. For her part the Applicant was unaware of many of the salient details concerning the breakdown of the Appellant's first marriage and specifically, his conviction for assault. It would be expected that in a genuine relationship the Appellant and Applicant would take the necessary time to learn, share and remember important information about each other. In particular I do not find it credible that the Appellant would not ask about the Applicant's past relationships to ascertain whether there was circumstances around them which could manifest themselves in the current relationship. Despite the favourable evidence showing knowledge of one another in some areas, I find that it does not overcome the Appellant's and Applicant's numerous gaps in knowledge and does not indicate a genuine relationship.

[14] The Appellant and Applicant are not compatible in age. The Appellant is 15 years older than the Applicant. While this incompatibility is not in and of itself determinative of the genuineness of the relationship, when considered in the context of the other concerns raised in this appeal it takes on more significance.

[15] The Appellant and Applicant were able to provide relatively consistent, though vague, evidence concerning their future plans together. The evidence presented does indicate plans to be together in Canada, though there was no evidence presented showing how the relationship would continue if the appeal was dismissed. I find the fact that the Appellant and Applicant have

not made plans for a life together outside of Canada not indicative of a genuine marriage. In a situation where a relationship develops across borders there is always a risk that a couple may not be able to settle down in their preferred location. It would be expected that in a genuine relationship a primary goal would be to live together even though the preferred location may not be possible.

[16] The Appellant and Applicant have a child together and the panel has taken considerable time to consider this evidence. While the visa officer notes reference a poison pen letter stating that the child resulted from in-vitro fertilization and was part of a larger plan to facilitate a marriage of convenience between the Appellant and Applicant, there was no evidence to corroborate this and I have not attributed weight to this in my decision. The panel is well aware that the implications can be devastating if a couple's appeal is dismissed when they have brought children into that relationship. While credible evidence of a child of a relationship is generally indicia of a genuine relationship, it is not determinative of the genuineness of the relationship.[7] In this instance, the birth of a child does not outweigh the numerous concerns with the evidence presented.

[17] It is not necessary for me to reiterate all evidence in order to answer the question of whether the marriage is genuine. Clear inferences and findings can be made from the evidence already set out that the marriage meets the test in section 4(1) of the IRPR. Based on the evidence before me, I find that there is insufficient credible evidence to show that there is a genuine spousal relationship between the Appellant and Applicant.

[18] Given my conclusion on the genuineness of the marriage, it is not necessary for me to make a determination on the question of whether or not the marriage was entered into primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act*.[8]

CONCLUSION

[19] The Appellant has not met the onus of establishing on a balance of probabilities that the marriage is genuine. The Applicant is not a member of the family class.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Mark Ferrari"**

Mark Ferrari

May 10, 2019

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.

[1] *Immigration and Refugee Protection Regulations*, SOR/2010–208, s. 1.
[2] Record, pp. 243-245; pp. 73-75.
[3] *Mutneja v. Canada (Minister of Citizenship and Immigration*), (IAD VB8-00623), Ferrari, October 16, 2018.
[4] Exhibits A1, A2, A3; R1 and R2.
[5] Record, p. 73.
[6] Record, p. 72.
[7] *Gill v. Canada (Minister of Citizenship and Immigration*), 2010 FC 122.
[8] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.