



IAD File No. / N° de dossier de la SAI: VB8-01323

Client ID no. / N° ID client: 3402-8590

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Mian Muhammad WASEEM	Appelant(e)(s)
and		et
Respondent	The Minister of Citizenship and Immigration	Intimé(e)
Date(s) of Hearing	February 20, 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	Judith Boer	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 reasons for the decision of the Immigration Appeal Division (IAD) in the appeal of Mian Muhammad WASEEM (Appellant) who appeals the refusal to approve the permanent resident application made by his conjugal partner Amara WASEEM (Applicant) and their two children.

ISSUES

[2] There are two issues before me in this appeal:

- Whether the Applicant meets the definition of “conjugal partner” as per section 2 of the *Immigration and Refugee Protection Regulations* (IRPR);¹ and
- Whether section 4(1) of the IRPR applies, thereby excluding the Applicant and her children from consideration as members of the family class.

[3] The Appellant must establish on a balance of probabilities that a conjugal partner relationship existed between him and the Applicant at least one year prior to the application date, and that this relationship is genuine and that it was not entered into for immigration purposes.

[4] At the outset of the hearing, Minister’s counsel agreed that section 117(9)(c)(i) of the IRPR was no longer an issue in this appeal and that the application is to be assessed as a conjugal partner application.

ANALYSIS

[5] This is the Appellant’s third application to sponsor the Applicant. He first applied in 2009 and the application was refused in 2013. He re-applied in 2016 and that application was refused

in 2017. In August 2017, the Appellant applied for a third time and that application was refused in March 2018. It is the third refusal which is being appealed.

[6] The reason the first and second applications were refused is because the Appellant was still married to his first wife when he married the Applicant, who is his second wife. He subsequently divorced his first wife and re-applied for his second wife, as a conjugal partner. For this decision, I find that a timeline is of assistance:

December 2001	Appellant marries his first wife Sameera
September 2002	Appellant's first child born (with first wife)
May 2005	Appellant's second child born (with first wife)
June 2007	Appellant marries his second wife Amara, who is the Applicant
October 2007	Appellant files application for separation from first wife
March 2008	Appellant's third child born (with second wife)
2009	Appellant files first application to sponsor the Applicant
August 2011	Appellant's fourth child born (with second wife)
March 8, 2013	Application to sponsor the Applicant is refused ²
May 2014	Appellant's fifth child born (with first wife)
January 26, 2016	Sponsor divorces first wife ³
2016	Appellant files second application to sponsor the Applicant
April 27, 2016	BC Court issues variation order regarding family law matter ⁴
June 1, 2017	Second sponsorship application refused pursuant to R117(9)(c)(i) and R4(1) ⁵
August 3, 2017	Third application to sponsor second wife, as a conjugal partner, is filed ⁶
March 2, 2018	Third application is refused ⁷

[7] As stated above, the Appellant must establish on a balance of probabilities that a conjugal partner relationship existed between him and the Applicant for at least one year prior to the application date. Here, the application was submitted in August 2017 and thus one year prior to the application date is August 2016.

[8] What constitutes a conjugal relationship is not defined in the *Immigration and Refugee Protection Act (IRPA)*⁸ or the IRPR and I therefore look to jurisprudence for guidance. The characteristics of a conjugal relationship were set out by the Supreme Court of Canada in *M. v H.*⁹ The seven non-exhaustive factors identified by the Court are shelter, sexual and personal behaviour, services, social activities, economic support, children and societal perception of the couple.¹⁰ Justice Cory writing for the majority noted that the weight to be attached to the various factors may vary infinitely and the courts must use a flexible approach to determine whether a conjugal relationship exists since relationships of couples vary.¹¹ In *Leroux*, Justice Tremblay-Lamer commented that the criteria in *M. v. H.* were established for couples living in Canada and must be modified for couples living in different countries.¹² Though, the conjugal relationship must have a sufficient number of characteristics to show that it is more than just a means of entering Canada as a member of the family class.¹³

[9] Even though the Appellant and Applicant have been in a relationship, through marriage, since June 2007, their relationship was polygamous as the Appellant continued to be married to his first spouse. According to the evidence before me, this is culturally and legally acceptable in Pakistan. However, Canadian immigration law specifically does not recognize polygamous relationships and this was the reason the first and second applications were refused. Since that refusal, the Appellant divorced his first wife. This was done in Canada and the first marriage was dissolved in January 2016.¹⁴

[10] At issue is whether the Appellant indeed severed his marital relationship with his first wife after his divorce. This is an issue as the Appellant had continued a marital relationship with his first wife while married to his second wife. This is evident by the birth of their third child in May 2014.

[11] The Immigration, Refugees and Citizenship Canada (IRCC) manual sets out this type of scenario succinctly in the discussion of polygamous marriages:

The prohibition against polygamy in the Regulations, and the lack of recognition of all spouses except the first, cannot be avoided by **processing a second spouse as a common-law partner**. Legally, it is not possible to establish a common-law relationship that meets the definition of such in terms of conjugality, where one or both parties are still living in a pre-existing conjugal relationship. The notion of conjugality has within it the requirement of monogamy; therefore, it is only possible in law to establish a new common-law relationship after a person is either divorced or separated from the spouse or common-law partner and where they have convincingly formed the intention not to continue with that previous relationship.¹⁵

[12] Based on the evidence before me I find that the Appellant has demonstrated that he is divorced from his first wife and that he convincingly formed the intention not to continue with that previous relationship. The Appellant's intention to discontinue the first relationship was not evident when he originally married the Applicant. The Appellant testified that he was unhappy with his first wife and that he wished to end his marriage with her. However, he faced a lot of pressure from the family not to divorce and he was also concerned about the welfare of the children. He testified about the threats made by family members, legal actions against him in Pakistan, his times of cohabitation and separation in Canada, his first wife's actions and behaviours, and his personal emotional and financial struggles. The Minister's counsel expressed credibility concerns about some of the Appellant's testimony on these events. However, given the complexity of the matter, the time-frame involved, and the cultural issues at play, I find that the Appellant generally provided information to the best of his ability.

[13] The Appellant testified that he did continue to have intimate relations with his first wife periodically but that this was allowed under Islamic law as they were not yet divorced. He testified that they last had intimate relations in early 2014 when his first wife was pregnant with their child. He stated that the baby was not planned (on his part) and I therefore do not find the child to be an indicative of an intent to continue the relationship. I accept the Appellant's testimony on this issue as he testified in a straightforward and credible manner. He also testified

that he has not had any marital and/or intimate relations with his first wife since their divorce was finalized in January 2016. I find that this testimony is consistent with his explanations of his actions, as well as his expressed views on marriage and divorce. Overall, I find that the Appellant formed the intention not to continue with his previous relationship, by the latest in January 2016.

[14] While I acknowledge that the Applicant may not have met the definition of conjugal partner earlier on the couple's relationship, I do find that she met the definition at least one year prior to the application being submitted. Based on all the evidence before me, I find that the Applicant meets the definition of conjugal partner.

[15] The indicators of a conjugal relationship are also strong indicia of the genuineness of a relationship. Included in his application to sponsor the Applicant, the Appellant wrote a narrative about their relationship.¹⁶ It states that the Applicant and Appellant have known each other since 1995 as the Applicant's brother was the best friend of the Appellant. When he was ready for marriage, the Appellant told his mother that he wished to marry the Applicant. His mother did not agree as the Appellant was from a different tribe. Instead, the Appellant was informed that his cousin Sameera had been selected as his wife.¹⁷ He reluctantly agreed with the family's proposal and entered into a marriage with his cousin. Later, the Appellant found out that the Applicant had divorced and he took the opportunity to marry her, as his second wife, in June 2007.

[16] The Applicant and Appellant have been in a relationship for about twelve years and have three children together. The Applicant has a 13 year old daughter from her previous marriage. The Appellant provides financially for the Applicant and the four children.¹⁸ He has also made frequent trips to Pakistan over the twelve years to visit the Applicant and their children.¹⁹ Their relationship is known by and accepted by their family and friends.²⁰ At the hearing, the Appellant and Applicant displayed a level of knowledge of each other and their lives and families that is indicative of the existence of a genuine relationship. This includes the

Applicant's knowledge of the Appellant's continued relationship with his first wife as well as the birth of the child in 2014.

[17] In relation to shared shelter, the couple shares a home with their children when the Appellant is in Pakistan. The Appellant explained that he cannot move to Pakistan on a long-term basis as he has the financial responsibility towards all of his children. He is concerned that he would not be able to obtain adequate employment in Pakistan in order to fulfil his financial obligation, which is court-imposed in Canada. I find this to be a reasonable explanation for the Appellant's decision to live and work in Canada and visit the Applicant and the children in Pakistan. The Applicant has applied for both permanent resident visas and visitor visas over the years but all have been refused. She and the children have therefore been unable to live with the Appellant in Canada.

[18] While there were some inconsistencies in their testimonies, I find that some inconsistencies are to be expected when two people recount events, each from their own perspectives from a period of about twelve years. Further, these inconsistencies are outweighed by the significant areas of consistent testimony and the documentary evidence.

[19] I am satisfied that on a balance of probabilities there is sufficient credible evidence before me to find that the relationship is genuine and was not entered into primarily for immigration purposes.

CONCLUSION

[20] I am satisfied that there is sufficient credible evidence before me to find that a conjugal partner relationship existed between the Appellant and the Applicant at least one year prior to the application date. The Applicant meets the definition of "conjugal partner". I also find that this relationship is genuine and that it was not entered into for immigration purposes. The appeal is allowed.

NOTICE OF DECISION

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 reasons of the Immigration Appeal Division.

(signed)

“Judith Boer”

Judith Boer

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/2002-227.

² Record, Letter from High Commission of Canada, pages 230-231.

³ Record, Certificate of Divorce, dated January 26, 2016, page 109.

⁴ Record, Variation Order, pages 220-221.

⁵ Record, Letter from High Commission of Canada, pages 228-229.

⁶ Record, GCMS notes at page 2, and stamp on IMM 1344 at page 98.

⁷ Record, Letter from High Commission of Canada, pages 241-243.

⁸ *Immigration and Refugee Protection Act*, S.C. 2001, c.27.

⁹ *M. v. H.*, [1999] 2 SCR 3, 1999 CanLII 686 (SCC).

¹⁰ *Ibid.* at para 59.

¹¹ *Ibid.* at para 21.

¹² *Leroux v. Canada (Citizenship and Immigration)*, 2007 FC 403, para 21.

¹³ *Ibid.* at para 23.

¹⁴ Record, Certificate of Divorce, page 109.

¹⁵ IRCC, Processing spouses and common-law partners: Assessing the legality of a marriage, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/legality.html#polygamy>, date modified: 2019-01-02.

¹⁶ Record, Narrative of Relationship to Sponsor, page 114.

¹⁷ *Ibid.*

¹⁸ Record, Copies of Money Transfers, pages 199-218; and Exhibit A1.

¹⁹ Record, Itineraries and Boarding Passes, pages 198; Exhibits A1 and A2.

²⁰ Record, Letters of Support, pages 154-158, as well as various photographs on pages 159-168.