



IAD File No. / N° de dossier de la SAI: VB9-09784

Client ID no. / N° ID client: 5977-1533

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Dil NAWAS	Appelant(e)(s)
and		et
Respondent	The Minister of Citizenship and Immigration	Intimé(e)
Date(s) of Hearing	September 17, 2020	Date(s) de l'audience
Place of Hearing	Vancouver, BC	Lieu de l'audience
Date of Decision	November 29, 2020	Date de la décision
Panel	Mark Ferrari	Tribunal
Counsel for the Appellant(s)	Massood Joomratty	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

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (IAD) in an appeal by Dil NAWAS (Appellant) from the refusal of the sponsorship application for a permanent resident visa for her spouse, Md Omar FARUQ (Applicant).

BACKGROUND

[2] The refusal was pursuant to subsection 4(1) 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.

[3] The Appellant is a 35-year old Canadian Citizen. The Appellant was previously married and has one child from that marriage.

[4] The Applicant is a 34-year-old citizen of Bangladesh. The Applicant has never been married and has no children.

[5] The Appellant and Applicant met virtually in January 2018 after having been introduced to one another through friends. In March of 2018 the Appellant proposed. The Appellant and Applicant met in person on April 22, 2018. They were married on May 13, 2018.

[6] The Appellant and Applicant have not seen one another since the time of their marriage.

ISSUES

[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 additional documentary evidence was provided by the Appellant. I have considered the testimony, the materials in the Record, the additional 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 documentary evidence states that the Appellant and Applicant were married in a traditional ceremony on April 28, 2018² and were able to be together physically subsequent to this. According to the testimony the ceremony occurred on April 22, 2018, the day the Appellant arrived in India. Also, the Appellant and Applicant's testimony concerning the Appellant's employment was inconsistent between themselves and with the information in the documentary evidence. Despite repeated questions on the inconsistencies, there was no cogent explanation given for the differing testimony. 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 Applicant was not aware that one of the reasons the Appellant left her first husband was because he beat her. Apart from the Applicant having inconsistent testimony concerning the Appellant's

employment, the Applicant could not answer basic questions about the employment he was aware of. There was no reasonable explanation for this evidence.

[14] Overall, 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. 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.

[15] The Appellant and Applicant were able to provide relatively consistent evidence concerning their future plans together. The evidence presented does indicate plans to be together in Canada, though there was little evidence presented showing how the relationship would continue if the appeal were 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] Credibility became an important issue in the weighting of the evidence and the determination of this appeal. There were several instances where the evidence raised concerns about the candour and veracity of the testimony. For example, while the Appellant testified that she does not have a disability and that she had never received income assistance from the government for a disability, there was documentary evidence which suggested that she received disability payments from January 2010 to August 2018.³ When presented with this evidence the Appellant could provide no cogent explanation. At one point, she stated that the monies were not for disability but due to the fact that she was earning a low wage from her employer.

However her stated wage at the hearing differed, and was much lower than, the wage stipulated in the documentary evidence.

[17] The documentary evidence concerning income assistance for a disability for the Appellant also states that payments were stopped as the Appellant went to the office to close the file for the purpose of sponsoring her spouse.⁴ There was no reasonable explanation provided which reconciled this documentary evidence with the Appellant's testimony that she was not receiving income assistance due to a disability.

[18] At the interview at the visa office in November 2019 the Appellant stated that she was still working for the last employer listed on her sponsorship application. The application was signed in 2018.⁵ At the hearing the Appellant testified that she did not work for that employer at the time of the interview at the visa office. The documentary evidence contained a letter from the employer from September 2018 stating the Appellant worked there, though during testimony she stated that she did not work there at the time.⁶ When questioned on this, the Appellant stated that her actual employer at the time would not give her an employment confirmation letter so she provided incorrect information.

[19] The Appellant has a duty of candour and needs to provide documentation and evidence which is truthful and will help in the proper assessment and determination of the sponsorship application and appeal. Due to the contradictory evidence, it is unclear whether the Appellant has a disability, has received income assistance, or what her employment history entails. Further, I find it concerning that the Appellant would provide letters confirming employment when she knew the information in them to be incorrect. While I sympathize that her employer would not provide her with a letter of employment, there was no reasonable explanation why the Appellant could not explain this to the visa office. Alternatively, there was other evidence that could have been submitted as a substitute such as pay stubs, an employee pass or company phone

lists. The fact that the Appellant's current employer would not provide her with a letter of employment does not justify providing inaccurate information.

[20] Appellant's counsel submitted that the Appellant's level of sophistication needed to be considered in the context of the appeal. I have considered this. Despite the submission of an apparent lack of sophistication, there was little evidence presented to indicate that the Appellant was unable to understand that she submitted inaccurate and misleading documents. Canada's immigration system relies on stakeholders and participants to be truthful and candid. Actions such as those of the Appellant undermine the credibility of the immigration system. I find that the Appellant lacks credibility. This diminishes any positive finding from the evidence and therefore detracts from the finding of a genuine marriage.

[21] 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 subsection 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.

[22] 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*.⁷

CONCLUSION

[23] 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

November 29, 2020

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, pages 86 and 107.

³ Record, page 157.

⁴ Record, page 157.

⁵ Record, page 100.

⁶ Record, page 154.

⁷ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.