

Bains v. Canada (Minister of Citizenship and Immigration)

Canada Immigration and Refugee Board, Immigration Appeal Division Decisions

Immigration and Refugee Board of Canada

Immigration Appeal Division

Toronto, Ontario

Panel: Daniel Tucci

Heard: September 12, 13, 2023 by videoconference.

Decision: November 3, 2023.

IAD File No. VC2-04166

Client ID No. 5689-7072

[2023] I.A.D.D. No. 882 | [2023] D.S.A.I. no 882

Between Jaswinder Kaur BAINS, Appellant(s), and Minister of Citizenship and Immigration,
Respondent

(16 paras.)

Appearances

Counsel for the Appellant(s): Brij Mohan.

Designated Representative(s): N/A.

Counsel for the Minister: Kevin Hatch.

Reasons and Decision

REASONS FOR DECISION

OVERVIEW

1 Jaswinder Kaur BAINS (Appellant) appeals a decision of a visa officer who refused her application to sponsor Simran Jit SINGH (Applicant) under Regulation 4(1) of the *Immigration and Refugee Protection Regulations* (Regulations).¹ The visa officer concluded that the marriage between the Appellant and the Applicant was not genuine and that the primary purpose of the marriage was for the Applicant to obtain Permanent Resident (PR) status in Canada.

2 The Appellant is a Canadian citizen. She was previously married twice, and she has a son from her first marriage who was born in 2007. Her son is currently in the custody of her former spouse. This is the first marriage for the Applicant.

3 The Appellant states that she met the Applicant online in 2017. She traveled to India in 2018 and married the Applicant after four days. The Appellant has returned to India on a number of occasions including 2019, 2020 and 2022. The visa officer had a number of concerns about the marriage including the incompatibility between the Appellant and the Applicant. He was also concerned with the lack of knowledge of each other, and he did not find the information they provided about the genesis of the relationship to be convincing.

4 The Appellant filed an appeal of the visa officer's refusal. The matter was heard by another member of the Immigration Appeal Division (IAD) who dismissed the appeal because she found that the marriage was not genuine and that the primary purpose of the relationship was for the Applicant to obtain PR status in Canada. The decision of the IAD Member was set aside by the Federal Court and they sent the matter back for a rehearing.

ISSUE

5 The issue for me to determine is whether the marriage between the Appellant and the Applicant is genuine and whether the primary purpose of the marriage was for the Applicant to obtain PR status in Canada.

DECISION

6 The appeal is allowed. I find that the marriage between the Appellant and the Applicant is genuine, and I also find that the primary purpose of the marriage was not for the Applicant to obtain PR status in Canada.

ANALYSIS

The Genesis of the relationship

7 The Minister's Counsel argues that the Appellant and the Applicant despite having two appeal hearings have not provided evidence of their communication before the marriage. He further argues that since they have not provided credible evidence of communication before the marriage, it raises questions about their entire relationship. While I agree that the Appellant and the Applicant have not provided evidence of communication prior to their marriage, I find that the Appellant provided credible testimony at the hearing about the beginning of the relationship.

8 While the genesis of the relationship is important, it is not a determining factor in this appeal. There are other elements of this relationship that weigh in favour of finding that the relationship is

genuine. While the lack of evidence regarding their communication before the marriage weighs against finding that the marriage is genuine, it is not sufficient overall for me to dismiss this appeal.

Return trips to India to visit the Applicant

9 The Appellant traveled to India in 2018 to meet the Applicant. They were married four days after her arrival. The Appellant spent approximately six weeks with the Applicant. She then returned to India in 2019, 2020 and 2022. There was some concern raised with the delay on the part of the Appellant to sponsor the Applicant. I find that the Appellant provided a reasonable explanation for this delay as she had some tax issues that she needed to deal with. I find that the three return trips to India to spend time with the Applicant weigh in favour of recognizing the marriage as genuine.

The Appellant and the Applicant showed knowledge of each other's lives

10 The Appellant and the Applicant showed at this hearing that they had knowledge of each other's lives. The Minister's Counsel argued that the Applicant at the visa interview was vague with respect to his knowledge of the Appellant's previous marriage. The Minister's Counsel did acknowledge that the Applicant provided more details of the Appellant's previous relationship and life in Canada at this hearing but suggested that this was because the Applicant had time to practice following the previous dismissal by the IAD and over the course of the previous hearing.

11 I find that the Applicant was generally credible at this hearing. I find that his responses were spontaneous. He did know more about the Appellant than at his visa interview, but I do not find this surprising as the Appellant and the Applicant have been together for several years since the interview. I did not detect that the Applicant was rehearsed or practiced his testimony at this hearing. While he was more vague at the visa interview, I find that he provided credible testimony at this hearing, and he displayed a level of knowledge commensurate with someone in a genuine marriage. I also find that the Appellant provided significant knowledge of the Applicant that is consistent with someone who is in a genuine marriage. This weighs in favour of finding that the relationship is genuine.

The Appellant and the Applicant's incompatibility

12 The Minister's Counsel argues that the Appellant and the Applicant are incompatible. The Appellant has been married three times and has a child from her first marriage. This is the Applicant's first marriage. I find that despite this incompatibility, the Appellant and the Applicant are in a genuine relationship. The Appellant's parents attended the wedding, and the Appellant has met with the Applicant's family when she travels back to India to visit. The evidence before me indicates that despite the incompatibility in marriages, both families have accepted the marriage. I find that this incompatibility is not sufficient to make a finding that the marriage is not genuine.

Ongoing communication

13 The Appellant and the Applicant have provided evidence of their ongoing communication since the marriage. This is a positive factor that weighs in favour of recognizing the marriage as genuine.

Future Plans

14 The Appellant and the Applicant were not questioned extensively about their future plans but what they did say was consistent. They were consistent in explaining that they have tried to conceive a child, but they have not been successful. The Applicant explained that he plans on driving a truck if he is allowed to come to Canada. The Appellant indicated that if the Applicant is not allowed to come to Canada, she will move back to India. I find that the Appellant and the Applicant were consistent about their future plans. This weighs in favour in recognizing the marriage as genuine.

15 I find that the Appellant and the Applicant have provided sufficient credible and trustworthy evidence to establish that they are in a genuine marriage and that the primary purpose of the marriage was not for the Applicant to obtain PR status in Canada.

CONCLUSION

16 The appeal is therefore 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.

Daniel Tucci

November 3, 2023

1 *Immigration and Refugee Protection Regulations, SOR/2002-227.*