

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

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Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

KASHMIR SINGH DEHAL

Appelant(s)

Respondent

**The Minister of Citizenship and Immigration
Le Ministre de la Citoyenneté et de l'Immigration**

Intimé

**Date(s) and Place
of Hearing**

May 3, 2006
Vancouver, BC

**Date(s) et Lieu de
l'audience**

Date of Decision

May 3, 2006

Date de la Décision

Panel

Narindar S. Kang

Tribunal

Appellant's Counsel

Massood Joomratty
Barrister & Solicitor

Conseil de l'appelant(s)

Minister's Counsel

Ron Coldham

Conseil de l'intimé

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Oral Reasons for Decision

[1] Kashmir Singh Dehal (the “appellant”) appeals the refusal to issue a permanent resident visa in Canada to Baljinder Kaur Dehal (the “applicant”), from India.

[2] The *Immigration and Refugee Protection Act* (“IRPA”)¹ and *Immigration and Refugee Protection Regulations* (“IRP Regulations”)² govern these proceedings.

[3] The application was refused³ because, in the opinion of the visa officer as contained in the refusal letter dated April 7, 2005, the applicant is not considered a spouse of the appellant because their marriage is as described in section 4 of the *IRP Regulations*⁴ (the “Bad Faith Regulation”), in that the marriage is not genuine and was entered into primarily for the purpose of acquiring the applicant’s permanent residence in Canada. Consequently, the visa officer determined that the applicant is not a member of the family class whose application as the appellant’s spouse may be sponsored pursuant to paragraph 117(1)(a) of the *IRP Regulations*.

[4] The Bad Faith Regulation provides as follows:

4. **Bad faith** – For the purposes of these Regulations, no foreign national shall be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine or was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[5] At issue in this case, in a *de novo* hearing, is whether the applicant falls within the rubric of the Bad Faith Regulation. The two-pronged test to be used is a conjunctive one. In order for a foreign national to be caught by the Bad Faith Regulation, the preponderance of reliable evidence must demonstrate that the marriage is not genuine and was entered into primarily for the purpose of acquiring a status or privilege under *IRPA*. In order to succeed on appeal, the

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

³ Record, page 99.

⁴ 4. For the purpose of these *Regulations*, no foreign national shall be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine or was entered into primarily for the purpose of acquiring an status or privilege under the *Act*.

appellant need only establish one of the prongs of the test has not been met. The onus is on an appellant to demonstrate that the applicant is not caught by the Bad Faith Regulation.

[6] Genuineness of the marriage is to be determined as at the time of this *de novo* hearing. In relation to the second-prong of the two-prong test, the purpose of entering into the marriage is to be determined as at the time of the wedding. In order to succeed on appeal, the appellant need only establish one of the prongs of the test has not been met. As stated above, the onus is on an appellant to demonstrate that the applicant is not caught by the Bad Faith Regulation.

[7] There were two witnesses in this appeal. The appellant testified first. The applicant testified by telephone from India immediately thereafter, without a break in the proceedings. Respondent's counsel chose not to examine either of the witnesses. I have considered their testimonies, along with additional material tendered at hearing.⁵ I have also considered the other materials contained in the Record and submissions of appellant's counsel. Respondent's counsel chose not to provide any submissions other than to state that the respondent, in the context of this adversarial hearing, had taken "no position" on its outcome and sought a decision from the Appeal Division.

[8] Counsel for the appellant submitted that both witnesses' testimony was unrehearsed, spontaneous, and genuine, and their testimonies were credibly responsive to the visa officer's concerns. He further submitted that any apparent inconsistencies were outweighed by other consistencies on important areas. Counsel for the appellant further submitted that the appellant and applicant were compatible in many ways.

Decision and Analysis of Evidence

[9] Upon carefully considering all the evidence before me, including the testimony of the aforementioned witnesses, as well as the documentary evidence and the submissions received, I find, on a balance of probabilities, that the applicant is not a person described in the Bad Faith Regulation. Consequently, the decision of the visa officer is invalid in law and the appeal is allowed. Following are my reasons.

⁵ Exhibit A-1, Appellant's Disclosure of 11 April 2006; Exhibit A-2, Appellant's Disclosure of 20 April 2006.

[10] In reviewing the evidence in this case, I find that the appellant testified in a generally straightforward manner and was a credible witness, including regarding matters referred to below. I have no difficulty finding that the marriage is genuine from the appellant's perspective. I note there was no questioning of the appellant by the respondent's counsel and his testimony remains unchallenged. This is significant because although it is the applicant's intentions that are also of pivotal importance, the intentions of the appellant are very relevant in considering the genuineness of the marriage.

[11] I also find there was consistency in the applicant's testimony, also unchallenged, which I find to be candid, with that of the appellant in important areas. I find that the applicant also testified in a credible and straightforward manner. She provided cogent and credible evidence as to how, when, and where she and the appellant first met, consistent with the appellant. The applicant also provided detailed corroborative testimony regarding the instrumental role of the appellant's paternal uncle's son Jasbir Singh, along with Pritpal Singh, the longstanding friend of her brother Kala Singh, in arranging this marriage.

[12] The applicant also possessed comprehensive knowledge of the appellant's antecedents, including his place of work and residence, as well as his marital history. The applicant also provided cogent and credible evidence as to the reasons why their marriage took place and ongoing interaction by her with the appellant's relatives in India during his return visitation, and the appellant's cohabitation with her subsequent to marriage in India at the end of 2004, when the appellant returned to India to accompany her to her visa post interview. In sum, the applicant's testimony was largely corroborative of the appellant's, and is further commented on below.

[13] Exactitude in the testimonies of the witnesses is not required, in my assessment, in order for an appellant to establish that the applicant does not fall within the rubric of the Bad Faith regulation. Discrepancies in testimony can be rooted in a myriad of factors, including cultural unfamiliarity, language difficulties, and the passage of time, amongst other legitimate reasons. This type of inconsistency, in my view, is outweighed by the detailed consistencies in other important areas, such as their recollections of more recent activities together. These consistencies in important areas are further elaborated upon below.

[14] The marital antecedents of both the appellant and the applicant can be gleaned from the Record, and the appellant testified in this regard as well. The 54 year old appellant was landed in Canada on February 10, 1993, and is now a Canadian Citizen. The applicant was born March 15, 1970 and is 36 years of age. The appellant married the applicant on February 12, 2004 in Badala, India, after first meeting on February 7, 2004 in the company of respective family members at a restaurant in Nur Mahal, located near the appellant's home village. The applicant has no sponsorable siblings. I find that this above noted level of age discrepancy in and of itself is not indicative on any level of non-genuineness of this marriage, given that both persons, when they married, were at least in their mid-30s and of mature age.

[15] Both witnesses testified in detail regarding the each other's first marriage. Neither, on their testimonies, has any biological children from their respective prior matrimonial unions. Both witnesses testified that the appellant, along with his former wife, adopted his paternal cousin's biological son, Satwant Singh Dehal (born in 1990), who was subsequently sponsored by the appellant and now resides with him and the appellant's paternal uncle's spouse (Satwant's biological grandmother) in a joint family setting in Surrey. Both witnesses testified that they were desirous of having additional children, given the difficulties in procreation they had with their respective earlier spouses, and that they had received medical guidance in this regard. Materials in Exhibit A-2 relating to a more recent examination of the appellant in late 2004 (post-marriage) corroborates this testimony.

[16] In sum, both witnesses' testimonies, unchallenged as they were by counsel for the respondent, remain credible. I find the high level of corroborative detail both witnesses provided in relation to both prior marital dissolutions is indicative of genuine marital discord in their first marriages. I also find the consistency between the witnesses regarding the appellant's first marital difficulties is indicative of genuineness of this marriage. Even if I were to be in error, this does not, in my view, impugn the witnesses' credibility in other important areas regarding the genuineness of their second marriages as further described below.

[17] Significantly, both witnesses testified that there was trust reposed in Jasbir Singh and Pritpal Singh in the initial marital discussions, and thus, in the context of a genuine arranged marriage, I do not consider it significant that the appellant and applicant married so soon after

first meeting. Both witnesses credibly testified that they both talked directly to each other and family members also discussed both their personal and familial antecedents. Regarding first impressions, the appellant testified that he found the applicant to have a very good nature, nice, and deferential.

[18] Both witnesses testified in substantial consistency, although not exactitude, regarding their activities immediately post-marriage, including visitation to relatives and to religious places of worship. I find this type of social enmeshment post-marriage, and their participation in their mutual faith practices, to be *indicia* of a genuine arranged marriage. Both witnesses also consistently testified regarding ongoing financial support from the appellant to the applicant, and this also is *indicia* of a genuine arranged marriage.

[19] The marriage, as both witnesses testified, took place in India and various members of their social and religious communities attended. Exhibits A-1 and A-2 contain photographs depicting the applicant with the appellant in various marriage and in marriage-related ceremonies, as well as in visitations to places of worship.

[20] Subsequent to marriage, as both the appellant and applicant testified, the appellant cohabited with the applicant prior to his return to Canada. The appellant testified that he had to return because of financial and work constraints and familial obligations. It is uncontested that the appellant had a son, Satwant Singh, in Grade school in Canada to whom he returned and, on his testimony, he was involved in raising on a daily basis. I find this explanation proffered by the appellant to be credible and plausible as to his reason for return to Canada shortly after marriage, noting that he has also returned since.

[21] Both witnesses testified that after the appellant returned to Canada, he and the applicant maintained extensive phone contact. They displayed detailed knowledge of each other's day-to-day activities including the appellant's work, and tellingly the applicant testified about the appellant's various activities in Canada. Both witnesses also testified regarding future marital plans, including a desire to have children. As referred to above, documentary evidence, namely photographs and phone bills corroborate their testimonies.⁶ I find the corroborative testimonies

⁶ Exhibits A-1 and A-2.

to be indicative of a desire for a permanent reunion on both their parts, and thus is indicative of genuineness of their marriage. As referred to above, the witnesses' credible testimonies, coupled with materials submitted, constitute sufficient evidence of numerous phone calls of lengthy duration between the appellant and the applicant since marriage. I find there is sufficient trustworthy evidence of numerous telephone calls and personal contact between the appellant and the applicant.

[22] I find that the appellant presented as a youthful person belying his age. While there is an age gap of about 16 years in favour of the appellant, I find that this is not significant in the circumstances of this case. Both have compatible levels of education and social background. Both the appellant and applicant have similar religious backgrounds, being of Sikh faith. Furthermore, both come from a similar socio-economic background, being from agrarian families originating in rural Punjab, India. I find that these commonalities form a sufficient impetus to consider an arranged marriage in all the appellant and applicant's circumstances. I find that the hallmarks of a genuine arranged marriage, as borne out by the credible testimony of both witnesses, are present in this case.

[23] Further, even if I were to find that the applicant was motivated to acquire status under *IRPA* in Canada through marriage to the appellant, this does not negate in any way the substantial evidence before me of genuineness of this marriage. I find this couple's commonality has been built upon by diligence between the parties in pursuing their relationship to its marital fruition, and subsequently has been strengthened over time with frequent communication and personal visitation by the appellant to the applicant post-marriage. Any discrepancies in their testimonies are not sufficient to impugn the witnesses' otherwise credible testimony in important areas, at this *de novo* hearing, again unchallenged by respondent's counsel, supportive of the genuineness of their marriage. In sum, the appellant and applicant's testimony was cogent and detailed enough to allay the visa officer's concerns and any unstated concerns of counsel for the respondent in important areas to my satisfaction.

[24] Given that this was a hearing *de novo*, the key concerns of the visa officer were alleviated at the appeal to my satisfaction.

Conclusion

[25] There was sufficient reliable evidence of the nature of a genuine marriage, including but not limited to that enumerated above, that I am of the view that the appellant has shown, on a balance of probabilities, that the applicant is not a person described in the Bad Faith Regulation. In reviewing the evidence in this case on the whole, I conclude on a balance of probabilities that the appellant has established that his marriage to the applicant is genuine, and that it was not entered into for a primary purpose of gaining any status or privilege for anyone under *IRPA*. Consequently, the decision of the visa officer is invalid in law.

[26] The appeal is allowed in law.

[Edited for clarity, spelling, grammar and syntax.]

NOTICE OF DECISION

The appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and the officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

"Narindar S. Kang"
Narindar S. Kang

8 May 2006
Date (day/month/year)

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.