



IAD File No. / N° de dossier de la SAI : VB0-01832

Client ID no. / N° ID client : 2135-8298

## Reasons and Decision – Motifs et décision

### SPONSORSHIP

<b>Appellant(s)</b>	Shamsher Singh BRAR	<b>Appelant(e)(s)</b>
<b>Respondent</b>	The Minister of Citizenship and Immigration	<b>Intimé(e)</b>
<b>Date(s) of Hearing</b>	23 June 2011	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Vancouver, BC	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	23 June 2011 (rendered orally) 20 July 2011 (written decision)	<b>Date de la décision</b>
<b>Panel</b>	Kashi Mattu	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	Massood Joomratty Barrister and Solicitor	<b>Conseil(s) de l'appelant(e) / des appelant(e)(s)</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e)(s) Désigné(e)(s)</b>
<b>Counsel for the Minister</b>	Jeff Williamson	<b>Conseil du ministre</b>

## REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division in the appeal made by Shamsheer Singh BRAR (the “appellant”), from a refusal for application for a permanent resident visa for his spouse, Swaranjit Kaur BRAR (the “applicant”), and her son from India.

[2] The application was refused initially on two grounds, the legal validity of the marriage and section 4 of the *Immigration and Refugee Protection Regulations*.<sup>1</sup> Prior to the hearing Minister's counsel indicated they were not pursuing the legal validity of the marriage. The hearing proceeded with respect to the *bona fides* of this marriage.

[3] Section 4 of the *Regulations* was amended on September 30, 2010.<sup>2</sup> The wording of the section is basically the same. The amendment simply affects whether one or two elements of the test need to be met in order to disqualify a spouse. The amendments to the *Regulations* do not affect the outcome of this appeal.

[4] The two elements of the test are whether the marriage is not genuine and whether the marriage was entered into primarily for the purpose of gaining a status or privilege under the *Immigration and Refugee Protection Act* (the “Act”).<sup>3</sup> The determination of whether or not the marriage is genuine is made at the time of the hearing. However, given that the nature of a marriage is a relationship between a husband and wife, I find the existence of a genuine marriage includes a mix of the past, the current and the future state of affairs of the relationship. In the circumstances of a marriage the status or privilege that can be acquired under the *Act* is for the spouse to be granted permanent resident status through membership of the family class when the spouse qualifies to be sponsored. The onus of proof is on the appellant to show, on a balance of probabilities, that the applicant is not disqualified as a spouse.

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<sup>1</sup> *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

<sup>2</sup> *Regulations amending Immigration and Refugee Protection Regulations*, SOR/2002-227.

<sup>3</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[5] The appellant and applicant both testified and additional documentary evidence was submitted. After hearing the evidence and considering the documents, I find there were significant discrepancies and inconsistencies and attempts to mislead not only immigration officials but also this panel and satisfactory explanations were not provided. This undermined the credibility of the witnesses and the documentary evidence.

[6] With respect to the documentary evidence, I accept Minister's counsel's submissions that it appears that even prior to submitting documents the appellant and applicant had decided that they were going to, for whatever reason, mislead immigration officials by not mentioning the applicant having met the appellant's sister in India or her parents in India after the marriage. Moreover, at the applicant's interview she indicated that none of the appellant's family was in India at the time of the wedding. Further, the appellant himself at the interview also gave certain reasons as to why his children did not come from Canada which, in fact, was misleading as well because at the hearing he has indicated that his children did not agree with the marriage and that is why they did not attend.

[7] In addition, at the hearing the appellant conceded, after questioning, that he had told his wife, the applicant, not to mention about his sister to the immigration officer. However, the applicant denied that they had that conversation. This is another contradiction in the evidence.

[8] The appellant and applicant did testify with respect to the reasons why they were marrying. However, I find that there were not satisfactory explanations why in their particular circumstances they would marry each other or why the appellant would feel a need to put an ad in a paper to find someone. The applicant did not look for any other potential spouse in India but answered an ad for someone who was from overseas. I find that is more indicative of the true intent of this marriage and that is not be a lasting relationship but, rather, for immigration purposes. The actions and behaviours of the appellant and applicant clearly call into question their credibility in their evidence at this hearing today.

[9] Moreover, while there was some more consistent evidence or knowledge of each other at the hearing and the appellant has visited, despite this favourable evidence the appellant and

applicant did not demonstrate the extent of knowledge that I would expect in a genuine spousal relationship. At the interview there were significant demonstration of lack of knowledge of the applicant with respect to the nature or extent of the appellant's work circumstances, for example, and at the hearing, there was a contradiction with respect to whether or not the applicant has ever talked to the appellant's children. The appellant clearly said on the first trip, the marriage trip, they said "hello" and talked on the telephone. Whereas, the applicant said she did not know if the appellant talked to his children and maybe if he was out of her sight he did, but she has never had any contact with his children. This evidence was an attempt to mislead this panel and not indicative of a genuine spousal relationship or intent to be a lasting relationship.

[10] Given the circumstances surrounding the genesis of this relationship, the lack of credibility and intentional and deliberate attempts to mislead immigration officials and this panel with the discrepancies and inconsistencies, I find, on a balance of probabilities, that this marriage is not genuine.

[11] The question of whether or not this marriage was entered into primarily for the purpose of acquiring a privilege or status under the *Act* can be determined on the issues I have already discussed. It is not necessary for me to reiterate all of the evidence as clear inferences can be made from the evidence already set out that it is more likely that this relationship was arranged primarily for the applicant and her son to acquire permanent resident status in Canada and a better life in Canada. There was insufficient credible evidence to rebut the immigration officer's initial assessment, to overcome the Minister's counsel's concerns or to show that this marriage was not entered into other than primarily for the purpose of gaining admission to Canada.

[12] I find, based on the evidence before me, that the appellant has not met the onus of proof. On a balance of probabilities, the marriage is not genuine and was entered into primarily to gain a status or privilege under the *Act*. Therefore, the applicant is disqualified as a spouse and the appeal is dismissed.

## NOTICE OF DECISION

The appeal is dismissed.

*(signed)*

**“Kashi Mattu”**

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**Kashi Mattu**

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**20 July 2011**

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**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.