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

IAD File No. / N° de dossier de la SAI : VA9-05201

Client ID no. / N° ID client : 5431-8501

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Harminder Singh KHATTRA	**Appelant(e)(s)**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	08 December 2010 02 February 2011	**Date(s) de l'audience**
Place of Hearing	**Vancouver, BC**	**Lieu de l'audience**
Date of Decision	04 February 2011	**Date de la décision**
Panel	**Douglas Cochran**	**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	Jasbir Sandhu	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] Harminder Singh KHATTRA (the "appellant") applied to sponsor Swaranjit Kaur CHEEMA (the "applicant") from India, as a spouse and was refused by the visa officer pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the "*Regulations*").[1]

[2] The visa officer had a number of concerns in relation to this marriage which arose from a review of the documents submitted in support of the sponsorship and from the interview with the applicant on August 26, 2009. These include conclusions that:

- the appellant and the applicant are incompatible in terms of marital status, with the appellant having been married previously to the applicant's cousin;
- the applicant's answers in the interview were vague and contradictory;
- the applicant lacked knowledge in relation to the appellant's previous marriage;
- the applicant was evasive in answering questions;
- there were no post wedding photos provided; and
- no practical future plans were outlined in the interview.

[3] I have before me the Record, additional documentary disclosure from the appellant, as well as the testimony of the appellant, in person and the applicant, by telephone, in total lasting about three quarters of a day.

[4] The appellant and the applicant are compatible in most respects, including age, education, language, religion and social background. The appellant remained in India for a lengthy period after the marriage and has returned to India to visit on two occasions for about a month. According to the testimony, the applicant is living with the appellant's brother and presently the appellant's parents are visiting India and residing in the same household. The appellant and the applicant testified over a lengthy period of time and their answers in chief and cross examination

[1] *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

were thorough and demonstrated in-depth knowledge of each other. The testimony was consistent in almost all respects.

[5] Minister's counsel made a number of submissions but there are two basic thrusts to his submissions in arguing that the appeal be dismissed. Firstly, he argues that the testimony regarding how the relationship commenced and developed is not credible. Secondly, he argues that the concerns of the visa officer have not been "addressed directly by cogent and probative evidence".[2]

[6] The appellant's first marriage was to the applicant's cousin. At a time when he was separated from his first wife, the appellant visited India and according to the testimony, he arranged to visit the applicant's home for assistance in obtaining some photos that remained with his first wife's parents. The appellant and applicant testified that, as a result of this visit the applicant telephoned the appellant because she was moved by his obvious emotional turmoil and the relationship developed from there, without the knowledge of the applicant's parents. Minister's counsel argues that this alleged behaviour from an unwed young woman from the conservative, rural area of the Punjab, is not credible. While the evidence regarding the genesis and development of the relationship between the appellant and the applicant is unusual and the initiation of contact by the applicant is acknowledged as uncommon, in considering the whole of the evidence before me I cannot identify in the evidence factors that demonstrate the implausibility or lack of credibility of this evidence. This is particularly so, given that the testimony of the appellant and the applicant was not undermined in cross examination. There are some areas where the applicant's knowledge was not perfect but this may be due to the vagaries of memory with the passage of time and the lack of knowledge was not to the extent that I can conclude that this arises due to a failure to remember a concocted story. By and large, the applicant demonstrated substantial knowledge in relation to the appellant.

[7] In considering whether the concerns of the visa officer have been "addressed directly by cogent and probative evidence" I find the appellant has addressed these concerns in the evidence

[2] *Dhillon* v. *Canada* (MCI) [2004] I.A.D.D. No. 1159, Workun; at paragraph 17.

before me. If the standard were higher than the balance of probabilities, this might not be the case. In looking at the implausibility of the version of events proposed by the appellant there is some guidance in the case law. Justice Muldoon in Valchev states;[3]

> The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at 305, that **when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness**. But the tribunal does not apply the *Maldonado* principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible. Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

[8] The above comments are equally applicable to a proceeding in the Immigration Appeal Division. The appellant has provided explanations in relation to concerns noted by the visa officer which might reasonably be true. Given that, short of circumstances undermining the credibility of the appellant or the applicant in a significant way, the explanations do address the visa officer's concerns.

[9] There are some discrepancies in the testimony of the appellant and the applicant. These discrepancies are of a kind that are consistent with failures of memory in recounting events commonly experienced. They are not such that I can conclude that they arise from a failure to remember a manufactured story.

[10] Considering all of the evidence before me as well as submissions of counsel, I find that the appellant has established, on the balance of probabilities, that the marriage is genuine and was not entered into primarily in order to acquire any status or privilege under the *Immigration and Refugee Protection Act*.[4] The appeal is allowed.

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3 *Valtchev* v. *Canada* (Minister of Citizenship and Immigration), [2001] F.C.J. No. 1131.

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

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) **"Douglas Cochran"**

Douglas Cochran

04 February 2011

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.