



IAD File No. / N° de dossier de la SAI : VC2-04803

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## AMENDED

### Reasons and Decision – Motifs et décision

#### Sponsorship Appeal

<b>Appellant(s)</b>	Gurmeet Singh LUMAY	<b>Appelant(e)(s)</b>
<b>and Respondent</b>	Minister of Citizenship and Immigration	<b>et Intimé(e)</b>
<b>Date(s) of Hearing</b>	December 20, 2022	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Heard by Videoconference	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	January 24, 2023 February 1, 2023 Amended	<b>Date de la décision</b>
<b>Panel</b>	Daniel Tucci	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	Brij Mohan	<b>Conseil 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>	Stephanie Naqvi	<b>Conseil du (de la) ministre</b>

## REASONS FOR DECISION

### OVERVIEW

[1] Gurmeet Singh LUMAY (Appellant), appeals a decision made by a visa officer refusing his application to sponsor his wife, Jagjit Kaur LUMAY (Applicant).

[2] The Appellant is a Canadian citizen who has been previously married twice. He arrived in Canada in 1999 after being sponsored by his first wife. He divorced his first wife and remarried. He had two children with his second wife. The Appellant eventually divorced his second wife, and he was granted full custody of his two children. The Applicant has never been married prior to her marriage with the Appellant. She has no children.

[3] The Appellant and Applicant were introduced in 2014 and they met in person in 2016. They married in 2019. The sponsorship application was refused by a visa officer as he determined that the marriage was not genuine and that the primary purpose of the marriage was for the Applicant to obtain status in Canada.

[4] The visa office was in possession of a poison pen letter that was not made available to the Appellant or the Applicant. The said letter was not disclosed at this hearing. The visa officer confronted the Appellant and the Applicant with the content of the poison pen letter. In particular, the letter apparently stated that the Applicant paid \$80,000.00 to the Appellant to marry her and sponsor her to Canada. The letter also accused the Appellant of arranging marriages of convenience for a fee. The Appellant and the Applicant denied the content of the poison pen letter.

[5] The visa officer also refused the sponsorship because he determined that the Appellant and the Applicant were not compatible as the Appellant had been previously married twice and had children while the Applicant had never been married and had no children. The visa officer also found that the Appellant married in haste considering his previous two failed marriages. Finally, the visa officer did not find the Applicant to be credible as he found the responses to be

contrived. Despite the numerous photos submitted with the sponsorship application, the visa officer said that these numerous photos were insufficient to address his credibility concerns.

## **ISSUE**

[6] I must determine if the Applicant is a member of the Family Class. I must assess if the marriage between the Appellant and the Applicant is genuine and whether the primary purpose of the marriage was for the Applicant to obtain status in Canada.

## **DECISION**

[7] The appeal is allowed. I find that the Appellant and the Applicant provided sufficient credible and trustworthy evidence to establish on a balance of probabilities that their marriage is genuine and that it was not primarily entered into for the Applicant to obtain PR status in Canada.

## **ANALYSIS**

### **Genesis of the Relationship**

[8] The Appellant and the Applicant both explained that the Appellant's family member Baljit acted as the middleman in arranging for them to meet. They both explained that their respective families knew each other. Their first contact was in 2014. Their relationship was friendly at first. They met in person in 2016 and the relationship became more serious.

[9] While the visa officer found that their relationship developed in haste, I disagree. The Appellant and the Applicant had their first contact in 2014 and they met in person in 2016. Their marriage took place in 2019, some three years after meeting in person. They remained in contact after meeting in person and then later decided to marry. I find that they were consistent in describing the development of the relationship and that the development was not as hasty as described by the visa officer. I find that the consistent description of their relationship weighs in favor of recognizing that the marriage is genuine, and the primary purpose is not for the Applicant to obtain PR status in Canada.

### **The Compatibility of the Appellant and the Applicant**

[10] The visa officer found that the Appellant and the Applicant were not compatible based on the fact that the Appellant was married twice previously, and he had children while the Applicant had never been married before. The Applicant testified that she agreed to marry the Appellant despite the fact that he had been previously married.

[11] The Applicant explained that her family was very poor and that she moved to Singapore to work and make money to help her family financially. She had worked and lived in Singapore for 14 years. She was getting older and there were few prospects for her to marry. In light of this, she agreed to marry the Appellant when she and her family approved of him as a spouse. I find that the Applicant has provided a reasonable explanation why she agreed to marry the Appellant despite the incompatibility between them.

### **The Appellant provides financial support to the Applicant**

[12] The Appellant provides financial support to the Applicant. He also provides financial support to her family in India. I find that the Appellant has established that he provides financial support to the Applicant and her family. This weighs in favor of recognizing that the marriage is genuine.

**The Appellant has returned to India to visit the Applicant and he has ongoing communication with the Applicant**

[13] The Appellant has provided evidence of his return trips to India to spend time with the Applicant. He has returned on three occasions since his marriage in 2019. The Appellant has also provided evidence that he and the Applicant have ongoing communication when he is in Canada. The return trips and ongoing communication weigh in favor of recognizing the marriage as genuine.

**The Applicant's lack of knowledge of the Appellant's partner in Canada**

[14] The Minister's counsel argues that the Applicant was unaware of the Appellant's partner in the properties he owns in Canada. The Applicant was asked to name the Appellant's partner and she could not. Later in her testimony, the Applicant remembered the name of the Appellant's partner. The Minister's counsel suggests that I should draw a negative inference from this spontaneous recollection by the Applicant. The Minister's counsel was concerned that the Applicant was being coached or reading off some notes and this is why she came up with the partner's name.

[15] I do not believe that the Applicant was being coached during her testimony nor was she referring to any notes in her possession. I find that the Applicant spontaneously remembered the name of the Appellant's partner later in her testimony. In any event, I find that this part of the Applicant's testimony is peripheral to the issue of the genuineness of the marriage or its primary purpose. I find that the Applicant and the Appellant displayed a knowledge consistent with two people that are in a genuine marriage. This weighs in favor of recognizing the marriage as genuine.

**The poison pen letter is given no weight**

[16] The visa officer referred to a poison pen letter that the visa office had received about the Appellant and the Applicant. A copy of the letter was not shown to the Appellant or the Applicant. No letter was produced by the Minister's counsel for the appeal hearing. The Minister's counsel said in her submissions that she was not relying on the poison pen letter to ask for the dismissal of the appeal. I give the poison pen letter no weight as it was not submitted as an Exhibit in this appeal.

**The Appellant's first marriage**

[17] The Minister's counsel suggested that the Appellant's first marriage appears to have been a marriage of convenience to allow him to immigrate to Canada. This was primarily based on the short period of time the marriage lasted once the Appellant became a PR of Canada. While this might be the case, my decision in this appeal is to assess the genuineness and primary purpose of the current marriage. Even if I were to conclude that the Appellant's first marriage was not genuine and the primary purpose was for him to obtain status in Canada, it is somewhat irrelevant to my assessment of his current marriage. I find that the Appellant's first marriage is not determinative of his current marriage.

**The Appellant and the Applicant traveled to Singapore after the marriage**

[18] The visa officer was concerned that the Appellant and the Applicant traveled to Singapore following the marriage. The visa officer found it odd that they would honeymoon in the place where the Applicant had worked for 14 years. The Applicant explained that she had family and friends in Singapore that she wanted to visit after the marriage. I find that the Applicant provided a reasonable explanation for their travel to Singapore following the marriage.

### **The Applicant was refused a work permit for Canada in 2018**

[19] The Minister's counsel noted that the Applicant was refused a work permit for Canada in 2018. This suggests the Applicant has a strong desire to be in Canada. While this may be the case, I find that this refused application is not sufficient to conclude that the Applicant's primary purpose for marrying the Appellant was to obtain status in Canada. I find that the other evidence presented by the Appellant and the Applicant outweighs this evidence and I conclude on a balance of probabilities that the marriage is genuine, and the primary purpose is not for the Applicant to obtain status in Canada.

### **Future Plans**

[20] I find that the Appellant and the Applicant were generally consistent about their future plans. The Applicant stated that she will be a housewife in Canada and help the Appellant with his children. She also plans on helping the Appellant with his farm. I find that their consistency in explaining their future plans should the Applicant be allowed to come to Canada weighs in favor of recognizing the marriage as genuine.

### **CONCLUSION**

[21] I find that the Appellant and the Applicant have provided sufficient credible evidence to establish on a balance of probabilities that their relationship is genuine and that the primary purpose of the marriage was not for the Applicant to obtain status in Canada.

[22] 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.

(Signed) \_\_\_\_\_  
Daniel Tucci  
**Daniel Tucci**

January 24, 2023  
\_\_\_\_\_  
**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.