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 : VB4-03308**
**Client ID no. / N° ID client : 5235-3073**

# Reasons and Decision – Motifs et décision

## SPONSORSHIP

| | | |
|---|---|---|
| **Appellant(s)** | Sukhdev Singh DHALIWAL | **Appelant(e)(s)** |
| **and** | | **et** |
| **Respondent** | The Minister of Citizenship and Immigration | **Intimé(e)** |
| **Date(s) of Hearing** | September 30, 2015 | **Date(s) de l'audience** |
| **Place of Hearing** | Vancouver, BC | **Lieu de l'audience** |
| **Date of Decision** | December 2, 2015 | **Date de la décision** |
| **Panel** | Sterling Sunley | **Tribunal** |
| **Counsel for the Appellant(s)** | Khushpal Taunk<br>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** | Ivy Scott | **Conseil du ministre** |



Canada

# REASONS FOR DECISION

[1] These are the reasons and the decision of the Immigration Appeal Division (the "IAD") in the appeal filed pursuant to s. 63(1) of the *Immigration and Refugee Protection Act* (the "*Act*")[1] by Sukhdev Singh DHALIWAL (the "appellant"), of the refusal made outside of Canada on the sponsorship application for a permanent resident visa made by his spouse, Kuldeep Kaur DHALIWAL (the "applicant"), from India.

[2] The application was refused under s. 4(1) of the *Immigration and Refugee Protection Regulations* (the "*Regulations*").[2] This was confirmed in a letter to the applicant dated September 24, 2014, from the immigration section of the Canadian High Commission in New Delhi, India.[3]

## BACKGROUND[4]

[3] The appellant is a 71 year-old permanent resident of Canada who landed in January 2006, having been sponsored as a member of the family class by his daughter Baljinder Kaur. He has been employed as a farm and cannery worker since 2008. The appellant is a widower; his first wife died in January 1993, i.e., prior to his landing in Canada. The appellant has three sons and one daughter from his first marriage.

[4] The applicant is a citizen of India, the country of her birth. She was born in 1977 and at the time of the hearing she was 38 years of age. The applicant married Chamkaur Singh Gosal in 1994. There are three children from this marriage, all of whom have been included in the index application as the accompanying dependents of the applicant. The applicant and her first husband were divorced in April 2010 following a lengthy separation.

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[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[2] *Immigration and Refugee Protection Regulations*, SOR/2010–208, s. 1.
[3] Record, pp. 313-314.
[4] Unless noted, the information in the Background section is taken from information contained in the Record.

[5] The appellant and the applicant, both of whom are of the Sikh faith, solemnized their marriage in March 2012 in a temple in India. No biological children have resulted from their union as at the time of the hearing.

## ISSUE

[6] At issue in this appeal is whether s. 4(1) of the *Regulations* applies, thereby excluding the applicant from consideration as a member of the family class. The relevant disjunctive tests as articulated in the *Regulations* are that a foreign national shall not be considered a spouse if the marriage was entered into primarily for the purpose of acquiring any status or privilege under the *Act* or if the marriage is not genuine. To succeed in his appeal, the appellant must demonstrate that *neither* test applies to the relationship.

## LEGISLATION AND EVIDENCE

### Section 4(1) of the *Regulations*

[7] Section 4(1) of the *Regulations* deals with "bad faith" marriages, common-law partnerships and conjugal partnerships. The portion relevant to the case at bar reads as follows:

> **4(1) Bad faith** – For the purposes of these *Regulations*, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership
>
> (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or
>
> (b) is not genuine.

[8] The status or privilege that can be acquired under the *Act* in respect of a marriage is that the appellant's spouse is granted permanent resident status in Canada through membership in the family class when the spouse qualifies to be sponsored to Canada. The onus lies with the appellant to prove, on a balance of probabilities, that the applicant is not disqualified as a spouse. All applications for permanent residence have, of course, acquiring status under the *Act* as a goal. This broad intent must be distinguished from the disqualification set out in the *Regulations*. A

disqualification is established when the evidence shows, on a balance of probabilities, that the index relationship was entered into primarily to acquire any status or privilege under the *Act*.

[9] The appellant was represented by counsel at the hearing; the respondent (the "Minister") was represented by Minister's counsel. The Panel entered into evidence one set of documents proffered by the appellant.[5] In addition to this documentary evidence, the Panel heard the *viva voce* evidence of the appellant and the applicant. All parties were provided with a copy of the appeal record (the "Record"). I heard oral submissions by counsel to the respective parties with respect to their positions on the disposition of this matter.

**ANALYSIS**

[10] A marriage that was entered into primarily for the purpose of acquiring any status or privilege under the *Act* is one that was entered into primarily in order to obtain permanent residence in Canada, or some other status of privilege. While the focus of this first test in *Regulation* s. 4(1) is the intention of the partners at the time they entered into the relationship, I am also guided by the decision in *Mohammed,*[6] which leads me to examine the conduct of the couple after the relationship began to seek evidence for what their intention was when they entered into the relationship.

[11] The thread which must be found to run through the majority of the evidence, whatever form that evidence might take, is that of credibility. In general, I found that the appellant and the applicant both testified credibly regarding the events leading up to the index marriage, the marriage itself, and the events which have occurred since their marriage began. I found no discrepancies and inconsistencies which are of such gravity as to lead to a finding that either witness is seeking to mislead the Panel nor, in my view, do they strike serious blows to the credibility of either the appellant or the applicant.

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[5] Exhibit A-1.
[6] *Mohammed v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 696.

[12] The appellant and the applicant appear to be compatible in terms of their primary language, education, culture (Punjabi) and religious affiliation (both follow the Sikh faith). There is photographic evidence[7] supporting the oral testimony that both a wedding ceremony and celebratory reception were held. The suitability of the match made in this marriage is attested to in several sworn statements and letters included in the appellant's disclosure (although it is noted that the affiants are not "disinterested" persons.) Travel and hotel receipts and telephone records have also been submitted in support of this appeal and there is corroborating documentary evidence to show that the couple speak regularly by telephone. There is evidence that the appellant has made four return trips to India since his marriage to the applicant and that the couple spent the time the appellant was in India together. These are positive indicia regarding both the primary purpose and the genuineness of the marriage.

[13] I concur with both the visa officer and the Minister that the significant age gap between the appellant and the applicant is not typically found in an "arranged" marriage, particularly given that in such a marriage due diligence is normally carried out by family members to ensure the couple's compatibility. As Mr. Justice Harrington has pointed out in the Federal Court decision in *Gonzales*,[8] however, there should be no fixed ideas of how a marital relationship should develop. Accordingly, the issue before me is strictly whether or not the marriage between the appellant and the applicant is as described in s. 4(1) of the *Regulations*, rather than whether it conforms to any particular pattern of development. While such an age gap may run counter to what is considered normal by Punjabi tradition, the strongest evidence before me is from the couple themselves, both of whom testified that they are comfortable with the age gap and that it has not posed any problems for them. In the case at bar, the couple submit that the main purpose of their relationship is, at this stage of their respective lives, mutual companionship rather than great romance. They provided the Panel with intimate details to show that they have addressed any physical challenges posed by the appellant's age. It is also noted that the appellant and the applicant did not acquiesce to the marriage until after they had met to discuss the matter face-to-face. The respondent argues that the applicant is, at 38 years of age, more likely to be seeking a marriage which affords her better opportunities for herself and her children in Canada rather than

[7] Record, pp. 237 - 312; Exhibit A-1, pp. 301 - 412.
[8] *Gonzalez v. Canada (Citizenship and Immigration)*, 2014 FC 201.

beginning a new life with a 71 year-old husband. That may be true, of course, and I am quite sure that if it is not now, age will become a more serious issue in the future. But there is sufficient evidence before me to show that the applicant did not agree to marry a much older man primarily to come to Canada.

[14] I share the Minister's concerns that the testimony of both the appellant and the applicant was much more consistent with respect to questions put to them by their own counsel. I find that this is most likely due to preparation of the parties by their counsel. And while it seems to my ear – and the Minister's ear – that the applicant was, at time, giving her testimony with papers in front of her (we both heard rustling), this cannot be confirmed because the applicant was being examined and cross-examined by telephone.

[15] The Minister submits that the primary purpose for this marriage is for the applicant and her children to come to Canada. Against this, however, must be weighed the absence of evidence showing the applicant had made any previous attempts to emigrate from India or, in particular, to become landed in Canada. I have also borne in mind that the respective parties were both looking for companionship and care: the appellant, who was widowed, testified that he was seeking to have companionship and care in his old age; the applicant, who was divorced, testified that she was also looking for companionship and care and support for her and her children. When all of the evidence is weighed on a balance of probabilities, I find that the primary purpose for this marriage is most likely the aforementioned mutual "care and companionship," rather than the gaining of an immigration advantage.

[16] There was credible testimony from the couple that they are both prepared to work hard to support the applicant's children if the latter wish to attend post-secondary school in Canada. I also heard oral testimony that if the index appeal is dismissed, the appellant and the applicant will live together in India. This evidence *inter alia,* when coupled with the visible emotions I observed during the hearing, support my finding that this is a genuine marriage.

[17] I am satisfied that when all of the relevant evidence is weighed, on a balance of probabilities, the appellant has met his onus with respect to s. 4(1) of the *Regulations*.

[18] In conclusion, I find that the marriage between the appellant and the applicant was not entered into primarily for the purpose of acquiring any status or privilege under the *Act* and that the marriage is genuine.

**DECISION**

[19] For the reasons I have provided herein, the appeal of the refusal made pursuant to s. 4(1) of the *Regulations* 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.

## 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 Divison.

*(signed)* **"Sterling Sunley"**

**Sterling Sunley**

**December 2, 2015**

**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.