



Immigration and  
Refugee Board

La Commission de l'immigration  
et du statut de réfugié

Library Square  
300 W Georgia St Suite 1600  
Vancouver, BC V6B 6C9  
Telephone: (604) 666-5946  
Facsimile: (604) 666-3043

Immigration Appeal  
Division

Section d'appel de  
L'immigration

**STATEMENT THAT A DOCUMENT WAS PROVIDED**

IAD File No.: VA3-03800  
Client ID: 52656451

On 15 December, 2004 I provided the **Reasons and Decision**

To the **appellant** at the following address:

Surinderpal Kalsi  
12738 - 97a Avenue  
Surrey BC V3V 2H5

Personal Service:   
Prepaid Regular Mail:   
Courier:   
Fax:

To the **appellant's counsel** at the following address:

Khushpal Taunk  
Mmt Law  
209 - 8556 120th Street  
  
Surrey BC V3W 3N5

Personal Service:   
Prepaid Regular Mail:   
Courier:   
Fax:

To the **Minister's counsel** at the following address:

CITIZENSHIP AND IMMIGRATION CANADA  
Immigration Appeals  
BC/Yukon Region  
Library Square  
Suite 700 - 300 West Georgia  
Vancouver, BC V6B 6C8

Personal Service:   
Prepaid Regular Mail:   
Courier:   
Fax:

(Signature)

(Print Name)

Richard Tang



IAD File No. / N° de dossier de la SAI : VA3-03800  
Client ID no. / N° ID client : 3369-7314

## Reasons and Decision – Motifs et décision

### *Residency Obligation*

Appellant(s)

SURINDER PAL KALSI

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 14, 2004  
June 18, 2004  
July 27, 2004  
Vancouver, BC

Date(s) et Lieu de  
l'audience

Date of Decision

December 15, 2004

Date de la Décision

Panel

John Munro

Tribunal

Appellant's Counsel

Khushpal Taunk  
Barrister & Solicitor

Conseil de l'appelant(s)

Minister's Counsel

Ron Coldham


Conseil de l'intimé


La Direction des services de révision et de traduction de la CISR peut vous procurer les présents motifs de décision dans l'autre langue officielle. Vous n'avez qu'à en faire la demande par écrit à l'adresse suivante: 344, rue Slater, 14<sup>e</sup> étage, Ottawa (Ontario) K1A 0K1, par courriel à [translation.traduction@irb.gc.ca](mailto:translation.traduction@irb.gc.ca) ou par télécopie au (613) 947-3213.

You can obtain the translation of these reasons for decision in the other official language by writing to the Editing and Translation Services Directorate of the IRB, 344 Slater Street, 14<sup>th</sup> Floor, Ottawa, Ontario, K1A 0K1, or by sending a request to the following e-mail address: [translation.traduction@irb.gc.ca](mailto:translation.traduction@irb.gc.ca) or by telecopying at (613) 947-3213.

**Certified True Copy  
Copie Conforme**

**Certified True Copy  
Copie Conforme**

  
IRB Representative  
Représentant de la CISR

  
IRB Representative  
Représentant de la CISR

## Reasons for Decision

[1] Surinder Pal KALSI (the "appellant") appeals the refusal to grant a permanent resident visa to his putative spouse, Santosh Kumari KALSI (the "applicant"), from India. The *Immigration and Refugee Protection Act* (the "Act")<sup>1</sup> and the *Immigration and Refugee Protection Regulations* (the "Regulations")<sup>2</sup> came into effect on 28 June 2002. The Notice of Appeal was filed on 8 October 2003.

[2] The application was refused under section 4 of the *Regulations*, which 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 and was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[3] Section 4 of the *Regulations* imposes a two-pronged test: that is to say, in order for a foreign national to be caught by section 4, the preponderance of the evidence must demonstrate that the marriage is not genuine and that it was entered into primarily for the purpose of enabling the applicant to acquire a status or privilege under the *Act*. The onus rests on the appellant to establish that the marriage is genuine or that the marriage was not entered into by the appellant and the applicant to enable the applicant to acquire permanent resident status in Canada.

[4] The refusal letter of 29 August 2003<sup>3</sup> articulates the visa officer's reasons for concluding that the marriage in question, as per section 4 of the *Regulations*, is not genuine and that the applicant's primary purpose is to acquire permanent resident status in Canada. In particular, the visa officer was concerned:

- (a) that the appellant's divorce rendered the couple incompatible;

---

<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>2</sup> *Immigration Regulations*, SOR/2002 - 227.

<sup>3</sup> Record, pp. 137-139.

- (b) that the applicant's parents did not meet the appellant's mother prior to the finalization of the marriage;
- (c) that, with the exception of a day trip to Amritsar, the couple did not spend time together outside the house during the appellant's six week stay following their wedding;
- (d) that the applicant lacked significant knowledge about the appellant; and
- (e) that there was little evidence of meaningful communication between the appellant and the applicant.

[5] However, the hearing of the Immigration Appeal Division is a hearing *de novo*. At issue is whether the applicant, as of the date of the hearing, falls within the class of persons described in section 4 of the *Regulations*. There was no challenge to the fact that a marriage in accordance with the laws of India took place.<sup>4</sup>

[6] The appellant, the appellant's mother, Parkash Kaur Kalsi, and the applicant were the only witnesses. I have considered their testimony, the documentary evidence in the Record, additional materials tendered for the hearing,<sup>5</sup> and the submissions of both counsel.

### Decision

[7] The appeal is allowed. I find that the appellant, Surinder Pal KALSI, has met the onus of demonstrating that the applicant, Santosh Kumari KALSI, is not caught by section 4 of the *Regulations*. On the basis of the evidence before me, I am satisfied, on a balance of probabilities, that the marriage is genuine and was not entered into primarily for the purpose of the applicant acquiring the status of a permanent resident of Canada.

### Background

[8] The appellant, Surinder Pal KALSI, is a citizen of Canada, who was born on 25 April 1973 at Village Saifabad, Pillaur, Jalandhar District, Punjab Province, India. He was landed on

<sup>4</sup> Marriage registration certificate: Exhibit A-1, p. 49.

<sup>5</sup> Exhibits A-1, A-2, A-3, A-4 and A-5.

30 July 1997 at Vancouver, sponsored by his first wife, Raj Kumari Kalsi.<sup>6</sup> They were divorced, without issue, on 13 January 2000.<sup>7</sup> He has 10 years of formal education, and is employed at present as a plumber's assistant. The appellant's principal language is Punjabi. He is a Hindu, but a follower of Sikhism. This is his second marriage. At present, the appellant resides in Surrey, British Columbia, with his mother and younger brother (his father is deceased).

[9] The applicant, Santosh Kumari KALSI, is a citizen of India, who was born on 4 September 1978 at Village Safabad, Phillaur, Jalhandhar District, Punjab State, India. She has 10 years of formal education, and is employed in the home. Her principal language is Punjabi. She too is a Hindu follower of Sikhism. This is her first marriage. At present, the applicant resides with her mother (her father is deceased) and one elder sister in their family home at Village Safabad.

### **Analysis**

[10] The appellant and his first wife, Raj Kumari Kalsi, were married in India on 23 June 1996. There is nothing in evidence as to how long Raj Kumari Kalsi remained in India after their wedding—thus, nothing to indicate the duration of their initial cohabitation. As indicated in paragraph [8] above, the appellant was landed on 30 July 1997. The appellant testified at the hearing, as did his mother, that he separated from his first wife approximately one month after his arrival in Canada, which would have been at the end of August or in early September 1997. He also testified that this was on 26 August 1998, the date on which his divorce documents state he ceased to cohabit with his first wife.<sup>8</sup> The appellant gave no indication that he understood that there was a 12-month discrepancy in his testimony.

[11] Minister's counsel, in his oral submission, contended that an adverse inference ought to be drawn from the above conflicting evidence. However, appellant's counsel countered in reply that the appellant lacked "sophistication," which the panel, in this instance, understands to mean that the appellant often experienced some difficulty in grasping relatively simple concepts.

---

<sup>6</sup> Record, p. 2; Exhibit A-1, p. 35.

<sup>7</sup> Divorce documents: Exhibit A-2, pp. 1-2; Exhibit A-3, pp. 1-9.

<sup>8</sup> See Statement of Claim, signed by the appellant as plaintiff: Exhibit A-3, p.5.

[12] Indeed, appellant's counsel contended that all his witnesses lacked "sophistication and education"—not that intelligence quotient is in any sense a determining consideration with regard to qualification as a family class immigrant. For example, the appellant's mother, who, sponsored by the appellant, was landed in 2002, testified to being both illiterate and innumerate—the latter leaving her not only unable to employ mathematics but also denying her a clear concept of time. On the other hand, the appellant and the applicant both claim to have 10 years of formal education. Unfortunately, it is not clear from the evidence what correlation exists between their respective years at school and their respective levels of intellectual attainment. However, at no time during the hearing did appellant's counsel suggest, nor did the panel find, that designated representatives were required for either the appellant or the applicant, pursuant to subsection 167(2) of the *Act*.<sup>9</sup> The panel finds that "lack of sophistication" is not a reasonable excuse for incoherent or contradictory testimony.

[13] Although the extraction of *viva voce* evidence throughout the duration of the 11½ hour hearing often proved tortuous and of limited probative value, the panel nevertheless finds the appellant and the applicant responsible for all of their respective testimony. On the subject of the timing of the appellant's separation from his first wife, the onus was on the appellant to reconcile his conflicting evidence. That he did not causes the panel to find his general credibility suspect.

[14] Nor does the panel find credible the appellant's testimony that he fled his marital domicile to live with a maternal uncle, Balbir Singh, whether this be in August 1997 or one year later, because his first wife, who wanted to keep him as a "slave," harried him to the point of "torture" by not allowing him his well earned sleep, going so far as to strike him in the face with a pillow to roust him from his bed after a late shift at work.

[15] The appellant's mother, on the other hand, testified that it was the appellant's first wife who left her husband's house, but that she could not remember the reasons, however allegedly dramatic, for their marital split. She further testified that she had not been in favour of her son's first marriage, which she claimed was not a traditional arranged marriage, but rather one decided

---

<sup>9</sup> Subsection 167(2) of the *Act* provides:

If a person who is the subject of proceedings is under 18 years of age or unable, in the opinion of the applicable Division, to appreciate the nature of the proceedings, the Division shall designate a person to represent the person.

by the appellant and his first wife without the benefit of a go-between. The appellant's mother did not disagree with Minister's counsel when he suggested in cross-examination that her son's first marriage had been one of convenience, the purpose of which was to secure his permanent resident's visa. Nor does the panel, on the basis of the evidence before it, disagree.

[16] For the most part, the panel finds the testimony of the appellant's mother credible. In this regard, the panel notes that at the time of the appellant's marriage to the applicant on 20 February 2002, the appellant's mother and her dependent son (the appellant's younger brother), then resident in the Punjab, were awaiting receipt of their permanent resident visas. Their successful sponsor was the appellant, with whom they live today.

[17] Both the appellant and the applicant testified at the hearing that theirs was an arranged marriage and that its broker was Baldev Singh, a neighbour of the applicant and her parents. The appellant also testified that Baldev Singh was a childhood, village friend and neighbour of the appellant's mother, and that Baldev Singh's parents still lived in this particular village. However, the appellant's mother testified that Baldev Singh is a member of the brotherhood from her late husband's village. There is nothing in the evidence to address this apparent contradiction in the testimonies of the appellant and his mother.

[18] The panel finds more important that the appellant's mother testified that it was she who sought the assistance of Baldev Singh in finding the appellant a suitable match, and that it was Baldev Singh who arranged her first meeting with the applicant. However, she insisted that she, not Baldev Singh, did all the negotiating with the applicant's family thereafter. Significantly, she testified that the selection of a daughter-in-law was of great importance to her, that she, personally, had suffered so much in life that she required her son's wife to look after her and to "serve" her. She further testified that, at her first meeting with the applicant and the applicant's mother at Baldev Singh's house in Pillaur, the applicant agreed to her demands. The applicant testified at the hearing that this initial meeting took place on 2 January 2002, that most of the talk was between the two mothers, but that her future mother-in-law did question her about her ability at household chores.

[19] From the point of view of the appellant's mother, or so she testified, all that remained was for the appellant to arrive in India, meet the applicant and, if he liked her, agree to marry

her. The applicant testified that her mother's position as the first meeting ended was: "If my daughter likes him, we can discuss further." The panel finds that these particular testimonies are not mutually exclusive. What the panel finds problematic is that the applicant did not share information about this meeting with the visa officer. When asked when her "parents" first met the appellant's mother, she replied: "At the time of our engagement,"<sup>10</sup> which was on 30 January 2002. This was one of the reasons that the visa officer cited in refusing to grant the applicant a permanent resident visa. However, there is credible *viva voce* evidence that the applicant's mother—a "parent"—was present at both the 2 January and 14 January meetings at Baldev Singh's home. According to the testimony of the applicant, the appellant and the appellant's mother at the hearing, the applicant's other parent, her father, was ill on these occasions. Again, according to the testimony of the appellant, the applicant and the appellant's mother, he was present at the engagement/ring ceremony. The applicant testified that her father died from his ailments on 15 September 2003.

[20] There is a contradiction in the respective testimonies of the appellant's mother and the appellant over when he first heard about the applicant. The appellant's mother testified that she conveyed her positive impressions of the applicant to her son in a telephone conversation while he was still in Canada. The appellant testified that he first heard about the applicant after he arrived in India on 10 January 2002. There is nothing in the evidence to reconcile these conflicting testimonies.

[21] The appellant and the applicant both testified that they met for the first time on 14 January 2002 at the home of Baldev Singh. The applicant testified that present at the meeting, in addition to himself and the applicant, were Baldev Singh, his wife and children, and the applicant's mother. The applicant testified that her paternal uncle was also present. According to the appellant, his private meeting with the applicant lasted 30 minutes, during which he told her that he was divorced, what it was like to live in Canada, as well as about his job. The applicant in her testimony added the subject of education to this list. The appellant testified that he asked, "Do you like me?" To this, the applicant, according to his testimony, shyly nodded, "Yes."

---

<sup>10</sup> Record, p. 145.



Following this meeting, the appellant claims that he and his mother agreed on the applicant. He testified that he left the rest of the discussions/negotiations to his mother.

[22] The applicant testified that the appellant did not tell her any details about his first marriage and divorce until later, whenever exactly that was. Certainly, the applicant claimed total ignorance of these matters at her visa interview on 5 August 2003.<sup>11</sup> The panel notes that the applicant was able, at the hearing, to echo in her testimony the appellant's description of the breakup of his first marriage. The panel finds neither the testimony of the appellant nor that of the applicant to be credible here.

[23] Also, as if in answer to the visa officer's concern that the appellant's divorce rendered the couple incompatible, the applicant was able, when challenged by Minister's counsel at the hearing, to provide what amounted to a relatively coherent response, claiming that she married the appellant because he was soft spoken, innocent, that they faced no religious prohibition, that one of her sisters was divorced and remarried, and that the appellant's divorce was not his fault.

[24] The marriage of the appellant and the applicant took place on 20 February 2002 at the applicant's ancestral home in Village Safabad. The applicant claimed about 400 guests in attendance.<sup>12</sup> The visa officer noted: "Photos show well attended marriage."<sup>13</sup>

[25] The visa officer was concerned that, with the exception of a day trip to Amritsar, the couple did not spend time together outside the appellant's house in Village Saifabad during the appellant's six week stay following their wedding. By and large, both the appellant and the applicant agreed. The appellant testified that, apart from a few visits to relatives, their time was taken with cooking, cleaning and sex. The applicant testified to chores, cooking and sleeping with her husband. On the subject of sex, she testified that they tried to conceive, but failed. On the subject of chores, she testified to cleaning the floors with cow dung. The panel finds all this quite credible. The appellant returned to Canada on 6 April 2002.

[26] There is much evidence of continuous communication between the appellant and the

---

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.* p. 9.

<sup>13</sup> *Ibid.* p. 145. See photographs: *Ibid.* pp. 21-40.

applicant.<sup>14</sup> More important, the applicant at the hearing possessed significant detail about the appellant's life and work in Canada. A small discrepancy occurred when she testified that the appellant's car is green in colour. He testified that it is grey. She, at least, knew the appellant's present correct address: 12738 97A Avenue, Surrey, British Columbia. Whereas, he, at first, testified that he still lived with his uncle Balbir Singh on 96A Avenue, Surrey. Although he corrected himself, claiming that he had not lived at his uncle's since July 2002, he added to his general credibility problem in the process, at least so far as minister's counsel was concerned. However, his telephone bills confirm that he has lived at his 97A Avenue address at least since March 2003,<sup>15</sup> and that, as of January 2003, he lived in a basement accommodation on 128 street, Surrey<sup>16</sup>—an address he did not mention at all in his testimony.

[27] The appellant, according to his testimony, has not always been forthcoming with the applicant in terms of important information that a married couple might be expected to share. For example, in addition to holding back details about his first marriage and divorce, the appellant testified that he waited until after the marriage to inform his new wife that he had sponsored the immigration to Canada of his mother and brother, and that they were awaiting the arrival of their visas. More important, after his return to Canada, he did not share with the applicant the reasons for his year-long delay in sponsoring her immigration. He testified at the hearing that he lost his job shortly after his return to Canada, that he was still unemployed when his mother and brother arrived in July 2002, and that it took him some months to re-establish himself financially. His excuse was that he did not wish to cause the applicant needless worry.

[28] On the positive side of this relationship, the appellant made a return visit to the applicant from 29 July 2003 until 1 October 2003.<sup>17</sup> He was with her at her failed visa interview on 5 August. He was with her at the death of her father on 15 September. During that visit the applicant became pregnant with, according to both their testimony, the appellant's child. Following the appellant's return to Canada, the applicant lost their unborn child in consequence

---

<sup>14</sup> See appellant's telephone bills: Ibid. pp. 52-115; exhibit A-1, pp. 44-48; Exhibit A-2, pp. 5-57; and exhibit A-4, pp. 22-25. See letters and cards: Record, pp. 116-136; Exhibit A-1, pp. 58-79 and 98-109; and Exhibit A-4, pp. 1-21.

<sup>15</sup> Record, p. 112; Exhibit A-2, p. 7.

<sup>16</sup> Exhibit A-2, p. 4.

<sup>17</sup> See cancelled airline ticket: Exhibit A-1, pp. 37-41.

of an automobile accident. The dead fetus was removed on 5 October 2003.<sup>18</sup> The appellant filed his appeal of the refusal to grant a permanent resident visa to his putative spouse, Santosh Kumari KALSI, on 8 October 2003. The panel accepts, given two adjournments of his hearing since it began in May 2004, that he has had little opportunity since for a further return visit.

### Conclusion

[29] The panel does not doubt that the prospect of immigration to Canada played some part in the applicant's decision to marry the appellant. The appellant's mother testified that she had mentioned the prospect of immigration to the broker, Baldev Singh. However, there is nothing in evidence that he passed this on in his initial conversations with the applicant's parents. The panel finds that the appellant put this in perspective when he testified that the immigration of the applicant was something everyone took for granted. There is no evidence that the applicant's mother wishes to immigrate to Canada, although it may be that the applicant's only unmarried sibling, her 30-year-old sister, Billa Baba, would qualify as a dependent child under section 2 of the *Regulations*: that is to say, one, who "is 22 years of age or older and has depended substantially on the financial support of the parent since before the age of 22 and is unable to be financially self supporting due to a physical or mental condition." On a balance of probabilities, the panel finds, based on the evidence before it, that the marriage of the appellant and the applicant was not entered into primarily for the purpose of the applicant acquiring any status or privilege under the *Act*.

[30] The panel finds that appellant attempted conceal detail with regard to his first marriage and divorce and, consequently, damaged his credibility. His otherwise slow, ponderous, often confused and sometimes inarticulate responses in both direct examination and cross-examination created the possibility of the panel drawing negative inferences where none actually were warranted. However, the panel does not find that the appellant's credibility problems have damaged his appeal beyond repair. What is more, the panel finds the applicant and the appellant's mother to be generally credible witnesses. On a balance of probabilities, the panel finds, based on the evidence before it, that the marriage of the appellant and the applicant is genuine.

---

<sup>18</sup> See relevant medical records: *Ibid.* pp. 50-56.

[31] I find the applicant, Santosh Kumari KALSI, is not described in section 4 of the *Regulations*. I find that the marriage is genuine and was not entered into by the applicant primarily for the purpose of acquiring a status or privilege under the *Act*. Santosh Kumari KALSI is a member of the family class. The appeal of Surinder Pal KALSI is allowed.

## 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.

**"John Munro"**

---

**John Munro**

**15 December 2004**

---

**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.