



IAD File No. / N° de dossier de la SAI : VA2-00574
Client ID no. / N° ID client : 4486-3774

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

CHARANJIT KAUR SANDHU

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

October 17, 2002
November 15, 2002
Vancouver, BC

Date(s) et Lieu de
l'audience

Date of Decision

March 7, 2003

Date de la Décision

Panel

John Borst

Tribunal

Appellant's Counsel

Khushpal Taunk
Barrister & Solicitor

Conseil de l'appelant(s)

Minister's Counsel


Ron Coldham

Conseil de l'intimé

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IRB Representative
Représentant de la CISR

Reasons for Decision

[1] Charanjit Kaur SANDHU appeals the refusal of the sponsored application for permanent residence of her husband, Sarabjit Singh BASSI, from India. The sponsored application was refused because a visa officer determined that the primary purpose of the marriage was to gain the applicant's admission to Canada and the applicant did not intend to reside permanently with the appellant. Thus the applicant was caught by subsection 4(3)¹ of the *Immigration Regulations, 1978* (the "*Regulations*").

[2] The appellant and applicant testified as follows:

[3] The appellant was born December 15, 1972 and was educated and raised in India. She married Sukhvinder Sunny Singh Sandhu on December 27, 1995, was landed on April 7, 1997 and divorced her husband on October 10, 1997. She married Ranbir Singh Sidhu on January 29, 1998. He was granted landing on April 7, 1999 and he divorced her on November 22, 2000.

[4] The applicant was born on January 1, 1978 and is the oldest son in his family. He comes from a wealthy family and has completed college. His father is a realtor and a tax collector. He lives with his younger brother, mother and father. He has no relatives living in Canada.

[5] The couple were related by marriage before their own marriage. The appellant's sister, Kamaljit Kaur, is the applicant's father's brother's wife. In fact the appellant and the applicant knew each other for fifteen years prior to their marriage because of their relationship with Kamaljit Kaur.

[6] After the appellant's second divorce, she flew to India in November 2000 with her mother. She stayed for two months and spent part of this time with her sister Kamaljit Kaur. The applicant declared his love for her and proposed. She did not accept immediately and returned to Canada for a short time in January 2001. She flew again to India on February 18, 2001. The couple met on February 20, 2001 and had a second meeting on February 22, 2001 to set the date for the marriage.

¹ Subsection 4(3): The family class does not include a spouse who entered into the marriage primarily for the purpose of gaining admission to Canada as a member of the family class and not with the intention of residing permanently with the other spouse.

[7] The marriage took place on February 28, 2001 with 500 guests in attendance. The reception for 1500 was held on March 1, 2001 and the marriage was consummated that evening. The couple spent the next month together. They spent five days on a honeymoon and visited relatives and religious sites. The appellant returned to Canada on March 28, 2001.

[8] The appellant returned to India on November 12, 2001 and stayed with the applicant for five and one half months returning on April 25, 2002. The couple attempted to conceive a child but were unsuccessful. They attended other weddings and public events during this time.

Analysis

[9] The appellant's counsel submitted that the marriage was not entered into for the primary purpose of gaining the applicant's admission and that the appeal should be allowed. The Minister's representative stated he thought there was a lot evidence which is favourable to the appellant's case but that he could not consent to the appeal being allowed because the evidence at the interview was that the applicant was intentionally misrepresenting the marriage. With respect, an appeal is a *de novo* hearing and although the notes of the visa officer are evidence before the panel, they are not determinative.

[10] Having heard the evidence and both counsel, the panel finds on a balance of probabilities that the marriage is *bona fide* and the appeal is allowed.

[11] The first prong of the *Horbas*² test requires the appellant to show on a balance of probabilities that the primary purpose of the wedding was not to gain the applicant's admission to Canada. The appellant and particularly the applicant contradicted the information the applicant gave the visa officer at his interview. At his interview, the applicant knew very little about the appellant. He also stated that the talks for the wedding started on February 20, 2001, there was no engagement ceremony and the wedding took place on February 28, 2001.

[12] At the hearing the appellant and the applicant stated the relationship started much earlier and even though the appellant is six years older than the applicant, the couple fell in love and the appellant returned a second time to India for the marriage.

² *Horbas v. Canada (Minister of Employment and Immigration)*, [1985] 2 F.C. 359 (T.D.).

[13] I agree with the Minister's representative that the applicant's excuse for his lack of knowledge is not credible. He testified that he did not feel well at the interview because he had traveled over night. He also stated that the visa officer was rude and told him he was not getting a visa before the interview started. I do not find this credible and if it were not for the wealth of information brought forward by the appellant and her counsel concerning the relationship, the applicant's lack of credibility would weigh heavily against him. The appellant also lacked credibility when he blamed an accountant for the wrong answers on the spousal questionnaire.

[14] The appellant described the reasons for the breakdown of her two previous marriages. Although different dates and roles, the explanations were variations of each other. The first marriage did not last because her husband did not show up at the airport to meet her and she found out he was living with another woman. The second marriage ended because the appellant showed up at the airport but her second husband had arrived on an earlier different date. I find these explanations not to be credible first because I find it unlikely the appellant would be fooled essentially the same way twice, second because it is unlikely the same set of circumstances would be repeated and third because there seems to have been little effort to prevent or rectify the situation.

[15] Although the explanations are not credible, other areas of testimony were credible and it is on the balance of probabilities considering all of the evidence that is the basis of the test. The appellant provided a credible description of the history of the relationship which was corroborated by the applicant, with details of the relationship which are hard to invent. The wedding was an elaborate affair with 500 guests at the ceremony. The reception was the following day and was attended by 1500 guests. The appellant spent a month with the applicant and returned to Canada. On November 12, 2001 the appellant made a second trip and stayed with the applicant for five months and two weeks. The appellant has sent gifts³ to the applicant as has the applicant to the appellant⁴ and has maintained regular and continuing correspondence by telephone,⁵ letter⁶ and the internet.⁷

³ Exhibit A-1, Tab 37.

⁴ Exhibit A-1, Tab 43.

⁵ Record, pp. 92 – 141, Exhibit a-1, Tabs 25, 26, 28.

⁶ Exhibit A-1, Tab 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, Exhibit A-2.

⁷ Exhibit A-1, Tab 27.

[16] Despite the applicant's lack of credibility at his interview, I find it unlikely, given the evidence, that the primary purpose of the marriage was to gain the applicant's admission to Canada.

[17] The refusal is invalid in law and the appeal is allowed.

ORDER

The Appeal Division orders that the appeal be allowed because the refusal to approve the application for landing made by Sarabjit Singh BASSI is not in accordance with the law.

"John Borst"

John Borst

7 March 2003

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.

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IMMIGRATION APPEAL DIVISION



COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
SECTION D'APPEL DE L'IMMIGRATION

IAD File No. / N° de dossier de la SAI : VA3-01246
Client ID no. / N° ID client : 3369-0261

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

SUKHWINDER KAUR PAAH

Appellant(s)

Respondent

The Minister of Citizenship and Immigration
Le Ministre de la Citoyenneté et de l'Immigration

Intimé

Date(s) and Place
of Hearing

December 8, 2003
Vancouver, BC

Date(s) et Lieu de
l'audience

Date of Decision

December 8, 2003

Date de la Décision

Panel

John Munro

Tribunal

Appellant's Counsel

Khushpal Taunk
Barrister & Solicitor

Conseil de l'appellant(s)

Minister's Counsel


Randal Hyland

Conseil de l'intimé

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Oral Reasons for Decision

1. This is the decision in the appeal of Sukhwinder Kaur Paah (the “appellant”) of the refusal of the sponsored application for a permanent resident visa made by Natha Singh Paah (the “applicant”), the appellant’s putative spouse.
2. The application was refused because, in the opinion of the visa officer, the requirements of section 2(1) of the *Immigration Regulations (1978)* paragraph (a) defining member of the family class, are not met.
3. Under section 4(3) of the *Immigration Regulations (1978)*, the family class did not include a spouse who entered into the marriage primarily for the purpose of gaining admission to Canada as a member of the family class and not with the intention of residing permanently with the other spouse.
4. The *Immigration and Refugee Protection Act*¹ (“IRPA”) and the *Immigration and Refugee Protection Regulations*² (“IRP Regulations”) came into force on 28 June 2002. According to section 190 of IRPA:

Every application proceeding or matter under the former Act that is pending or in progress immediately before the coming into force of this section, shall be governed by this Act on that coming into force.

5. As sponsorship for a foreign national as the sponsor’s spouse under the family class may be made pursuant to section 117(1)(a) of the *IRP Regulations*. Section 4 of the *IRP Regulations* provides:

Bad faith. For the purpose 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 or was entered into primarily for the purpose of acquiring any status or privilege under the Act.

6. According to the English version of the *IRP Regulations*, the bad faith provision imposes

¹ S.C. 2001, c. 27.

² SOR/2002 – 227.

a disjunctive test. The French version of the legislation indicates a conjunctive test is to be used in assessing sponsorships of foreign nationals.

7. A conjunctive approach is similar to the approach used within the former legislation, although the articulation and substance of that two-pronged test is changed in the current legislation. As in all other cases of this nature before the Division, the two-pronged test to be used is a conjunctive one, that is, that in order for a foreign national to be caught by section 4 of the *IRP Regulations*, the preponderance of reliable evidence must demonstrate that the marriage is not genuine and that it was entered into by the applicant primarily for the purpose of acquiring a status or privilege under the *IRPA*. The onus rests on the appellant to establish that the marriage is genuine or that the applicant did not marry the appellant primarily for the purpose of acquiring permanent resident status in Canada.

8. The refusal letter of 31 March 2003 articulates the visa officer's reasons for concluding that the marriage in question, as per section 4 of the *IRP Regulations*, is not genuine and that the applicant's primarily purpose is to acquire permanent resident status in Canada.

9. The visa officer was concerned that the parties to this marriage, that is to say, the appellant and the applicant, do not appear compatible. In particular, the visa officer noted that the appellant and the applicant are incompatible in terms of age and marital background and that they may also be so in terms of family status.

10. In the letter addressed to the applicant, the visa officer states:

- Whereas this is a first marriage for youour sponsor has already been married and divorced.
- Age is an important aspect of a compatible match. When an age difference does exist, it is expected that the groom be elder to the bride. In your case, your sponsor is one and a half years older than you.
- Your sponsor was married for almost four years. You do not provide complete documents regarding your sponsor's divorce. If your sponsor has children from her first marriage, your match with your sponsor would be even more incompatible.
- This match is all the more unusual in that you are the eldest son and child yet your marriage was arranged with a woman who is divorced and older

than you. You could provide no substantive reason for this unusual match.

The circumstances surrounding your marriage cause me to doubt that it is a genuine marriage.

- You contradicted yourself numerous times regarding the circumstances of your marriage.
- An engagement ceremony, which demonstrates the commitment of the parties to the marriage, was not performed in connection with your marriage.
- You could provide no photos showing the 80 or 90 people that you claimed took part in the groom's procession (barat).
- Though you claimed at different times that your wedding was attended by 80, 130 or 140 and 300 persons, little evidence to support this contention was offered. Indeed, the evidence has been consistent only with a much smaller gathering.
- Your sponsor did not sponsor your application for admission to Canada as soon as possible after her return to Canada following your marriage. You could not provide a satisfactory explanation for the delay caused in submitting a sponsorship for you.

I am not satisfied that you and your sponsor are in touch with other. The evidence offered of such contact is minimal. I note the following:

- Though you claim to have lived with your sponsor in India for three months after your marriage and that you have been in extensive contact with her subsequently by telephone and letters, you did not possess any significant knowledge of her.
- You did not know the particulars of your sponsor's divorce; you did not know how long she had lived with her former spouse; you did not provide complete divorce papers and appeared to be making up reasons to explain the termination of your sponsor's marriage.
- Your lack of knowledge of your sponsor and her personal circumstances is all the more surprising since you claim this was an arranged marriage. In your community, it is usual for parents to learn as much as possible about the prospective bride and to relay all this information to their son to gain his consent to the match.
- You could provide no phone bills to substantiate your claim of regular communication with your sponsor.

- The letters that you provided as proof of written communication with your sponsor appear to have been prepared for immigration purposes.

My concerns about the bona fides of your marriage are heightened by the fact that I did not find you to be a credible person. It was my distinct impression at the interview that your answers were contrived and made up throughout the course of the interview. I note the following:

- You contradicted yourself many times during the course of the interview, as well as with the information that you provided under spousal questionnaire.
- You provided evasive answers throughout the interview surrounding the circumstances of your marriage. You did not provide complete divorce documents for your sponsor as requested.
- You could not provide a satisfactory explanation for not providing them. In my opinion, these documents were not provided in order to hide the details of the circumstances of your sponsor's divorce.

I advised you of the specific concerns that I have identified in your case regarding your relationship with your sponsor and asked you to address these issues. You were unable to provide a response that satisfied my concerns.

[typed as per original with errors and/or omissions.]

11. Well, the hearing today, 8 December 2003, is not simply an appeal of the visa officer's decision and a re-examination of that visa officer's reasons for coming to that decision. The hearing today is a *de novo* hearing, which takes into account all the evidence presented in the Record, including the visa officer's letter of refusal and the CAIPS notes, which provide a rough summary of the visa officer's interview with the applicant.

12. In addition, the panel had before it a very substantial documentary exhibit presented by the appellant, which runs to 244 pages of documents, in addition to a video presentation of the wedding ceremonies and celebrations.

13. It is important to note for the record that the applicant's visa application is dated the 1st of June 2001. This is indeed some distance in time from the wedding that took place on 6 December 2000, but not particularly distant from the return of the appellant from India on 5 March 2001. The lock-in date for this application is 20 July 2001. The sponsorship was signed on 19 September 2001. The date of the interview with the visa officer was 19 February 2002.

The only truly extraordinary date in this chronology is the date of refusal, which is some 13 months later, on 31 March 2003.

14. As to the question of incompatibility, the appellant has testified that the age difference of one and a half years in her favour has had no effect whatsoever on her relationship with the appellant. The panel observes that the pictorial record substantiates her claim.

15. As to the respective marital backgrounds of the appellant and the applicant, the appellant has testified, in credible fashion, that her first marriage ended largely due to her first husband, David Singh's, infidelity and general bad habits.

16. She has also testified that this marriage, which began on 13 December 1995 and ended on September 1, 2000, involved a final year of separation prior to the divorce. In that neither the applicant nor the applicant's parents appear to have taken issue with the appellant's divorce, the panel can see no reason to do so either.

17. The marriage of the appellant and the applicant was an arranged marriage, arranged in conjunction, it would appear, with the marriage of the appellant's sister to the applicant's brother, the first marriage, that of the appellant and the applicant, having taken place on 6 December 2000, the second marriage, that of the appellant's sister and the applicant's brother, taking place the next day on 7 December 2000. Indeed, the appellant testified that her dowry was, in its largest part, selected to make more comfortable the life of her sister in her new home which, coincidentally, is the ancestral home of the applicant and his brother.

18. As to the issue of an engagement ceremony, whether there was one or was not one, whether there is a serious contradiction between the Spousal Questionnaire in the Record at page 10 and the answer of the applicant to the visa officer as recorded in the Record at page 83, this appears to have been reconciled, and certainly to the panel's satisfaction, by the testimony of the appellant and by the pictorial record as contained in Exhibit A-1.

19. The question of the number of guests present is not one that the panel finds significant. The marriage, both its solemnization and celebration, were held under the tent at the ancestral home of the appellant in village Barewal Fatehpur. The number of guests present is largely a factor in decisions so far as this number is indicative of the marriage receiving what is considered due publicity in the community of the bride and, secondarily, of the groom.

20. The video presentation and the photographs indicate a substantial number of guests in attendance, certainly a sufficient number of guests to eliminate any suspicion that there was any attempt on the part of the parties to this marriage to hide it from their respective communities.
21. The panel finds it curious that the middleman, in arranging the marriage, was a Muslim family doctor and astrologer who has the reputation of a holy man in his community and is apparently, at least according to the testimony of the appellant, much revered.
22. The appellant testified that the middleman is the family doctor to both families, and that he was approached to be middleman and that he provided an auspicious foretelling and date selection and provided the appellant, according to her testimony, with some personal consolation following her first unhappy marital experience.
23. The most important consideration, so far as the panel is concerned, is the very substantial evidence that the marriage of the appellant and the applicant is genuine. They were married on 5 December 2000. They were to cohabit for the following three months, during which period the appellant became pregnant, only to miscarry on 26 February before her return to Canada on 5 March 2001.
24. The appellant returned to India to cohabit with her husband between 16 July 2002 and 16 September 2002. She returned less than two months later, on 9 November 2002, and remained with her husband until 8 March 2003. During that period, she became pregnant a second time, a pregnancy that she was to carry to term, giving birth to a son, Justin, at Langley Memorial Hospital on 18 November 2003.
25. The appellant's documentary disclosure contains a letter from Dr. Kenneth J. Dornan, the appellant's obstetrician and gynecologist. This letter is addressed to the appellant's counsel, Mr. Khushpal Singh Taunk. It is dated 17 October 2003 and reads:

RE: Paah, Sukhwinder, dob January 1, 1973

My patient, Sukhwinder Paah, has asked me to detail in a letter the fact that she is now pregnant with a calculated due date of 9th of November/03. She got married December/2000 and her husband still resides in India and apparently is seeking emigration to Canada. The patient was actually in India from November 7/02 to 8th of March/03 and on the basis of her ultrasound, her last menstrual period was

2nd of February/03 and it is reasonable to assume that she conceived this child in India on approximately 16th of February/03.

This all, of course, would be consistent with the story that she gives and I have no reason to doubt that data.

She is now some 37 weeks secondary amenorrhea with a calculated due date of 9th of November and I feel is becoming somewhat more anxious and concerned regarding the status of her husband and his potential for emigration to Canada. I am hopeful that this letter of support will facilitate this.

Yours truly,
Kenneth J. Dornan, MB, BSC, BA, OMD, FR, COG.
[types as per original with errors and/or omissions.]

26. There is ample proof of continuing communication in the documentary exhibit provided by the appellant. The letters in the Record, so far as one could tell, do not seem calculated purely to enhance the immigration purposes of the applicant.

27. So far as the issue in this case of whether the applicant falls within the class of persons described in section 4 of the *IRP Regulations*, and noting that which should have been noted earlier, that there is no legal challenge to the validity of the marriage, the appellant has met the onus on her of establishing, on a preponderance of evidence, that the marriage is genuine.

Conclusion

28. Sukhwinder Kaur Paah has met the onus of demonstrating that the applicant, Natha Singh Paah, is her legal spouse. The applicant is a member of the family class pursuant to the *IRP Act*, section 12(1) and the *IRP Regulations*, section 117(1)(a). The appeal is allowed.

[Edited for clarity, spelling, grammar and syntax.]

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

23 December 2003

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.