



Immigration and
Refugee Board of Canada

Immigration Appeal
Division

Commission de l'immigration
et du statut de réfugié du Canada

Section d'appel de
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On 15 November, 2005 I provided the **Reasons and Decision**

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Nicole Brass, RSA



IAD File No. / N° de dossier de la SAI : VA4-03042
Client ID no. / N° ID client : 2785-1584

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

MANDEEP KAUR GREWAL

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

November 4, 2005
Vancouver, BC

Date(s) et Lieu de
l'audience

Date of Decision

November 7, 2005

Date de la Décision

Panel

Robert Néron

Tribunal

Appellant's Counsel

Khushpal Taunk
Barrister & Solicitor

Conseil de l'appelant(s)

Minister's Counsel


Steve Bulmer

Conseil de l'intimé

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Reasons for Decision

[1] These are the reasons in the appeal of Mandeep Kaur GREWAL (the “appellant”) from the refusal to approve the sponsorship application for a permanent resident visa for her husband, Parvinder Singh GREWAL (the “applicant”).

[2] The application was refused by a letter dated November 19, 2004,¹ because in the opinion of the visa officer, the applicant is not considered a spouse of the appellant because their marriage is as described in section 4 of the *Immigration and Refugee Protection Regulations* (the “IRP Regulations”)² (the “Bad Faith Regulation”), in that the marriage is not genuine and was entered into primarily for the purpose of acquiring the applicant's permanent residence in Canada. Consequently, the visa officer determined that the applicant is not a member of the family class.

[3] In coming to these conclusions, the visa officer took into consideration a number of factors, including the following:

- the applicant was vague and contradictory during his interview with the visa officer;
- only a few persons attended the marriage ceremony;
- the appellant did not sponsor the applicant as soon as she returned to Canada.

[4] The central issue that I must decide; is whether the evidence shows that the marriage is a genuine one. In order to disqualify a spouse under section 4 of the *Bad Faith Regulation*, the marriage must have been entered into by the applicant primarily for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act* (“IRPA”),³ and the marriage is not genuine. In order to succeed on appeal, the appellant needs to establish that the applicant is not caught by the *Bad Faith Regulation*.

¹ Record, pp.108-110.

² *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

³ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

Analysis

[5] The assessment of the appellant and the applicant's marriage often raises difficult questions of fact. In making this determination, the Immigration Appeal Division (the "IAD") looks at a number of factors, including the following:

- how the couple met and how their relationship evolved;
- circumstances of their engagement and marriage;
- actions before and after the marriage, including contact and communication between the couple;
- family knowledge of and involvement in the engagement and marriage; and
- plans and arrangements for the future.

[6] The applicant was called as a witness at this hearing and the appellant also testified and I find the appellant and the applicant's testimony to be credible. They testified in a forthright manner and the explanations given for the discrepancies noted by the visa officer during the interview with the applicant to be supportive of a *bona fide* relationship.

[7] The circumstances leading to the marriage of the appellant with the applicant are credible. The appellant met the applicant and she found him attractive. They had pre-nuptial sexual relation which was confirmed by both parties. The marriage appears to be very fast and quick but the applicant and the appellant had been intimate, it is credible for the family to have this marriage entered into.

[8] The visa officer was also not satisfied with the numbers of letters and photographs presented at the interview as being probative of a *bona fide* relationship. At the hearing, letters, cards, emails and photographs were presented and they are, in my view, supportive of the on-going communications between the appellant and the applicant. Moreover, in reviewing the visa officer's notes taken at the interview, I note that the applicant knew many details about the appellant, such as what he did with the appellant when she was in India and when she returned in 2004, information that is consistent with on-going communication as alleged by the appellant.

[9] The appellant testified that she went to India not only once but twice since her marriage ceremony and she lived with the applicant. Her evidence was corroborated by the applicant. I

find these return trips to India in order to be reunited with the applicant to be supportive of a *bona fide* relationship not entered into for immigration purposes.

[10] What troubles me in this case is the fact that it appears to be discrepancy as to the type of preservative while being intimate with one another. The appellant said that she was taking birth control pills while the applicant testified that they were using condoms. I would have expected the parties to be consistent on this point but I do not find, overall, that this discrepancy would lead me by itself to conclude that this marriage was entered for immigration purposes.

[11] Having considered all the evidence, both documentary and *viva voce*, and having taken into consideration the circumstances surrounding this marriage, the number of times that the appellant and the applicant communicated by telephone, and the activities done by the appellant and the applicant when she returned to India after the wedding, I find overall that there is a genuine spousal relationship between the appellant and the applicant.

[12] I am persuaded, on a balance of probabilities, that the applicant did not marry the appellant primarily for the purpose of gaining admission to Canada as a member of the family class, and I find that the applicant has the intention of residing permanently with the appellant in Canada. Therefore, the appeal of Mandeep Kaur GREWAL, in respect to her husband, Parvinder Singh GREWAL, is allowed because the refusal is not valid in law.

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.

"Robert Néron"
Robert Néron

7 November 2005
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.