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Canada

Immigration Appeal
Division

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

Section d'appel de
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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 : VA4-01831
Client ID no. / N° ID client : 3495-2328

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

KARAMJIT SINGH NIJJAR

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 28, 2005
February 8, 2006
Vancouver, BC

**Date(s) et Lieu de
l'audience**

Date of Decision

February 8, 2006

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

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Oral Reasons for Decision

[1] These are the reasons and decision in the appeal of Karamjit Singh Nijjar (the “appellant”) of the refusal to grant a permanent resident visa to his putative spouse, Santosh Kaur Nijjar (the “applicant”) from India. The *Immigration and Refugee Protection Act* (the “Act”)¹ and the *Immigration and Refugee Protection Regulations* (the “Regulations”)² came into effect on 28 June 2002. The *Regulations* were amended³ on 22 July 2004. The Notice of Appeal was filed 29 July 2004.

[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 June 2004 articulates the visa officer’s reasons for concluding that the marriage in question, as per section 4 of the *Regulations*, is not genuine, that the applicant’s primary purpose is to acquire permanent resident status in Canada.

[5] The visa officer wrote:

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

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

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

³ *Regulations*, as amended by SOR 2004-167.

- Your sponsor immigrated to Canada in 2000, yet you and your sponsor did not get married for almost three and one-half years after that. You could not provide a satisfactory explanation for this delay in getting married.
- Your wedding was held at Bhogpur which is close to your sponsor's hometown. Contrary to the custom in your community, your marriage was not performed at the bride's place of residence. You could not provide satisfactory explanation, why your marriage was performed at a place different from the bride's place of residence. In my opinion, the marriage was performed at a place other than the bride's place of residence in order to avoid giving publicity to the fact of your marriage.
- You stated that you and your sponsor had been communicating with each other on the phone since 1997-1998, and when your family found out about this, they decided for you and your sponsor to get married. You also stated that your family found out about the relationship between you and your sponsor around 1998.
- During a telephonic interview with your sponsor, he was asked why he did not marry you earlier, your sponsor stated it was because of Canada. When asked to explain this statement he said his application for immigration was already in process since his father had sponsored him. He also stated that if he had got married earlier, he would not have been eligible. This, coupled with the other factors mentioned above, indicates a lack of commitment on the part of your sponsor towards to your marriage.

B: Lack of Contact and Knowledge

I am not satisfied that you and your sponsor are in touch with each other. The evidence offered of such contact is minimal and is not borne out by any significant knowledge on your part of your sponsor. [Copied from the original without correction.]⁴

[6] 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.

[7] The appellant was the only witness. I have considered his testimony, the documentary evidence in the record, additional materials tendered for the hearing and the submissions of both counsel.

⁴ Record, pp.100-101.

Decision

[8] The appeal is allowed. I find that the appellant, Karamjit Singh Nijjar, has met the onus of demonstrating that the applicant, Santosh Kaur Nijjar, 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.

Background And Analysis

[9] The appellant, Karamjit Singh Nijjar, is a citizen of India who was born on 15 May 1970 at Village Behram Sarishta, District Jalandhar, Punjab State, India. He was landed in Canada on 19 May 2000 as an assisted relative category (AR4) immigrant with his father providing that assistance. The appellant has some seven or eight years of formal education and is employed as a roofer in residential construction. His principal language is Punjabi. He is a Jat Sikh. This is his first marriage. At present, the appellant resides with his extended family in Surrey, British Columbia.

[10] The applicant, Santosh Kaur Nijjar, is a citizen of India who was born on 16 April 1967 at Village Bulandpur, Punjab State, India. She is without formal education, but has become literate in Punjabi through her own efforts. Her only language is Punjabi. She is employed in household duties. This is her second marriage. Her first marriage to the brother of the appellant, Manjinder Singh Nijjar, on 21 March 1994 ended with his death on 3 September 1995. Their union produced one child, a son, Harvinder Singh Nijjar, born 7 July 1995. At present the applicant and her son reside with her parents in Village Barial, District Hoshiarpur, Punjab State, India.

[11] The panel finds probable the contention of Minister's counsel in his oral submission that the initial motivation of the appellant in marrying the applicant was to secure the immigration of the applicant's son, Harvinder Singh, to Canada. Minister persuasively argued that the appellant's family in Canada wished to be reunited with the son of the deceased Manjinder Singh Nijjar, and that this would explain, among other things, the issuing of a passport to Harvinder Singh in 1999 when he was about four years old. Minister further contended that the applicant was not prepared to part with her son unless she, too, was able to immigrate to Canada. The panel finds plausible the argument of Minister's counsel that this and this alone would explain her

initial endeavour to disguise the nature of her relationship to the appellant at her visa interview on 31 May 2004.

[12] The question before the panel is whether a genuine relationship between the appellant and the applicant has developed since their marriage on 19 November 2003.

[13] The panel finds particularly significant the affidavit contained in one of the appellant's documentary submissions which reads as follows:

I, Gurmeet Ram Bhatti, s/o SH. Tulsi Ram R/o Village and Post office Behram Sarishta Tehsil and District Jalandhar, Punjab, India, do hereby solemn affirm and declare as under-

1. That Santosh Kaur Nijjar daughter of Gurdarshan Singh is a widow of Manjinder Singh Nijjar, elder brother of Karamjit Singh Nijjar S/o of Amarjit Singh Nijjar. Manjinder Singh Nijjar died on 3-9-1995 at Village Behram Sarishta, Tehsil & District Jalandhar, Punjab.

2. That I, Personally know Santosh Kaur Nijjar. She has been living in village, Behram Sarishta, Tehsil and District Jalandhar, Punjab, after the death of her first husband Manjinder Singh Nijjar.

3. That I was invited to Karamjit Singh Nijjar S/o Sh. Amarjit Singh Nijjar R/O Village and Post Office Behram Sarishta , Tehsil and District Jalandhar, Punjab India and Santosh Kaur Nijjar D/o Sh. Gurdarshan Singh R/o Village Barial Post Office Pandori, Phangurian District Hoshiarpur , Punjab India to attend the marriage of my daughter Kamaljeet, between Surinder S/o Sh. Gurdeep Singh of Village Pandori Kad District Hoshiarpur Punjab, India. The marriage was solemnized at Amar Palace G.T. Road Sadha Chak, Bhogpur, District Jalandhar, Punjab, India on 23rd May 2005.

4. That I was also attended the marriage between Karamjit Singh Nijjar and Santosh Kaur Nijjar on 19-11-2003.

5. All relatives , friends , neighbours, and acquaintances of both bride and bridegroom were present on this occasion to witness the event and bless the couple.

6. All the ceremonies and ritual were celebrated according to the Sikh Religion.

7. It is custom in our Sikh community that whenever a married man dies in a family leaving behind a widow and dependants and if another brother of the deceased man is alive in the same family , then usually widow of the deceased is married to the brother. This is normally done by a ceremony called "CHADDER" and sometimes with a complete marriage ceremony, as this was done in the case of Karamjit Singh Nijjar and Santosh Kaur Nijjar.

8. That Karamjit Singh Nijjar and Santosh Kaur Nijjar jointly attended the

marriage of my daughter Kamaljeet on dated 23rd May 2005 and they are shooting their photographs.⁵ [Copied as original without correction.]

[14] The point of the above is that the marriage of the appellant and the applicant was in accordance with Sikh custom. The further significance of the above affidavit is that there was no endeavour on the part of the appellant and the applicant to keep their union secret and that, as the deponent indicated, they were present as a couple at the marriage of his daughter as the deponent had been a guest at the marriage of the appellant and the applicant.

[15] In this regard, the appellant testified at the hearing that the solemnization and celebration of the marriage in question took place at a location between the respective villages of the applicant and the appellant, and that it was not far distant from either.

[16] As to the reason why there appear to be inordinate delay in the marriage of the appellant to the applicant, the appellant testified that it was not possible to proceed with the marriage until his younger sister had been married off, that this was achieved in 2002 and that his marriage and that of his younger brother followed the next year.

[17] The panel notes that the appellant has provided the applicant and her son, his natural nephew, with financial support since their marriage and that the appellant made a return visit to be with the applicant and his stepson between 5 May 2005 and 28 May 2005. The panel notes that there is independent documentation to confirm this visit.

[18] More important, the documentation provided by the appellant contains medical documentation of the applicant becoming pregnant during the appellant's May 2005 visit. The panel finds this documentation credible. Indeed, the due date for the birth of this child is 10 February 2006. The panel finds this imminent event to be particularly significant of the development of a genuine spousal relationship between the appellant and the applicant.

[19] The panel further finds that if Minister was correct in his contention that the appellant's family was primarily interested initially in the immigration of the applicant's son to join his father's family in Canada, then it logically follows that the appellant's extended family in Canada would be equally interested in the about-to-be-newborn also joining their family in Canada. The

⁵ Exhibit A-1, volume 2, p.315.

panel finds it probable that the applicant, by virtue of both births, would be a welcome addition to that family as well.

[20] Finally, there is much evidence of ongoing communication between the appellant and the applicant, both in terms of telephone records, translated correspondence and greeting cards. The panel notes that the appellant at age 35 and the applicant at age 38 are mature individuals. The panel finds credible the appellant's assertion that were his appeal to fail, he would return to India to join his wife and children.

Conclusion

[21] On the basis of the evidence before me I find, on a balance of probabilities, that the applicant, Santosh Kaur Nijjar, is not described in section 4 of the *Immigration and Refugee Protection Regulations*. I find that the marriage is genuine. Santosh Kaur Nijjar is a member of the family class. The appeal of Karamjit Singh Nijjar 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

18 February 2006

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.