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Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

PARAMJIT SINGH PANESAR

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

June 30, 2004
August 26, 2004
Vancouver, BC

Date(s) et Lieu de
l'audience

Date of Decision

August 31, 2004

Date de la Décision

Panel

Kim Workun

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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Reasons for Decision

[1] Paramjit Singh PANESAR (the “appellant”) appeals the refusal of the sponsored application for a permanent resident visa in Canada of Surinderpal Kaur SEMBY (the “applicant”) from India. The application was refused because, in the opinion of the visa officer, the requirements of subsection 13(1) of the *Immigration and Refugee Protection Act, 2001* (the “Act”)¹ were not met in that the appellant was the spouse of a person, other than the applicant, at the time of his marriage to the applicant, contrary to the requirements of paragraph 117(9)(c) of the *Immigration and Refugee Protection Regulations, 2002* (the “Regulations”)² that the sponsor, at the time of a marriage to a sponsored foreign national, not be married to another person. As a second ground of refusal, the visa officer concluded that the applicant is a person caught by the exclusionary provision of section 4 of the *Regulations* relating to bad faith marriages.

[2] There are two issues raised by the refusal letter. At hearing, it was agreed by the parties that the panel would address the first ground of refusal, that is, whether the appellant was married to another person at the time of his marriage to the applicant. If the panel determines this issue in the positive, the panel would not go further to assess the *bona fides* of the relationship but, rather, the appeal would be dismissed. If the panel determines this issue in the negative, a decision to that effect would issue and the hearing would be reconvened for the purpose of receiving further evidence on the issue of the genuineness of the present relationship.

[3] I have considered the evidence presented regarding the appellant’s marital status at the time of his marriage to the applicant and conclude that the appellant’s divorce granted by the state of Nevada in October 2000 is not recognized in Canada. In this regard, the panel has considered the facts of the case together with section 22 of the *Divorce Act*.³ I conclude that the appellant was married to another person at the time of his marriage to the applicant. As a result, the applicant cannot be considered a member of the family class by virtue of her relationship to her sponsor, the appellant. The refusal on this ground is valid. The appeal is dismissed.

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

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

³ R.S.C. 1985, c. 3.

[4] In reaching this conclusion, I have considered the appellant's testimony on this issue, the testimony of his mother and documentary material filed at the hearing.⁴ I have also considered the submissions of counsel.

[5] As brief background, the materials indicate that the appellant was married to his first partner in 1981.⁵ The appellant traveled to Canada as a visitor, advanced a refugee claim and became a permanent resident of Canada in 1991.⁶ He then sponsored his first partner and son to Canada in 1993. He testified that he resided with his first partner until 1998 when he decided to start a business in the United States. He testified that he resided in Reno, Nevada for a period prior to his return to Canada in December 2000. He alleges that he secured a divorce from his first partner in Reno, Nevada during a period of residency in Reno.

[6] It appears that Nevada legislation permits parties to divorce in the state of Nevada so long as one of the parties to the divorce proceedings is resident in Nevada for at least a six-week period. The appellant indicated in the joint divorce petition filed in that State that he had been resident of Nevada for more than the requisite six-week period.⁷ As noted by the visa officer, Canadian divorce legislation⁸ indicates that foreign divorces shall be recognized in Canada so long as one of the parties to the foreign divorce has been ordinarily resident in the jurisdiction in which the divorce was granted for at least one year immediately preceding the commencement of proceedings for the divorce.⁹ In the case at hand, the divorce proceedings commenced¹⁰ in the state of Nevada 24 August 2000. In order to succeed in this appeal, the appellant must establish that he was ordinarily resident in the state of Nevada between 24 August 1999 and 24 August 2000.

[7] The appellant's testimony regarding the chronology of events, including the timing of his separation from his first partner, was confusing. His testimony changed as between the first and second sittings of the appeal and there was internal inconsistency within the body of his testimony, particularly during the course of cross-examination. He testified that his first partner

⁴ Exhibits A-1 through A-5; Exhibit R-1.

⁵ Record, p. 145; line 29.

⁶ *Ibid.* p. 2.

⁷ Exhibit A-1, Tab 1, para. 1.

⁸ *Supra*, footnote 3.

⁹ *Ibid.*, section 22(1).

¹⁰ Date materials were filed with the courts.

was unwilling to relocate to the United States and, consequently, the two separated in January 1998 (according to the appellant's testimony in direct examination at the first sitting of this appeal) or April 1998 (according to the appellant's testimony in cross-examination at the second sitting of this appeal). In any event, the appellant apparently relocated to the United States at some point in 1998. The appellant's testimony as to when his business opened in California is unclear as is his testimony as to whether he resided in California for a period. In direct examination, he testified that he opened a business in Yuba City, California in June 1998, remained in Yuba City until the end of December 1998, then relocated to Reno, Nevada where he has extended family. He testified that he remained in Reno, Nevada until December 2000 when he returned to Canada because of family obligations in Canada. In cross-examination, the appellant testified that he went to Reno in January 1999 and denied having said that his business opened in Yuba City in June 1998. Moreover, he testified that he never remained in Yuba City overnight and, at all times, remained at his cousin's home in Reno, Nevada during his various sojourns in the United States, but for brief stays in Los Angeles at a hotel to visit the company head office. I do not find the appellant's testimony in these areas to be reliable. Moreover, his delivery of testimony in these areas was not compelling. When his contradictory statements were put to him in cross-examination, he either denied making the previous statement or claimed to have been mistaken. In my view, significant and basic events ought to be recalled consistently and easily-stated if they have a basis in fact. The witness' difficulty at hearing in these areas raises concerns with respect to his overall credibility. At the same time, the panel is cognizant that the appellant's testimony as to the timing of his business operations in California and dates of separation from his first partner do not bear necessarily or directly on the issue of his residency between 24 August 1999 to 24 August 2000.

[8] In looking to that particular period, I have considered the appellant's testimony that he resided in Reno at his cousin's home in Reno, Nevada. Unfortunately, materials filed in support of this allegation, including an Affidavit from the appellant's cousin, Parwinder Singh Gosal, do little to support the appellant's allegations in this regard.

[9] The appellant submitted a California identification card¹¹ issued 30 December 1998 indicating a Yuba City, California address for the appellant. The appellant testified this card was

¹¹ Exhibit A-1, Tab 4.

obtained for the purpose of obtaining a business license in the state of California. He identified the address on the card as the address of a friend's business operation in Yuba City, California. This card does not assist in establishing the appellant's residency in the state of Nevada for any period.

[10] The appellant submitted an Affidavit dated 8 January 2004 from an individual, Parwinder Singh GOSAL.¹² According to the appellant in direct examination, he resided with "some of my friends" and named Mr. Gosal as one of these individuals. In cross-examination, he further identified Mr. Gosal as his cousin and initially indicated he lived with Mr. Gosal continuously for 2.5 years in Reno, Nevada, however later indicated that Mr. Gosal resided separately from him, but for a two or three-month period. The appellant testified he saw Mr. Gosal at the residence, however, the contents of Mr. Gosal's declaration indicate he had occasion to see the appellant at a gym at regular intervals. The Affidavit does not speak to *any* contact with the appellant at the appellant's residence, a residence allegedly owned by Mr. Gosal or to any period of co-residency with the appellant. There is a marked lack of cogency in the evidence as it relates to the appellant's residency with Mr. Gosal or in Mr. Gosal's alleged home in Reno, Nevada. I conclude that either the appellant's testimony, or Mr. Gosal's declaration, is contrived and give no weight to either the testimony or declaration.

[11] I have considered another Affidavit from one of the appellant's acquaintances in Reno, Nevada, Ms. Sulinder Kaur Randhawa¹³ in which she indicates she saw the appellant on a daily basis in Reno, Nevada between January 1999 and December 2000 and that she and the appellant visited each other once in a while in a month. The appellant testified he did not see Ms. Randhawa every day and could not explain Ms. Randhawa's statements in her Affidavit. I do not find this Affidavit particularly probative of the appellant's ordinary residence in Reno, Nevada between 24 August 1999 and 24 August 2000 and give the Affidavit little weight.

[12] I have considered a third Affidavit, again, from one of the appellant's acquaintances in Reno, Nevada, Harbhagwan Singh SANDHU.¹⁴ According to the appellant, Mr. Sandhu is president of the Sikh temple in Reno, Nevada. He testified he first met Mr. Sandhu in February

¹² Exhibit A-1, Tab 3.

¹³ Exhibit A-2.

¹⁴ Exhibit A-2, Tab 4.

1999 during his visits to temple. He also indicated he saw him at the supermarket. He admitted that Mr. Sandhu is mistaken in his Affidavit that he saw the appellant on a daily basis from December 1998 to October 2000. He also was unable to provide a credible explanation for Mr. Sandhu's statements in the Affidavit regarding his continued contact and visitation with the appellant to date. The appellant admitted he has had no contact with Mr. Sandhu, but for the request for this Affidavit, since relocating to Canada. I give little weight to this Affidavit in light of these obvious difficulties.

[13] I have also considered the appellant's mother's brief testimony regarding the appellant's residency in the United States. She was unable to recall the appellant's address in the United States or the date he relocated to the United States. She testified that he resided in one state and did business in another and that she and her grand daughter had visited the appellant for a ten-day period at one point at the home of her brother, Satnam Singh Gosal, and his family. Her inability to speak to dates and addresses is not particularly helpful to the panel.

[14] There is no objective material in the form of bank materials, credit applications or invoices, envelopes, telephone billings, local memberships (including gym memberships) or any other third-party objective material that would tend to demonstrate the appellant's alleged residency in Reno, Nevada for the protracted period in question. I find the absence of such materials to be conspicuous. The only personal identification material tendered was the identification card for the state of California. There is no material from any Nevada state or municipal authority, local merchant or community group, which would suggest the appellant had a presence in Reno for anything other than visits with extended family members, as attested to by his mother.

[15] The materials in Exhibit A-5 do little except establish the appellant's operation of a business in Yuba City, California for a period. Bank materials do not reference the appellant's alleged residency in Nevada nor do they appear to provide any contact information for the appellant in the state of Nevada.¹⁵ To the contrary, these materials indicate any contact with the appellant is to be made at a California address and telephone number. Materials from the

¹⁵ *Ibid.* p. 5-6.

Internal Revenue Service,¹⁶ similarly, are not probative of the appellant's residency in Nevada. The appellant's rental of a vehicle in Reno, Nevada for two days in July 2004¹⁷ is not probative of his alleged ordinary residence in Nevada from 24 August 1999 to 24 August 2000. The appellant's commercial lease for his business premises for the term 1 June 2000 to 31 May 2005¹⁸ is not probative of his residency in the state of Nevada for the relevant period and do not appear to reference any contact address or telephone number in a state other than California. Advertisements on maps¹⁹ depicting counties in California and printed in year 2000, are not probative of the appellant's residency in Nevada for the relevant periods.

[16] Essentially, the appellant asks that the panel consider the existence of the appellant's extended family residing in Reno, Nevada and conclude that the appellant resided with these family members during the period he operated a business in Yuba City, California. On the evidence before me, I cannot draw that conclusion. There is, simply, insufficient reliable evidence for me to do so. I found the appellant's testimony to be unreliable in many areas. He was vague, changed his testimony and, overall, did not present as a credible witness in several areas. It was submitted that the appellant had only a basic formal education and performed poorly in mathematics. Counsel suggested it was, for this reason, that his testimony was confusing with respect to dates and chronology. I reject this submission. The appellant presented as well-organized and articulate. He testified he attended school for thirteen years and I note his business experience to date. In my view, he ought to have been able to recall significant dates consistently and speak credibly with respect to particular events. There is a significant lack of cogency in the evidence as it relates to his alleged residency in Reno, Nevada. The appellant has not proven his case on the requisite balance of probabilities.

[17] The appellant has not demonstrated, on the requisite balance, that either he or his former partner were residents of Nevada for at least a one-year period immediately preceding the commencement of proceedings for the Nevada divorce from the first partner. As such, it has not been established that the divorce granted by the state of Nevada would be recognized in Canada. In the absence of a recognized divorce, I conclude that the appellant was the spouse of a person

¹⁶ *Ibid.* at p.p. 7-12.

¹⁷ *Ibid.* pp. 13-14.

¹⁸ *Ibid.* pp. 15-18.

¹⁹ *Ibid.* pp. 24 and 25.

other than the applicant at the time of his marriage to the applicant and, as such, the applicant cannot be considered to be a member of the family class.

Conclusion

[18] In light of this decision and in noting the agreement between the parties, the panel shall not address the merits of the appeal with respect to the section 4 ground of refusal.

[19] The applicant is not a member of the family class and the appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

"Kim Workun"

Kim Workun

31 August 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.