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Immigration Appeal
Division

Section d'appel de
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On 16 May, 2005 I provided the **Reasons and Decision**

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IAD File No. / N° de dossier de la SAI : VA4-01366
Client ID no. / N° ID client : 28883745

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

TARLOK SINGH SAIMBI

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 3, 2005
Vancouver, BC

Date(s) et Lieu de
l'audience

Date of Decision

May 3, 2005

Date de la Décision

Panel

John Munro

Tribunal

Appellant's Counsel

Khushpal Taunk
Barrister and 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

Oral Reasons for Decision

[1] These are the reasons and decision in the appeal of Tarlok Singh SAIMBI (the “appellant”) of the refusal to grant a permanent resident visa to his putative spouse, Balwinder Kaur SAIMBI (the “applicant”) and her accompanying dependent, Ramandeep Kaur GHASIAL, 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 2003. Notice of Appeal was filed on 23 July 2004.

[2] The application was refused under section 4 of the *Regulations* which provides as follows:

(4) 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*.

[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 13 April 2004 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:

- that the appellant and the applicant were incompatible in terms of education, marital background and social background;

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

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

- that the appellant and the applicant did not perform the *phas* at their religious ceremony;
- that the dress of those attending the religious ceremony, including the appellant and the applicant, was casual;
- that the photographic evidence did not indicate the presence of 35 of the 40 guests;
- that the wedding in question was not attended by the children of the appellant or those of the applicant;
- that there was an undue delay in the appellant's sponsorship of the applicant;
- that the applicant displayed a lack of significant knowledge about the appellant, particularly with regard to his divorce from his second wife;
- that the applicant was unable to provide what the officer considered to be a credible explanation of her husband's death;
- that the appellant had not been able to provide a death certificate for his first wife; and
- that it appeared to the visa officer that the appellant's principal motivation in marrying the applicant was to provide his mother a caregiver.

[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.

[6] The appellant and the applicant were the only witnesses. I have considered their testimony, the documentary evidence in the Record, additional materials tendered for the hearing and the submission of Minister's counsel. The panel did not require appellant's counsel to make a submission.

Decision:

[7] The appeal is allowed. I find that the appellant, Tarlok Singh SAIMBI, has met the onus of demonstrating that the applicant, Balwinder Kaur SAIMBI, 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 and Analysis;

[8] The appellant, Tarlok Singh Saimbi, is a citizen of India who was born on 10 August 1950 at Village Heron, District Ludhiana, Punjab State, India. He was landed on 27 June 1993 at Vancouver. He and his younger son, Gurmeet Singh, were sponsored by the appellant's elder son, Satpal Singh Saimbi. At the time of his landing the appellant was a widower. His first wife, with whom he lived from 1966 until her death in 1990, was the mother of the appellant's two sons. [Her death certificate is included in the appellant's documentary submission.] The appellant has nine years of formal education. His principle language is Punjabi. He is a wooden door maker by profession. This is his third marriage. At present, the appellant resides in Surrey, British Columbia, in a home that he shares with his son, Gurmit Singh, his son's wife and their four children.

[9] The applicant, Balwinder Kaur Saimbi, is a citizen of India who was born at Village Sudhar, Ludhiana District, Punjab State, India, on 11 October 1957. Her principal language is Punjabi. Like her husband, she is a Jat Sikh. Although she has no formal education, she testified that she has taught herself to read a little Punjabi but not to write it. This is her second marriage. At the time of her marriage to the appellant, she had been widowed by her husband. He died on 3 February 1996. The applicant is the mother of one daughter, Ramandeep Kaur Gharial, who is an accompanying dependant. At present the applicant resides in the ancestral village of the appellant, Village Heron.

[10] The appellant's second marriage to Baljit Kaur Saimbi took place on 13 April 1994. The appellant sponsored Baljit Kaur's immigration to Canada. They were separated on 31 May 1997 and divorced on 20 January 2000. The documents relating to that divorce are included in the Record. The panel notes that the appellant's second wife was the plaintiff in that action. His testimony concerning the circumstances that led to the break-up of the marriage and the eventual intervention of the police in their stormy relationship is found credible by the panel.

[11] The panel does not find the appellant and the applicant to be significantly incompatible. Certainly, they share a common language, religion and caste, things that the visa officer did not dispute. In terms of education, the appellant is not an educated man by any standard. So far as marital background is concerned, each lost his or her first spouse. The appellant's second marriage was relatively short lived and is not considered by the applicant to be an important handicap. So far as social background is concerned, the appellant was raised in the same social milieu, a rural Punjabi village, as the applicant. The appellant's immigration to Canada has not resulted in his breaking his ties to those social/cultural roots.

[12] Minister's counsel indicated at the outset of the hearing that he was not prepared to take issue with the affidavit of the Sikh priest as to variations in the religious ceremony of a Sikh marriage so far as older and previously married couples were concerned. The priest in question, Harkirat Singh, ex-head priest of Guru Nanak Sikh Gudawara in British Columbia, deponed that:

In some Sikh temples, it is also acceptable, not to walk around a Guru during listening of each hymn and the bride and bridegroom has to bow to Guru. In India in some Sikh temples, if either the bride or/and the bridegroom are divorced from their previous marriages or they are physically not able to walk, they do not walk around Sri Guru Granth Sahib, but listen to the hymns and bow to Guru.

[13] The panel finds the photographic evidence inconclusive insofar as the number of guests in attendance at the marriage are concerned. Further, the panel does not find significant the alleged casual dress of the appellant and the applicant at their wedding, given their respective ages at the time and their past marital histories.

[14] The appellant testified that the absence of his children and the daughter of the applicant at their wedding was in consequence of a joint decision designed to spare both the parents and the children any mutual embarrassment that the ceremony might cause.

[15] The applicant, in her testimony at the hearing, did not display any detailed knowledge of the appellant's divorce. However, she did have a grasp of the essential reasons for that marital break-up as outlined in the appellant's testimony at the hearing. The panel does not find significant the fact that the appellant has not chosen to share nor the applicant to pry into the sordid details of that apparently unhappy relationship. Apart from the details of the appellant's

divorce, the panel finds that the applicant has an entirely adequate grasp of significant information concerning the appellant's life and work.

[16] The counsel for the respondent did not challenge the deposition of the handwriting experts who established credibly the identity of the applicant's deceased husband, Swaran Singh Gharial, also known as Kulwant Singh. The handwriting experts are David Babb of North Vancouver, British Columbia, and Curtis Baggett of Richardson, Texas.

[17] In all, the panel found the appellant and the applicant to be credible witnesses, although their respective testimony with regard to the genesis of their relationship and the matchmaking roles played by various of their relatives and friends, often with confusingly similar names, remains difficult to understand or, in some instances, even to reconcile. This defect in the evidence, however, is not sufficient to result in a dismissal of the appeal.

Conclusion:

[18] I find the applicant, Balwinder Kaur SAIMBI, is not described in section 4 of the *Immigration and Refugee Protection 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*. Balwinder Kaur SAIMBI and her accompanying dependent, Ramandeep Kaur GHASIAL, are members of the family class. The appeal of Tarlok Singh SAIMBI 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.

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IRB Representative
Représentant de la CISR

"John Munro"

John Munro

14 May 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.