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: VB7-00123

Client ID no. / N° ID client: 2878-1000

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Rajinder Singh SANGHA	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	April 23, 2018	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	May 1, 2018	**Date de la décision**
Panel	George Pemberton	**Tribunal**
Counsel for the Appellant(s)	Khushpal Taunk Barrister and Solicitor	**Conseil(s) de l'appelant(e) / des appelant(e)(s)**
Designated Representative(s)	N/A	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	Laura Merriam	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (the "IAD") in an appeal by Rajinder Singh SANGHA (the "appellant"), from the refusal of the sponsored application for a permanent resident visa for his spouse, Sandeep Kaur SANGHA (the "applicant"), a citizen of India.

BACKGROUND

[2] The refusal was pursuant to subsection 4(1) of *the Immigration and Refugee Protection Regulations* (the "*Regulations*").[1] The visa officer found that the marriage between the appellant and the applicant is not genuine and was entered into primarily for the purpose of the applicant acquiring status under the *Immigration and Refugee Protection Act* (the "*Act*").[2]

[3] The appellant is a 46-year-old Canadian citizen. He became a permanent resident in 1993. The applicant is a 28-year-old citizen of India. Theirs is an arranged marriage, the appellant's second and the applicant's first.

[4] The appellant, applicant and Kulvinder SANGHA ("Kulvinder"), the appellant's elder brother, testified. The appellant provided documentary evidence.[3] I have considered the witness testimony, the documentary evidence, and the parties' submissions.

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[1] *Immigration and Refugee Protection Regulations*, SOR/2010–208, s. 1.
[2] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[3] Exhibit A-1 to A-3.

ISSUES

[5] The issue in this appeal is whether subsection 4(1) of the *Regulations*[4] applies, thereby excluding the applicant as a member of the family class. The two tests set out in subsection 4(1) of the *Regulations* are that the marriage:

a) was entered into primarily for the purpose of acquiring any status or privilege under the *Act*; or,
b) is not genuine.

Only one test needs to be met to disqualify a spouse. The onus of proof is on the appellant to show, on a balance of probabilities, that the applicant is not disqualified as a spouse.

DECISION

[6] Based on the evidence before me, I find that the appellant has met the onus on him of establishing on a balance of probabilities that the marriage is genuine and was not entered into primarily for the purpose of acquiring a status or privilege under the *Act*. I therefore find that the applicant is not excluded as a member of the family class. The appeal is allowed.

ANALYSIS

[7] There is little concern surrounding the appellant's reasons for entering into the marriage. The concerns relate primarily to the reasons the applicant entered into the marriage. The appellant suffers a mental health condition as a result of which he has been unable to work for several years. The applicant is 18 years younger than the appellant, better educated and never previously married.

[4] *Immigration and Refugee Protection Regulations*, SOR/2010–208, s. 1.

[8] Differences in age, marital history and education often exist in marriages. They are incompatibilities but are generally easily explainable and are rarely, on their own, determinative of the genuineness of a marriage. In this case it is the cumulative effect, especially when coupled with the appellant's mental illness that creates cause for concern.

[9] The appellant's first marriage broke down in approximately 2007. He and Kulvinder testified that as a result of the marriage failing the appellant suffered severe depression. His physical health declined, he lost his job and could not care for himself. He moved in with Kulvinder and his family. The appellant provided letters from the appellant's psychiatrist confirming his condition.[5] (The doctor did not describe the condition as "depression". He used a different medical term. The fact that lay people use a different term than a medical professional uses is immaterial.)

[10] According to the appellant's doctor, the appellant has been gradually improving over the years. His condition is controlled by medication. The doctor stated that he has observed that the appellant's condition improved after his marriage to the applicant. That observation is consistent with Kulvinder's testimony.

[11] The appellant testified that he began to consider re-marriage on his doctor's suggestion. He discussed the idea with his family. In January 2015 the appellant, his mother and Kulvinder went to India for the purpose of finding the appellant a wife. They notified family and neighbours of their intent to find a match. A few other potential matches were suggested. The appellant testified that those matches were rejected because the women were too young.

[12] In April 2015 the applicant was suggested as a match. The families met on April 19, 2015. The marriage was agreed to by the applicant's family the next day. The marriage took place on May 3, 2015. The application form reports that no reception was held after the

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[5] Record, p. 58, Exhibit A-1, p. 638.

marriage.[6] That would be contrary to the cultural norms and may be indicative that the marriage is not genuine. The witnesses testified that there was a reception. Photos and documentary evidence of the reception were provided. I find that the statement there was no reception was a mistake. The inconsistency is not material.

[13] There is evidence of the genuineness of the marriage. Since the marriage the appellant has returned to India three times for a total of approximately 11 months. On one visit he and the applicant went to Thailand for a week to celebrate the applicant's birthday. There is evidence of ongoing communication. The appellant testified that he and the applicant speak three or four times per day. He also speaks to her parents and siblings and she speaks to his parents, and his brothers and their wives. The appellant's family owns farmland near the applicant's village. Since the marriage, the applicant and her brother have taken over operation of the farm on behalf of the appellant's family. The net income is used to support the applicant. The couple have sought medical treatment to determine why they have been unable to conceive. The appellant and applicant demonstrated knowledge of each other consistent with a long-distance relationship.

[14] One issue is the appellant's future ability to support the applicant. (This of course assumes that the stereotype that a man should support a woman is valid.) The witnesses testified that the appellant's condition has been improving. Once the applicant is in Canada the appellant's health will improve further and he will return to work. That downplays the challenges people with mental illness face. No single event is going to bring about full recovery. The appellant himself provided the most reasonable explanation. He testified that if he cannot work to support his wife, then his family will take care of her, an outcome consistent with living in a joint family situation. She also intends to upgrade her education and work to help support the family. The applicant testified that if the appellant cannot work, she will care for him. The witnesses may be overly optimistic, but I find that does not detract from the overall proof of genuineness.

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[6] Record, p. 77.

[15] The appellant provided evidence of enrolment in a training course as proof that he may soon be able to return to work. He failed to attend the course. Inconsistent explanations were provided for that failure. The applicant showed little knowledge of the course. I find her lack of knowledge and the inconsistent explanations indicative that the appellant enrolled in the course primarily to bolster his case. I give the course little weight.

[16] Based on the above evidence I find that, whatever incompatibilities exist, the marriage is genuine. That does not account for why the applicant and her family made the decision to enter into the marriage.

[17] The Minister of Citizenship and Immigration submitted that given the incompatibilities and the challenges of the appellant's medical condition, the most reasonable explanation is that the appellant's status in Canada was the overriding factor.

[18] The appellant testified that the appellant's family was good, and they did not demand a dowry. She testified that she is personally opposed to dowry demands, and her family could not afford to pay a dowry. She reasonably testified that the age difference was not an issue because her own parents have a similar age difference. She liked the appellant when they first met, and the background enquiries her family did were good. She testified that she was aware of the appellant's health condition but that it could be treated.

[19] The appellant's status in Canada was not mentioned as a reason for marriage. It defies credibility that the appellant's status was not one of the considerations. The question is whether it was one of many pros and cons, or whether the marriage was entered into primarily so the applicant could gain status in Canada.

[20] Evidence of genuineness can be indirect evidence of a person's purpose for entering into a marriage, and vice versa. In this case I find the significant evidence of genuineness weighs in

the appellant's favour when considering primary purpose. Appellant's counsel submitted that this is a marriage between families, consistent with the couple's culture. Little evidence about cultural attributes was led. However, the facts demonstrate that in this case, regardless of culture, it is a marriage between families. The two families have established close relations. The appellant's family has entrusted their family farm to the applicant. The applicant will live, at least initially, in Kulvinder's home with the rest of the family and, if necessary, be supported by them.

[21] Taking into account all the circumstances I find that the appellant's status was a factor in the applicant's family's decision. It was a positive when the family weighed the pros and cons. It no doubt helped overcome the perceived negatives. However, I find that it was only one factor of several. The marriage was not entered into primarily for the purpose of the applicant acquiring status.

CONCLUSION

[22] I find that the appellant has met the onus on him of establishing on a balance of probabilities that the marriage is genuine and was not entered into primarily for the purpose of acquiring a status or privilege under the *Act*. I therefore find that the applicant is not excluded as a member of the family class. The appeal is allowed.

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NOTICE OF DECISION

The appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and an immigration officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

(signed) **"George Pemberton"**

George Pemberton

May 1, 2018

Date

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.