IMMIGRATION AND REFUGEE BOARD
(IMMIGRATION APPEAL DIVISION)

COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION D'APPEL DE L'IMMIGRATION)

IAD File No./Dossier : TA0-12843

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s) / **Appelant(s)**

HARJINDER SINGH DHUGGA

Respondent / **Intimé**

The Minister of Citizenship and Immigration
Le Ministre de la Citoyenneté et de l'Immigration

Date(s) and Place of Hearing / **Date(s) et Lieu de l'audience**

August 23, 2002
Toronto, Ontario

Date of Decision / **Date de la Décision**

March 5, 2003

Panel / **Tribunal**

Egya Sangmuah

Appellant's Counsel / **Conseil de l'appelant(s)**

Harinder S. Gahir
Barrister and Solicitor

Minister's Counsel / **Conseil de l'intimé**

Dale Munro

Reasons for Decision

[1] The appellant, Harjinder Singh DHUGGA, appeals from a refusal to approve the sponsored application for landing of his wife, Parvinder Kaur Dhugga (the applicant). The application was refused because the visa officer held that the applicant entered into the marriage primarily for the purpose of immigrating to Canada as a member of the family class and not with the intention of living permanently with the appellant.[1]

[2] The visa officer had a number of concerns. The officer was of the view that contrary to the norm in arranged marriages the appellant and the applicant are incompatible in age and marital status. The appellant is twice divorced and is sixteen years older than the applicant. In contrast, the applicant is a young never-married female. The officer noted that although he applicant claimed that about 500 persons attended her wedding, the evidence was consistent with a much smaller gathering. Other concerns of the officer were that the applicant did not have any photographs to show that they spent time together after the marriage and that the applicant did not have significant knowledge of the appellant's circumstances, particularly the details of his previous marriages and divorces.[2]

[3] Section 4(3) of the Immigration Regulations, 1978 (the Regulations) stipulates a two-prong test. Both prongs must be met before an application can be refused under the provision. For the appeal to succeed, the appellant can either establish that the principal applicant did not enter into the marriage primarily for the purpose of gaining admission to Canada or that the principal applicant intends to reside permanently with the appellant.[3] It is established law that under section 4(3) of the Regulations the intention of the applicant is paramount[4] and that the relevant period is the time the applicant entered into the marriage.

[4] The panel finds that the appellant has discharged the onus on him to establish that the visa officer erred in law in refusing the application.

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[1] Record, pp. 16-18.
[2] Ibid., p. 17-18.
[3] Horbas v. Canada (Minister of Employment and Immigration), [1985] 2 F.C. 359 (T.D.), at 369.
[4] S.G.C. v. Bisla, Satvinder (F.C.T.D., no IMM-5690-93), Denault, November 28, 1994.

[5] The visa officer was rightly concerned about the immigration history of the appellant, given that it was apparent on the face of the documents available that his previous marriages may not have been genuine. This concern was reflected in the CAIPS notes and not the refusal letter. On appeal the Ministers Counsel focused on the appellant's previous marriages to discredit the appellant and cast doubt on the intentions of the applicant. However, under section 4(3) of the Regulations it is the intentions of the applicant that are paramount. Thus, one must be careful not to visit the previous sins of the appellant on the applicant for no good reason.

[6] The appellant was sponsored as a fiancé by Paramjit Kaur Mann and was landed in January 1990. He married Ms. Mann within 90 days as required by the terms of his landing, but the marriage was dissolved in 1991.[5] The appellant then married Amritpal Kaur and sponsored her for permanent residence in Canada. That marriage was dissolved in 1999.[6] On the evidence before the panel, they separated in early 1997. The appellant's first marriage bore the hallmarks of a marriage of convenience. It was quickly dissolved and the appellant remarried someone else soon after. The second marriage on the other hand appears to have been a genuine attempt at marriage on the part of the appellant, but the marriage did not work out because his spouse was interested in another man or other men. From previous proceedings before the Board,[7] we know that she was living in common-law relationship with another man from December 1997. What at first blush is puzzling is that at the time the appellant married the applicant the former owned a house with his first wife, Ms. Mann,[8] whom he was supposed to have divorced in 1991, and that at different times the appellant has used that residential address, 36 Mallard Crescent, Brampton, as his residential address.[9] Counsel for the Minister argued that this shows that the applicant could not have entered into a genuine marriage if she agreed to marry someone living with his ex-wife. The appellant explained that he and his ex-wife remain good friends. She is now married with two children. The appellant testified that he co-signed a mortgage with her to help her meet the financial requirements for the mortgage. He simply used that address sometimes because he is a truck driver and wants to ensure that he gets his mail while travelling. The panel finds this explanation satisfactory. The appellant is on good terms with Ms. Mann because she

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[5] Record, p. 20; Exhibit R-1, p. 1.
[6] Ibid., p. 20.
[7] Dhugga v. Canada (Minister of Citizenship and Immigration), [1998] I.A.D.D. No. 724.
[8] Exhibit R-1.

helped him to gain admission to Canada and he was amenable to helping her when she needed a co-signer for the mortgage. The appellant's relationship with Ms. Mann after their divorce is consistent with his having entered into a marriage of convenience with her in the past.

[7] What does all this mean with respect to the applicant's intentions? Not much. On the evidence before the panel the refusal is not valid in law. There is ample evidence on the record to conclude that the primary purpose of the marriage, as far as applicant is concerned, is to immigrate to Canada. She ignored the incompatibilities noted by the visa officer because part of the bargain in entering into the marriage was the prospect of immigrating to Canada. Furthermore, she would be a pioneer with respect to her family's immigration to Canada given that she could later sponsor her parents and her two siblings, who are of sponsorable age. Thus the first prong of the Horbas test has been met.

[8] Nonetheless, section 4(3) of the Regulations is not applicable if the applicant intended to reside permanently with the appellant. The panel finds on a balance of probabilities that although the applicant entered into the marriage primarily for the purpose of immigrating to Canada as a member of the family class, she intended to live permanently with the appellant as his spouse.

[9] The strongest point in favour of the applicant is that the she has given birth to a daughter, Ashlie, fathered by the appellant. Ashlie does resemble the appellant[10] and after the hearing the appellant submitted DNA test results that confirm his paternity.[11] Having a child with the appellant is certainly not a convenient way to gain admission to Canada, as it does not make for a clean break after the divorce. Given the negative impact having a child would have on the applicant's future marriage prospect she would not have a child with the appellant if she did not intend to live permanently with him.

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[9] Record, pp. 4, 24.
[10] Exhibit A-5.
[11] Exhibit A-6.

[10] A review of the applicant's interview[12] also shows that she did know significant details about the appellant. Granted that she did not know details about the appellant's first wife, but that was not a relationship of substance. There was little to know about the first marriage. The applicant knew some details about the appellant's second marriage, which does not appear to be one of convenience. She also knew details about the appellant's family and his work schedule as a truck driver.

[11] For these reasons, the panel finds, on a balance of probabilities, that the although the applicant entered into the marriage primarily for the purpose of gaining admission to Canada as a member of the family class, she always had the intention of residing permanently with the appellant as his spouse. The applicant is therefore a member of the family class.

[12] Accordingly, the appeal is allowed.

NOTICE OF DECISION

The Immigration Appeal Division orders that the appeal be allowed because the refusal to approve the application for landing made by:

Parvinder Kaur Dhugga

is not in accordance with the law.

"Egya Sangmuah"
Egya Sangmuah

March 5, 2003
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 a lawyer as soon as possible, since there are time limits for this application.

[12] Record, pp. 20-23.