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./Dossie: TA4-06701

Reasons and Decision – Motifs et décision

Sponsorship

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

AMARJIT SINGH NARWAL

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**

February 13, 2006
June 28, 2006
Toronto, Ontario

Date of Decision **Date de la Décision**

July 21, 2006

Panel **Tribunal**

Hazelyn Ross

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

Harinder Gahir

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

Ned Djordjevic
Barrister and Solicitor

Reasons for Decision

[1] The appellant, Amarjit Singh NARWAL, appeals the decision of a visa officer to refuse the sponsored application for a permanent resident visa to Canada made by his spouse, Amrit Pal KAUR, ("the applicant"). The visa officer interviewed the applicant in New Delhi on the 9th February 2004. Upon concluding the interview, the visa officer determined that the marriage between the appellant and the applicant was not genuine. The visa officer, therefore, found she was not a "spouse" for the purposes of Canadian immigration law.

Background

[2] The appellant is 40 years old. He was born in India and came to Canada in 1997, where he made a successful claim for refugee protection. He was granted landed immigrant status on in March 2001. The applicant is a 34-year-old citizen of India. On the 22nd January 2000, she entered Canada as a visitor. On the 30th May 2000 she made a claim for refugee protection. Unlike the appellant, her claim was not successful. The claim was refused in June 2001. Shortly thereafter, on the 3rd November 2001, the applicant married the appellant. She made an inland claim for permanent residence, which was refused. The pre-Removal Risk Assessment was also negative and the applicant was forced to return to India pursuant to the departure order issued against her on the 8th June 2000. The applicant is now the mother of a son, Uday Karan Singh, born the 24th September 2005. The overriding questions at this appeal are whether this marriage is genuine or whether it was entered into for an immigration purpose.

Legal Basis for the Refusal

[3] The legal basis for the refusal to issue the permanent resident visa is Section 4 of the *Immigration and Refugee Protection Regulations*, (*"the Regulations"),* which reads 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 or was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[4] A finding that the marriage is not genuine or that it was entered into primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act* ("the *IRPA*") automatically results in the applicant being excluded for consideration in the family class as defined by Section 12(1) of the *IRPA.* Section 12(1) states:

> **12.(1) Family reunification –** A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

[5] In considering the first prong of the test contained in Section 4 of the *Regulations*, i.e. whether a marriage is genuine and whether the "bad faith" provision applies to it, decision makers in the Immigration Appeal Division ("the IAD") routinely examine a number of factors. These factors are set out succinctly in the 2005 decision of Member Hoare in *Chavez.*[1] In any given decision, any combination or all of these factors may be considered in determining the genuineness of a marriage.[2]

The Concerns that Led t o the Refusal

[6] The visa officer's reasons for refusal are set out in detail in the Refusal Letter.[3] The visa officer had concerns about the *bona fides* of the marriage arising from the applicant's failure to

[1] *Chavez, Rodrigo v. M.C.I.* (IAD TA3-24409), Hoare, February 11, 2005, where the Member identifies the following non-exhaustive list of factors:

- the intent of the parties to the marriage;
- the length of the relationship;
- the amount of time the spouses spent together both before and after the wedding;
- the conduct of the parties at the time of meeting, engagement and/or the wedding;
- behaviour subsequent to the wedding;
- knowledge of each other's relationship histories;
- levels of continuing contact and communication;
- provision of financial support;
- knowledge of and sharing of responsibility for the care of children brought into the marriage;
- knowledge of and contact with extended families of the parties; and
- knowledge about each other's daily lives.

[2] Ibid.

[3] Record, pp.3-5, Refusal Letter.

provide an explanation for why she married the appellant when she was not certain that she would be allowed to remain in Canada, given that she had overstayed her visitor's visa. The visa officer was also concerned by the applicant's inability to properly explain when the circumstances under which the appellant came to Canada as well as by her lack of an explanation for why her parents did not attend the wedding.

[7] Also, the visa officer did not find the applicant credible and trustworthy. He described her as evasive and noted that during the interview questions had to be repeated to the applicant, who provided contradictory responses to several important questions. As a result of these concerns, and the applicant's previous misrepresentations to Canadian Immigration authorities the visa officer concluded that the applicant had a strong motivation to live in Canada and had entered the marriage for the purpose of gaining entry into Canada.

[8] At the *de novo* hearing, the appellant bears the burden of proving, on a balance of probabilities, that the marriage is genuine or that it was not entered into primarily to allow a party to acquire status or privilege under the *IRPA*. The panel heard testimony from both the appellant and the applicant, who provided her evidence by means of a telephone conference call. Documentary evidence was also disclosed.[4] At the end of the hearing, the Respondent's counsel submitted that while there were some positive factors in favour of a finding that the marriage is a genuine marriage, there were many negative factors weighing against such a conclusion.

Analysis

Summary and Assessment of the Evidence

[9] The appellant contends that the marriage is genuine and was not entered into primarily for an immigration purpose. The Respondent takes the opposite position. Both the appellant and the applicant provided extensive testimony about the genesis of and development of their relationship, the circumstances of their first marriage, divorce and remarriage as well as their current relationship.

[4] Exhibits A-1 through A-6.

[10] For the following reasons and having considered the evidence and submissions of the parties, the panel finds that she is not persuaded, on a balance of probabilities, that the marriage is genuine or not primarily entered into for an immigration purpose.

[11] As stated earlier, the crux of the appeal is the genuineness of or the purpose of the marriage. The panel recognises that there are a number of factors that go to support that this is a genuine marriage. These are primarily that the applicant has given birth to a son and that the results of the DNA test place the probability that the appellant has fathered the child at 99.99%.[5]

[12] Panels of the IAD have taken the position that the birth of child is a strong indicator that the marriage is genuine. However, in the instant case, the assessment is complicated by the many negative factors raised by the applicant's untruthfulness, misrepresentations and stratagems.

[13] The evidence shows, and the applicant admitted, that she perpetrated a sophisticated fraud upon Canadian immigration authorities in order to obtain a Canadian Visitor Visa to enter Canada in January 2000. Not only did the appellant misrepresent her background and marital status, she presented an official document that turned out to be false.[6] The document in question was a Record of Landing for a non-existent sister in Canada. In addition, she submitted a false affidavit to support her application.

[14] Having started her association with Canada through lies, the applicant continued in this vein, making a refugee claim that was found to be without foundation. To facilitate the claim she provided the Immigration and Refugee Board with false information concerning her residence. The panel agrees with the Respondent's counsel that the applicant's actions demonstrate that she was highly motivated to stay in Canada.

[15] Thus the timing of the applicant's marriage coming so soon after her claim for refugee protection was rejected raises valid concerns as to its primary purpose. While the applicant and

[5] Exhibit A-6.

[6] Record, pp.27-28, CAIPS notes.

the appellant maintain that the primary purpose of their marriage was not to facilitate the applicant's immigration to Canada, the panel is not satisfied that it was not. The applicant continued with the refugee process after she married the appellant. He testified that he told her she should not have made a refugee claim, but as the Respondent's counsel noted, the appellant persisted with an attempt to seek a judicial review of the decision. The appellant and the applicant were married in Canada in November 2001, about four months after her application for refugee protection was denied. They made an inland claim to sponsor the applicant shortly thereafter, but as stated earlier, the claim was denied. Furthermore, the applicant's statement that she had to get married and her non-response when asked to clarify her statement raise further concern that the marriage was arranged as a response to the negative refugee claim decision.

[16] What the panel found to be the most disturbing about the applicant's actions was her propensity to excuse her actions as being the brainchildren of third parties. Thus the fraud on the Canadian High Commission was the work of the agent. The unfounded refugee claim was the result of a paralegal's advice. Coming from a person with the applicant's particular profile as a woman whose parents encouraged her to study, rather than marry her off and as a university educated woman, the panel does not accept that she would blindly follow the instructions of third parties in the manner she attempted to portray. The panel finds, on a balance of probabilities, the applicant willingly participated in the frauds perpetrated on Canadian authorities.

[17] Furthermore, the applicant continued to provide testimony that was not straightforward even as she professed remorse at her actions. When she was asked who she came to Canada to see, she was evasive. It took several questions before she responded that she had come to see her cousin Lakvinder Singh. The panel found the applicant's evasiveness to a question that merited a straightforward answer to be indicative of her general want of credibility.

[18] This was compounded by her equivocations concerning her stay in Montreal. The applicant made her refugee claim in Montreal. In her application for a permanent resident visa she states she lived in Montreal from the time of her arrival until February 2001.[7] When she was asked about her sojourn in Montreal, the applicant disclaimed knowledge of the person in whose

[7] Record, p.14, Question 11.

house she stayed although she claims to have spent as much as 60 days in his home. Nor was she forthcoming in her responses and explanations, rather she was alternatively evasive, defensive and defiant. Further, the applicant, once more disclaimed responsibility for the content of something she relied on in her attempt to remain in Canada when she claimed that Manjinder Singh and the paralegal that filled out her refugee application were responsible for the discrepancies in that application. The panel finds that the applicant's untruthfulness and willingness to deceive Canadian immigration authorities weighs negatively against the assessment of the genuineness and purpose of her marriage. The panel infers from the applicant's demeanour and responses that it was Manjinder Singh she came to see and that it was in his home and not her cousin's home in Brampton that she stayed during her first year in Canada.

[19] The panel has reviewed the documents in support of the appellant's claim that this is a genuine marriage.[8] While the panel continues to have grave reservations about the primary purpose of this marriage, in light of the high degree of probability that the appellant is the father of the applicant's child and the Respondent's position acknowledging that allowing the appeal was not an unrealistic outcome, in all the circumstances of the case, the panel has decided to give the appellant and the applicant the benefit of the doubt. The panel acknowledges that by doing so, it is permitting the applicant to benefit from her dishonesty. However, it does not wish to punish the appellant because of it.

[20] For these reasons, the panel would allow the appeal.

[8] Exhibit A-1 through A-6.

NOTICE OF DECISION

The appeal is <u>allowed</u>. 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.

"Hazelyn Ross"
Hazelyn Ross

July 21, 2006
Date