IMMIGRATION AND REFUGEE BOARD
(IMMIGRATION APPEAL DIVISION)

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

2006 CanLII 78091 (CA IRB)

IAD File No./Dossier : TA4-17366

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	**SUKHJINDER KAUR MAHAL**	**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	**July 7, 2006** **Toronto, Ontario**	**Date(s) et Lieu de l'audience**
Date of Decision	**July 7, 2006**	**Date de la Décision**
Panel	**Lawrence L. Band**	**Tribunal**
Appellant's Counsel	**Harinder S. Gahir** **Barrister and Solicitor**	**Conseil de l'appelant(s)**
Minister's Counsel	**Karen Rine**	**Conseil de l'intimé**

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Oral Reasons for Decision

[1] These are the reasons for the decision of the Immigration Appeal Division pertaining to the appeal pursuant to section 63(1) of the Immigration and Refugee Protection Act (IRPA) of Sukhjinder Kaur MAHAL, the appellant, whose sponsored application of her spouse, Lakhwinder Singh Gill, the applicant, was refused primarily on the basis that the applicant is not a member of the family class.

[2] The reasons for the visa officer's refusal of the sponsorship application was that the visa officer was satisfied that the marriage between the appellant and the applicant was not a genuine marriage, and that the marriage was entered in to primarily for the purposes of acquiring any status or privilege under the Act, all within the meaning of section 4 of the Immigration and Refugee Protection Regulations (the IRP Regulations).

[3] As such, the visa officer concluded that the applicant was not a member of the family class whose application as the sponsor's spouse may be sponsored pursuant to section 117(1)(a) of the IRP Regulations, and section 11(1) of IRPA.

[4] Section 4 of IRPA regulations sets out two elements or prongs to be taken in to account in determining whether in the case of a marriage an applicant shall be considered a spouse: firstly, if the marriage is not genuine; and secondly, if the marriage was entered in to primarily for the purposes of acquiring any status or privilege.

[5] Accordingly, the test set out in section 4 if the IRP Regulations is a two pronged test where the foreign national shall not be considered a spouse if the marriage is not genuine, and if it was entered in to primarily for purposes of acquiring any status or privilege under IRPA.

[6] Appeals from the Immigration Appeal Division (IAD) are hearings *de novo*. The onus is on the appellant to provide credible or trustworthy evidence to this panel showing that the designated visa officer's decision was in error.

[7] After hearing all of the evidence and observing the demeanour of the appellant and giving appropriate weight to her evidence, and after hearing the evidence given by the applicant; and considering the consent of the Minister relevant to allowing the appeal in question, the panel concluded that the appeal be allowed.

[8] Although there were some minor contradictions internally in the evidence of the appellant, and of the applicant, and externally between the two, those differences were not such as would cause the panel to be concerned about the veracity of the evidence. The panel found both witnesses to be credible witnesses. Further, the panel found that the visa officer's concerns as expressed in the refusal letter were answered appropriately by credible and trustworthy evidence.

[9] The panel noticed in the CAIPS notes that there were areas that the applicant could not answer in respect to relevant aspects of their marriage, and to the relationship between the appellant and the applicant. On reviewing the questions to which the applicant was unable to provide relevant answers, it is clear that of the 30 odd questions asked only a relatively few of them were answered, "I don't know". Several of those questions that were answered in that fashion were not the type of questions that one would consider as being a lack of knowledge which goes to the genuineness of the marriage.

[10] The panel therefore did not consider that the visa officer's concerns about the alleged lack of knowledge by the applicant and the appellant ought to have been a factor in the circumstance supporting a conclusion that the marriage was not genuine.

[11] The visa officer indicated that according to the pictures he saw, he did not believe that there were 450 guests. The evidence today indicated that if there were not 450 guests at the wedding, the number of the guests at the wedding shown in the photos would pretty closely approximate that number. The appellant was able to identify people in other pictures than those before the visa officer who were relatives that appeared in the pictures of the large gathering of guests.

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[12] The wedding was clearly, (by reason of the number of people present, and by reason of the fact that the Mayor of the city was present) an open and public wedding.

[13] As to the age difference and customs of the appellant and the applicant, the age difference was slight (about a year). It was something that the appellant testified to as not being very important. In fact, neither the applicant nor the appellant considered it important.

[14] As to the youngest son marrying a person older and a divorcee, not being an acceptable or a customary occurrence, there was some expert evidence to support that. That evidence, however, fell short of evidence that would indicate that this currently remains the custom of Sikhs or people from the Punjab who live in Canada. Times have changed, divorce is more common, and although the customs are generally practiced, there is no evidence that they are practiced by all in the Sikh community. Indeed, the expert evidence in this regard uses the word, "generally", to describe the practices relevant to many of the customs that were said to be in place. In other words, the customs may not be universally followed. The panel would be surprised if in fact they were. We are dealing here with specific people and not with statistics. We are dealing here with people from different social backgrounds in the sense that one person, the appellant, lives in a western society, and the other does not. That of course has to be taken into account in determining whether today the concerns expressed by the visa officer's are applicable in the circumstances of this case.

[15] In considering the evidence in its totality, the panel is satisfied that this is a genuine marriage, and that it was not entered into primarily for the purposes of acquiring any status or privilege under IRPA or the IRP Regulations.

[16] Accordingly, the appeal is allowed.

(Edited for grammar and syntax)

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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 the officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

"Lawrence L. Band"
Lawrence L. Band

August 15, 2006
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	Contrôle judiciaire – Aux termes de l'article 72 de la Loi sur l'immigration et la protection des réfugiés, vous pouvez, avec l'autorisation de la Cour fédérale, présenter une demande de contrôle judiciaire de la décision rendue. Veuillez consulter un conseil sans tarder car cette demande doit être faite dans un délai précis.