



IAD File No. / N° de dossier de la SAI: TA7-00614
Client ID No. / N° ID client: 5436-3046

2009 CanLII 80054 (CA IRB)

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	DALJIT KAUR KULAR	Appelant(e)(s)
Respondent	The Minister of Citizenship and Immigration Le ministre de la Citoyenneté et de l'Immigration	Intimé(e)
Date(s) and Place of Hearing	February 16, 2009 Toronto, Ontario	Date(s) et lieu de l'audience
Date of Decision	March 2, 2009	Date de la décision
Panel	Donald V. Macdougall	Tribunal
Counsel for the Appellant(s)	Harinder S. Gahir Barrister and Solicitor	Conseil(s) de l'appelant(e) / des appelant(e)(s)
Counsel for the Minister	Pat Bono	Conseil du ministre

Reasons for Decision

Introduction and Issue

[1] This is an appeal pursuant to section 63(1) of the *Immigration and Refugee Protection Act*¹ (*IRPA*) by a Canadian permanent resident from a decision of the immigration officer not to issue a permanent resident visa to her applicant husband on the basis that the marriage is not genuine.

[2] The issue is whether the appellant has proven that the applicant is her spouse, and therefore a member of the family class, pursuant to *Immigration and Refugee Protection Regulations*² (*IRPR*) sections 117(1)(a) and 4.

Decision

[3] Having considered the evidence and submissions, the panel finds that the appellant has proven on a balance of probabilities that the marriage is genuine. The appeal is allowed pursuant to section 66(a) of *IRPA*.

Background

[4] The appellant is 25 years old, was born in India, first came to Canada in May 2005, and is a permanent resident. She has no children, but is pregnant with an expected delivery date of April 1, 2009. She works in a warehouse.

[5] The 23-year-old applicant is a citizen of India, where he lives. He has not been previously married, has no children and farms with his father.

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

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

[6] In January 2006, the appellant and applicant married in India. In November 2006 the immigration officer refused the permanent residence visa, deciding that the applicant was excluded from being considered a spouse under *IRPA*, and the appellant appealed that decision.

[7] At the hearing of this appeal the appellant testified and filed three exhibits of documentary evidence. The Minister filed one exhibit consisting of the record.

Analysis

[8] A Canadian may sponsor the application of a foreign national member of the family class; a spouse is a member of the family class.³ However, if the marriage was entered into in bad faith, *IRPR* section 4 excludes that spouse from the family class:

Bad faith

4. For the purposes of these Regulations, a foreign national shall not 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 and was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[9] In considering whether the marriage is genuine for the purposes of *IRPR*, the panel examined a number of factors⁴ and took into account additional evidence that was not before the immigration officer.⁵

[10] The panel is cognisant of the immigration objectives, especially “to see that families are reunited in Canada.”⁶

[11] The appellant bears the burden of proof. To allow this appeal, the panel must be satisfied on a balance of probabilities that the marriage is genuine or that it was not entered into primarily for the purpose of acquiring any status or privilege under *IRPA*. To dismiss this appeal, the

³ *IRPR* ss 130(1), 117(1)(a).

⁴ *Khera v. M.C.I.*, 2007 FC 632 (FC) and *Chavez v. M.C.I.* (2005), IAD TA3-24409 (IAD).

⁵ *Kahlon v. M.E.I.* (1989), 7 Imm. L.R. (2d) 91 (F.C.A.).

⁶ *IRPA*, section 3(1)(d).

panel must be satisfied both that the marriage is not genuine and that it was entered into primarily for the purpose of acquiring a status or privilege under *IRPA*.

[12] The appellant submitted that the totality of the evidence, especially the pre-interview immigration officer's notes and the appellant's pregnancy, demonstrates that the marriage is genuine. Her counsel argued that the concerns of the immigration officer were adequately explained by the testimony and documentation.

[13] The Minister's counsel submitted that the lack of knowledge about each other that was identified by the immigration officer still had not been satisfied by the evidence.

[14] The immigration officer who screened the application reviewed all the evidence and decided that the appellant and applicant were "compatible in all respects" and concluded "CONCERNS: None. CONCLUSION: Interview waived."⁷ After that conclusion was reached, a "poison pen" letter was received containing allegations about the marriage of the appellant's sister.⁸ Although that letter is not mentioned directly in the Minister's exhibit, the panel concludes, especially based on the dates involved, that it caused a re-determination to interview the applicant of this application.⁹ That interview resulted in a number of concerns enumerated by the immigration officer.¹⁰ However, a field investigation later determined that the allegations in the "poison pen" letter were unfounded.¹¹ The panel considers that the immigration officer had reasonable concerns and suspicions after the applicant's interview. However, the evidence during the hearing provided reasonable explanations for those concerns.

[15] The panel had the benefit of hearing and seeing the appellant when she gave her evidence. She testified in a straight-forward and direct manner with few if any contradictions and inconsistencies. The inconsistencies or contradictions that did surface were insignificant and

⁷ Exhibit R1, page 18.

⁸ Exhibit A3.

⁹ Exhibit R1, page 19.

¹⁰ Exhibit R1, page 5-6, 21.

¹¹ Exhibit A3.

did not concern the core issue sufficiently enough to impugn the genuineness of the marriage. The panel finds that the appellant was sincere and accepts her evidence as being credible, trustworthy and truthful.

[16] The only concern mentioned by the Minister's counsel in his submissions, a lack of knowledge about certain details of each other's lives at the immigration interview, is partly explained by the education, lack of sophistication and employment background of both the appellant and applicant.

[17] There is ample evidence demonstrating compatibility and a continued relationship after marriage.¹² That and the couple's child expected in April 2009 are strong factors in favour of the genuineness of the marriage.

[18] Having weighed the evidence and submissions, the panel finds that the appellant has proven on a balance of probabilities that the marriage is genuine or that it was not entered into primarily to acquire any status or privilege under *IRPA*. The appeal is allowed pursuant to section 66(a) of *IRPA*.

¹² Exhibits A1 and A2.

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.

“Donald V. Macdougall”

Donald V. Macdougall

March 2, 2009

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.