

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: TB4-10063
Client ID No. / N° ID client: 2351-7215

2018 CanLII 54751 (CA IRB)

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	KASHMIR KAUR NIJER (a.k.a. KASHMIR KAUR NIJER)	Appelant(e)(s)
and		et
Respondent	The Minister of Citizenship and Immigration Le ministre de la Citoyenneté et de l'Immigration	Intimé(e)
Date(s) of Hearing	December 20, 2017 September 8, 2017	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	April 16, 2018	Date de la décision
Panel	Maureen Kirkpatrick	Tribunal
Counsel for the Appellant(s)	Harinder S. Gahir Barrister & 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	Debbie Henry	Conseil du ministre

REASONS FOR DECISION

INTRODUCTION AND ISSUE

[1] The appellant, Kashmir Kaur Nijjer, appeals¹ an immigration officer's refusal of the sponsorship of her spouse, Tavinder Singh Grewal, the applicant.²

[2] The applicant applied for permanent residence and the appellant applied to sponsor the applicant as a spouse in August 2013.³ The appellant and applicant were married in India on July 25, 2012;⁴ a second marriage for the appellant, and a third marriage for the applicant.

[3] The appellant is a 50-year-old Canadian permanent resident, born in India.⁵ She landed in Canada as a permanent resident in September 1986, at the age of 19 years, having been sponsored to Canada, together with her father (now deceased), by her older brother.⁶ She married her first husband in India in November 1989, and sponsored him to Canada.⁷ They separated in October 2004, and divorced in July 2006, after nearly 17 years of marriage.⁸ Two children were borne of the appellant's first marriage: a daughter in 1992 and a son in 1996, both now adults.⁹ The appellant works as a cleaner.¹⁰

[4] The applicant is a 58-year-old Indian citizen, who has lived all of his life in India, with the exception of three years of employment in the United Arab Emirates (UAE) from 1982 to 1985.¹¹ The applicant's parents and his sister live in Canada. The applicant's sister submitted a

¹ Section 63(1), *Immigration and Refugee Protection Act (IRPA)*, SC 2001, c 27. See also Exhibit R-1, pp. 1-2 for the appellant's Notice of Appeal, signed and dated by the appellant in Brampton on October 16, 2014.

² Exhibit R-1, pp. 3-4 for the officer's refusal letter to the appellant, dated September 17, 2014; pp. 5-6 for the officer's refusal letter to the applicant, dated September 17, 2014; and pp. 20-28 for the officer's notes.

³ Exhibit R-1, pp. 7 and 19, noting the lock-in date of August 21, 2013.

⁴ Exhibit R-1, pp. 101-102 for the appellant/applicant's marriage certificate.

⁵ Exhibit R-1, pp. 20 and 22 for the appellant's immigration history in Canada; and pp. 39-49 and 56-58 for copies of her previous Indian passports, including her September 1986 entry to Canada at p. 47. See also Exhibit A-1, pp. 1-2; Exhibit A-2, pp. 1-4; Exhibit A-3, pp. 1-6 and Exhibit A-4, pp. 1-4 for her passport.

⁶ Exhibit R-1, pp. 20 and 22 for the appellant's immigration history in Canada; pp. 39-49 for copies of her previous Indian passports, including her September 1986 entry to Canada at p. 47; and note also p. 35 where the appellant declared that her mother died in 1968, and her father died on May 25, 2004.

⁷ Exhibit R-1, pp. 22 (sponsorship history and first husband's landing in Canada in 1991) and 71 (first marriage).

⁸ Exhibit R-1, pp. 71-77 for documents related to the appellant's divorce. Note that her ex-husband filed for divorce.

⁹ *Ibid.*

¹⁰ Exhibit R-1, pp. 21 where the immigration officer notes: "I spoke to employer on file who confirmed employment. Satisfied that sponsor lives in Canada;" and 35 where the appellant declared her employment history.

¹¹ Exhibit R-1, pp. 50-54, and 59-69 for his passport; and p. 18 for his declared work history in the UAE.

sponsorship application for the applicant and their parents; their parents successfully landed in Canada, but the applicant did not as he was removed from that application because he did not meet the definition of a dependent.¹² The applicant married his first wife in India in January 2002, and she submitted a sponsorship application for him in March 2002.¹³ His first wife withdrew her sponsorship in October 2002, and as a consequence, the application was refused in October 2002 without any further assessment or interview.¹⁴ Their divorce took effect in June 2003.¹⁵ The applicant testified that after their marriage in India in January 2002, his first wife returned to Canada in April 2002, withdrew the sponsorship, and filed for divorce, because she had a boyfriend in India whom she wished to marry and about whom she had not told her parents. She did later marry that boyfriend. The applicant married his second wife in India in October 2006. When his second wife returned to Canada after their marriage, she did not submit a sponsorship application for him. The applicant testified that his second wife – like him – had been previously married and divorced. She married him because she was angry at her previous husband and she came to India saying that she would get herself remarried. After the marriage, when she returned to Canada, her children helped her to reconcile with her former husband, so she did not sponsor the applicant. She filed for divorce from the applicant in about May 2010 and their divorce took effect in December 2010.¹⁶ The applicant works as a farmer.

[5] The issue in this appeal is whether the appellant has met the burden of demonstrating, on a balance of probabilities, that the marriage is genuine and was not entered into primarily to acquire any status or privilege under the *Immigration and Refugee Protection Act (IRPA)*.¹⁷

[6] In refusing the application, the immigration officer noted the following concerns:

- **CONCERNS:** The marriage is not in accordance with local customs and norms. Female sponsor is 45 years old and male applicant is 52. Both PA [principal applicant] and the sponsor are previous divorcees. This is the third

¹² Exhibit R-1, pp. 13, 22, 27, and 117.

¹³ Exhibit R-1, pp. 82, and 117.

¹⁴ Exhibit R-1, pp. 13, and 115-117, where at p. 117, officer's notes provide: "Sponsorship update recvd. Sponsor requested to withdraw the 1344. Printout taken, attached to file and fwdd to TM1 [07OCT2002]. File reviewed. Application refused for lack of sponsorship, refusal letter signed this day [08OCT2002]."

¹⁵ Exhibit R-1, pp. 78-90, and 98-100 for documents relating to the applicant's first divorce. Note that his first wife petitioned for the divorce in December 2002 and the divorce took effect in June 2003.

¹⁶ Exhibit R-1, pp. 91-97 for documents relating to the applicant's second divorce. Note that his second wife filed for the divorce in May 2010 and the divorce took effect in December 2010.

¹⁷ Section 4(1) of the *Immigration and Refugee Protection Regulations (IRPR)*.

marriage for the applicant, whereas second for female sponsor. Applicant was sponsored by his second spouse, however the sponsorship was later withdrawn and then refused in October 2002. To be noted that both the PA's ex-spouses were from Canada, and this suggests PA's strong prior inclination for going abroad. Also, to be noted that the cohabitation of the PA with both his ex-spouses was very short, therefore indicating non *bona fide* relationships. Sponsor has two children from her previous marriage. PA's parents and one sister are residing in Canada. His name was deleted from his parents' FC4 application. Couple got married within two weeks of their first meeting in person. The marriage appears to have been arranged in haste. The haste in marriage, especially in light of the incompatibilities of the couple, does not appear credible. Wedding photos, though depicting the ceremonies, fail to reflect an atmosphere of joy and festivity that one normally associates with a wedding. Both PA and sponsor appear stiff and expressionless in all of the photographs. Low attendance at *Andan-Karaj* and people appear casually dressed. Even bride and groom do not appear to be dressed for the occasion. It appears that after the marriage, there was no formal reception. PA and sponsor did not go for their honeymoon or any outing as is the general practice with newlyweds. Stated account of relationship does not appear very convincing.¹⁸

- **I advised PA of my concerns [at interview]:**

You were married twice before. Your first wife sponsored you but then withdrew the sponsorship. Your second wife did not sponsor you at all. The norm for women in your community is to marry only once. They would not leave their husbands and divorce except if there are some serious issues. As your first wife withdrew your sponsorship and the second did not sponsor you at all, it would appear that those two marriages were not genuine and were arranged in attempts to gain your admission to Canada.

You did not marry a woman in India and your explanation why you did not was not credible [parents of girls would come to see you, and would reject you because you do not have enough land]. In your community, it is considered important for men to marry and produce children. Parents of your community would, therefore, try and arrange their son's marriage with a younger woman who would be able to bear him children. It is not credible that parents of your community would arrange their son's marriage with a woman who is unlikely to bear children. I also note that your elder brother married a much younger woman. I conclude that you wanted to marry only a woman in Canada because you want to gain admission to Canada.

Although you suffered two bad marriages, you decided to marry sponsor even before you met her in person. Sponsor consented to the marriage the very day she met you in person for the first time. The haste in decision to marry is significant given that sponsor too had suffered a bad marriage before; her husband brought home a woman and lived with her in the same house as

¹⁸ Exhibit R-1, pp. 22-23.

sponsor, and she has two grown up children from her first marriage. It is normal to expect that a woman who had allegedly suffered such things could be expected to be cautious and take sufficient time to get to know any prospective marital partner well before agreeing to marry.

Marriages in your community are normally held at or near the bride's home. Your marriage, however, was held in your maternal uncle's wife's sister's village. It appears your marriage was not held in sponsor's village to avoid publicity because yours is not a genuine marriage. Sponsor's family members did not attend her wedding. This is not indicative of a genuine marriage.

At your interview, you lacked knowledge about your sponsor. You did not even know how long after your marriage she started working [he said 2012 or 2013 after she returned to Canada whereas as she said May 2013]. I am not satisfied that telephone bills and other items provided by you are conclusive evidence of communication between sponsor and you as a married couple. If you had been in regular contact as stated, you would have been more knowledgeable about sponsor. Sponsor too lacked knowledge about you. She did not know how much land you have [she said little land whereas he said two *killas*/roughly two acres]. She thinks your brother is a property dealer whereas you stated that he is a security guard for some contractors. She did not know how many rooms your house has [she said three big rooms whereas he said three-four rooms and then said four rooms]. This would not be the case in a genuine marriage.

My concerns about the genuineness of your marriage are heightened by the fact that I did not find you to be a credible individual. Your responses to my questions appeared contrived and made up throughout the interview. This is not your first attempt to gain admission to Canada. You were removed from your parents' family class application because you did not meet the definition of a "dependent." Your application for permanent residence in Canada was refused because your first wife withdrew the sponsorship she submitted for you. You then married another woman from Canada but she did not even submit a sponsorship for you. Marriage with sponsor appears to be another attempt to gain admission to Canada.

PA had nothing substantive to say to allay my concerns. I am not satisfied that this marriage is genuine and believe it was entered into merely to acquire permanent residence in Canada for PA. Application refused.¹⁹

DECISION

[7] Appeals before the Immigration Appeal Division (IAD) are hearings *de novo* and therefore are not limited to the information received by the immigration officer in processing the initial application. The evidence provided at the hearing resolved the bulk of the above-noted

¹⁹ Exhibit R-1, pp. 26-27.

concerns of the immigration officer. I find that the appellant has met her burden of proof, and, on the balance of probabilities, find that the marriage is genuine and was not entered into primarily for immigration purposes. The reasons below explain why the appeal is allowed.

ANALYSIS

Genuineness of the marriage

[8] In addition to assessing the credibility of the appellant and the applicant, the factors listed in *Chavez* guide an assessment of the genuineness of a marriage, and include:

- intent of the parties to the marriage;
- length of the relationship;
- amount of time spent together;
- conduct at the time of the meeting, engagement and/or the wedding;
- behavior subsequent to the wedding;
- knowledge of each other's relationship histories;
- level of continuing contact and communication;
- 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.²⁰

[9] The *Chavez* factors are not exhaustive and weight given to factors vary according to the circumstances of a case.

Previous marriages

[10] The appellant and the applicant both gave testimony. Both were unsophisticated²¹ yet credible witnesses. Throughout this hearing, the appellant, in particular, had obvious difficulties with dates, timeframes, and numerical estimates of any sort, and displayed very limited numerical literacy. To highlight one of many instances where the appellant's mathematics produced self-contradictory conclusions – although she provided her age, her date of birth, and

²⁰ *Chavez v. Canada (Minister of Citizenship and Immigration)*, IAD TA3-24409.

²¹ Exhibit R-1, p. 10 where the applicant declared six years of education in total, and p. 35 where the appellant declared eight years of education. The applicant testified that he studied up to Grade 6. The appellant testified that she had completed up to Grade 7 in India, and did not study further because she didn't know English or math very well so did not go back to school thereafter.

the date of her first marriage in her testimony – which dates are well-established by the documentary evidence and which are uncontested – she testified that she was 26 years old when she was first married, when, in fact, she was 22 years old. Many such erroneous – though innocent – calculations on the part of the appellant led to confusion in her testimony and, in particular, in her timelines. As her testimony progressed, it became apparent that the appellant’s mathematics was not reliable (i.e. when erroneous calculations were cross-referenced against documentary evidence and further questions were put to the appellant to test the veracity of her calculations). I note, however, that when the appellant testified to events in a chronological fashion and did not do calculations in her head, her testimony was clear and convincing.

[11] The appellant and the applicant each testified in a spontaneous fashion as to their family relationships, and the context in which their previous marriages had been arranged. They testified at length regarding their previous marital relationships, and provided credible explanations as to how and why those marriages failed. The appellant and the applicant also provided credible testimony as to how those past experiences and failed marriages informed their decision-making when each was presented with the other for the possibility of marriage.

Appellant’s first marriage

[12] The appellant testified that she was sponsored to Canada with her father by her elder brother. She was the only girl, with three elder brothers. One brother has died, leaving her with one elder brother in Canada, and one elder brother in India. The appellant’s mother died in India when the appellant was very young.

[13] The appellant testified that after arriving to Canada, she returned to India to marry her first husband. Their marriage was arranged by her first husband’s older sister. She met her first husband about ten days before they were married.

[14] The appellant testified that after their marriage, she sponsored her first husband to Canada. He had a Grade 8 education, and worked as a truck driver after he arrived to Canada. She and her husband lived in Brampton. She had a good relationship with his family. His parents came to Canada for a little while, but both of his parents passed away (his father in India and his mother in Canada) before their marriage broke down. His siblings live in England. Her brother

(who had sponsored her to Canada) lived in Oakville. She had a good relationship with her brother in Canada until her marriage broke down, at which point he started distancing himself from her and never called her (i.e. she was always the one to call him).

[15] The appellant testified that her first marriage lasted about 15 years, and produced two now adult children – a daughter and a son. Her husband had a good job and she stayed at home and took care of the children and did all of the housework. She did not work outside the home.

[16] The appellant testified that her father died in 2004.²²

[17] The appellant testified that also in 2004, her marriage broke down. Her husband used to be very happy with her. But, about six months before they separated, another woman and her niece used to come by their marital home to visit. The appellant spoke with her husband about this and asked him to stop bringing this other woman to their home. He told her that she (the appellant) could stay or not, but that he would be bringing this woman to the house. It then became apparent that her husband was having an affair with this other woman. The appellant told her husband that it couldn't work like this, and she was worried because their children were getting older and the situation would "have bad thoughts going in to their brains as well." Her husband informed her that he planned to marry the other woman. He then brought that woman to live with him in their family home.

[18] When she and her husband separated in 2004, she moved into the basement of their marital home because she had nowhere else to go.²³ Because she did not work outside the home, she had no financial resources of her own. Her husband told her that she could stay in the basement, and he would pay for her basic living expenses. She was not in agreement with this arrangement, but her parents were deceased and she was on her own. She reached out to the brother who had sponsored her to Canada and who was then living in Oakville, but he refused to speak with her first husband or to try to help her resolve their marital issues. Having no other choice, she stayed in the basement. At first, she was thinking to find work, or to get remarried,

²² Exhibit R-1, p. 35 where she provided her father's date of death as May 25, 2004.

²³ Throughout her testimony concerning her first marriage, the appellant used the term "separation" very liberally – at times, she used "separation" to refer to the legal separation in 2004, at times to refer to the divorce in 2006, and at times to refer to her physically moving out of the marital home in 2012.

but later, she became sick. She explained that she fell into depression; there was “too much load on her brain.” She felt really bad about her situation. It was a situation that “doesn’t happen.” It was a very abnormal situation for her to live in the basement while her husband and his new partner lived upstairs. She did not then think about going back to India because she was in shock. She didn’t think that her husband could betray her after 15 years of marriage.

[19] The appellant testified that after her marriage broke down, her relationship with her children was affected because her husband would not let them come downstairs. Sometimes her son, the younger of her two children (eight years old in 2004), would come downstairs to spend time with her, but then her husband would shout for him to come back upstairs, and her son would cry, and then go back upstairs to her husband and the other woman. She realized that she couldn’t continue doing this, but she couldn’t stand up to her husband or say anything.

[20] The appellant testified that her husband divorced her in 2006. He did everything on his own about the divorce and did not discuss it with her. She did not appear in court.²⁴

[21] The appellant testified that even after the divorce, she continued to stay in the basement. At some point after the divorce, her ex-husband married his second wife (i.e. the woman with whom he had the affair, and who lived with him upstairs). After their marriage, her ex-husband and his second wife continued to live upstairs with the children. She and her husband’s second wife had very little interaction. She never said anything bad to her ex-husband’s new wife, and the new wife never said anything bad to her. The appellant’s issues were with her ex-husband.

[22] The appellant testified that after her ex-husband remarried, she started feeling unwell, and she didn’t know what was happening around her. Her ex-husband’s new wife’s sister took her to the hospital for a check-up. (The appellant explained that the new wife and her sister lived upstairs as a joint family). The new wife was at work and she didn’t get involved at all. The new wife’s sister took the appellant to the hospital, and helped her because the appellant did not know English. After she was sent home, nurses came to their house. She was given some medication.

²⁴ Exhibit R-1, pp. 71-77 where it is apparent that the appellant’s husband had a lawyer and the appellant did not. Her now ex-husband petitioned for the divorce; “In this case, the applicant is claiming divorce only.” There is no evidence that the appellant appeared in court. The marriage was dissolved by court order. When her now ex-husband petitioned, and when they divorced, the appellant and her now ex-husband’s addresses were listed as the same.

[23] The appellant testified that while she lived in the basement, her ex-husband continued to pay for her basic living expenses. She has “no idea” why he did this. There were no discussions between them, and he didn’t care where she went, or where she might go. He didn’t care about her, and her “brain was dead” and she didn’t understand what she was to do. Apart from the applicant, she did not come across anyone else who could be a potential match for her. The appellant testified that nobody was even prepared to listen to her and that getting a new match was a distant hope. Nobody took responsibility to help or support her.

[24] The appellant testified that her brother in India didn’t understand the situation she was in. When she called him, he told her that it is her own personal life and she should deal with it, and advised her that what she does is her decision. She believes that after their father died, her brother in Canada no longer felt that he had any responsibility for her. She needed his help, and he told her that she could do whatever she could on her own, and that he didn’t need to know anything. She has since lost contact with her brother in Canada given that he did not support her after the separation, and did not help her; the “story with him is completely finished.” She did not think to return to India at this time because she didn’t have any support there either.

[25] The appellant testified that her main social contact during this time was going to the Gurudwara. She also had a friend, Parmjit, who lived a street away from her. They would cook together sometimes, and go for walks together, and the Gurudwara was close by, and this is how she passed her time. She confided in her friend about the breakdown of her marriage, the divorce, and about her circumstances. She told Parmjit that she was hoping that something (good) could happen, but that it was getting to be too late. She had lost all of her support, and was feeling very alone. She wanted to marry again because she had nobody to help her, and she needed someone so that she could have her own personal life. Parmjit told her not worry and said that she would keep her/the appellant in mind. It was Parmjit who suggested to the appellant that she meet with her (Parmjit’s) friend to discuss a prospective match. The appellant testified that she lived in the basement until talks started about her new/current marriage.

[26] When the appellant was planning to remarry in 2012, she testified that her relationship with her children was considerably strained. By that point, her daughter (then about 20 years old) was in university and talked with her less. Her son would then have been about 16 years old. The

appellant has had no contact with her children or with her ex-husband since she made plans to remarry. When asked if she has tried to contact her children since her remarriage, the appellant said, “no, never.” When asked why she has not tried to contact her now adult children, the appellant said that they have “taken the side of their father so that’s ok.”

Applicant’s first marriage

[27] Prior to his first marriage, the applicant testified that women had been presented to him for marriage from his village, from other villages, and also from outside the country (i.e. Canada). When women from India learned that he does not have much land, they “turned back.” The applicant explained that anyone who is a landowner in India is looking for a match who has good land / good property in India whereas the people who come from Canada don’t look for land in a match but rather look to see if the boy or the girl is good, if they will be hard-working, and if the individual person will make a good match. The applicant also added that some of the women “turned back” because of his age – that was also becoming a problem.

[28] The applicant testified that he married his first spouse in January 2002 in India. He had a friend whose parents knew her parents; they arranged his marriage to his first wife. His first wife agreed to marry him because she had not told her parents that she had a boyfriend. There was an age gap of 17 years between the applicant and his first wife. When she returned to Canada, she sponsored him at first, but then she stopped the sponsorship because she had a boyfriend, and she later got married to her boyfriend. His first wife divorced him in June 2003.

Applicant’s second marriage

[29] The applicant testified that between his first and second marriages, suitors from India were considered for him. However, when they saw that he didn’t have a big house or any significant land, they would “turn back.”

[30] The applicant testified that he married his second wife in India in August 2006. It was his friend’s brother who had proposed the match. His second wife was (like him) previously married and divorced. His second marriage ended because after she returned to Canada, she reconciled with her former husband, and since she was back together with her former husband, she did not

sponsor the applicant. She married him because she was angry at her former husband, and she had come to India saying that she would get herself remarried. After she married the applicant, her children helped her and former husband reconcile. She divorced him in December 2010.

[31] The applicant testified that after 2010, suitors other than the appellant were presented to him for marriage. However, when they found out about his land situation, they would “turn back.” By 2010, the applicant was 50 years old. He wanted to marry for companionship, and he knew that it was unlikely that he would have many further opportunities to marry.

Development of relationship / Knowledge of other / Contact and support / Compatibility

[32] As above, both the appellant and the applicant were unsophisticated yet spontaneous and credible witnesses who gave descriptions of the development of their relationship which were, by and large, consistent with their application forms, and with one another. They were also consistent in their evidence regarding details such as the time they have spent together in India since their wedding in 2012, the intermingling of their lives (i.e. the appellant lives with the applicant’s parents in Brampton since November 2012, and works for his cousin’s cleaning company since 2013) as well as each other’s histories, including the applicant’s immigration applications to Canada, their respective prior marriages, and their family relationships.

[33] Both the appellant and the applicant testified that they met through her friend, Parmjit, and the applicant’s maternal uncle and his wife. The appellant had confided in Parmjit about her situation, and her hopes for remarriage in the future. The appellant testified credibly that she wanted to remarry so that she could have her own personal life again. The appellant went to the Gurudwara with Parmjit to discuss a prospective match, and Parmjit introduced her to the applicant’s uncle and aunt. (The appellant explained that Parmjit and the applicant’s aunt worked together “at a place where clothes come together and they separate the clothes.”) It was Parmjit who had the idea that the appellant and the applicant might make a good match because she knew the appellant and she knew the applicant’s aunt. During that meeting between the appellant, Parmjit, and the applicant’s uncle and aunt to discuss a prospective husband, the appellant told them “everything.” Then, the applicant’s aunt became the “middle man” to make the match between the appellant and her nephew. His aunt told the appellant that she has a

nephew who is a bit older than her (the appellant). The appellant was then about 44 years old, and the applicant was about 52 years old. The applicant's aunt told the appellant that she would talk with the applicant. In the interim, the appellant used Parmjit's phone to talk with the applicant's aunt. Approximately one week after their meeting at the Gurudwara to discuss a possible marriage, the applicant's aunt arranged for the appellant to come to her (the aunt's) house so that the appellant could see a photo of the applicant, and talk with him on the phone.

[34] The applicant testified that he first had knowledge of the appellant in April 2012 when his aunt called him, and told him about the appellant, and asked him if he would like to get married. His aunt told him that the appellant had been betrayed by her husband, had two children and was divorced. Since the applicant was also divorced and was getting "very old," and because he was also looking for a life partner, he didn't care about the appellant's past marital history.

[35] Both the appellant and the applicant testified that they first spoke with one another on the phone on April 13, 2012. The appellant told the applicant that she had been previously married for 15 years and was divorced, and that she felt very badly, and did not know what she was going to do. During that first phone call, the applicant told the appellant that he had been twice married and twice divorced. During the first phone call, they agreed that they would talk again.

[36] The appellant testified that the applicant told her about his two previous marriages. One woman had sponsored him, but then "stopped him from coming." His wife went to India to marry him, but came back to Canada, changed her mind and stopped the sponsorship. The other woman left him after their marriage, and didn't sponsor him, and didn't contact him after that.

[37] In his testimony, the applicant confirmed that he knew about the appellant's prior marriage. When they first spoke on April 13, 2012, she told him that she has two children from her marriage – an older daughter and a younger son. Her now ex-husband started bringing another woman home, and bothered the appellant because he wanted to get married to the new woman. Then, he put the appellant in the basement because he wanted to get remarried. She told him that she was living in the ex-husband's basement because she had got sick, and had nowhere else to go. She told him that she had been living in the basement since after they separated in

2004, that she wasn't in a good situation, and her children were not allowed to come to her. After some time, she started going out of the house, and to the Gurudwara and moving forward.

[38] In his testimony, the applicant confirmed that it was the appellant who had first brought up the topic of marriage with his aunt. The appellant was the one who first said that they should get married. On April 13, 2012, when they talked with one another, she had made up her mind "a little bit" and then she called him back another day and said that they should get married.

[39] After they had talked more, in about June 2012, the appellant testified the applicant told her that "it's ok;" he was agreeable to marrying her. The applicant testified that he had decided to marry the appellant because they were similar in age, and their thinking was "very alike." The appellant testified that she was agreeable to marrying the applicant because she was alone, and she wanted a life partner who could support her. She liked his nature.

[40] Both testified that in June 2012, they decided that she would travel to India, and come to his village so that they could sit together and talk some more. The purpose of the appellant's trip to India was to marry the applicant if they were still both agreeable to so doing after they had met in-person. On this basis, the appellant left the basement, and stayed with the applicant's aunt for a few days before she and his aunt flew to India in July 2012. Both testified that their in-person meeting did not give rise to any doubts about their decision to marry one another.

[41] When asked why she thought her second marriage would be different from her first marriage which had ended very badly, the appellant testified that all of the qualities that were not present in her previous husband were present in the applicant – he is trustworthy, and always there to support her during her good times and her bad times. When she spends time with him, she doesn't know where the time goes. And, when she returns to Canada, she keeps thinking about him and wondering what he might be doing and where he might be – he is always on her mind. She added that she married her second husband so quickly because whenever she calls him, he always replies to her. He will call her even if she doesn't call him. Wherever he goes, they go together. He involved her in all of the decisions. Her current husband is a very responsible person, and the first husband was not at all. She did so much for her previous

husband, and supported him so much, but then, he treated her like garbage, and threw her to the side, and she was sad.

[42] In his testimony, the applicant rejected the visa officer's conclusion that he had married the appellant to come to Canada. The applicant testified that they married one another so that they could live together. They are older; "where would we go if we left each other?"

[43] Both testified that they married on July 25, 2012. Her family did not attend the wedding because her brothers did not agree with her decision to remarry, and as above, she is estranged from her children, and her parents are deceased. The appellant testified that she did not visit her brother who lives in India as he was "sad with her" because she was remarrying. He did not wish to take part in her wedding, and told her that she could make her own choices. The applicant confirmed in his testimony that the appellant's brothers were not in agreement with her marriage to him. He has not met her brothers; the appellant is afraid to go visit her brother in India (and in Canada) because she thinks that they will argue with her. Both testified that from the applicant's side, everyone attended the wedding – about 40 people. His aunt facilitated the wedding.

[44] Both testified that the appellant stayed with his aunt until they married, and then she moved in with the applicant (who lives with his brother and his sister-in-law), and lived with the applicant in his home in the village until she returned to Canada in November 2012.²⁵ They went together to visit the applicant's relatives. After their marriage, they went together to Amritsar.²⁶ In addition, they spent time together at parks,²⁷ with his family and friends,²⁸ and at home together with the applicant's dog, Shotu, and on the farm.²⁹ Both testified that most of the time, they didn't go far from home. He rents some land and they would go there. He was working on the land. In the evening, she would help with the milk because he keeps cows.

²⁵ Exhibit A-3, p. 6 for the appellant's passport stamps, confirming her entry into India on July 9, 2012 and her departure from India on November 7, 2012.

²⁶ Exhibit A-3, p. 7 for photos of the couple at Amritsar.

²⁷ Exhibit A-3, pp. 10-11.

²⁸ Exhibit A-2, p. 5 for a photo of the appellant, the applicant's sister-in-law (applicant's brother's wife), and his uncle and his friend, and p. 6 for a photo of the appellant, the applicant, his older brother (to the far right), his uncle and his uncle's friend, and his sister-in-law.

²⁹ Exhibit A-2, pp. 5-9 for photos of the appellant and the applicant together in his home, showing the outer area of the home, the kitchen, and their bedroom.

[45] Both testified that since she returned to Canada after their marriage (November 2012), the appellant has lived with the applicant's parents on Pine Landing Trail in Brampton. The appellant testified that she is very happy in her new house. She has no difficulties living with her mother-in-law and her father-in-law; they are both old and very nice.

[46] Both testified that since their marriage, the appellant has made several lengthy trips to spend time with the applicant in India.³⁰ The appellant proudly testified that she bought all of the tickets herself because she has been working at Dalewood, doing clean-up work in a warehouse, since 2013, after their marriage. The applicant's cousin's sister, Manjit, gets cleaning contracts, and passes on the contracts; the appellant is not sure how it works exactly, but she gets work through Manjit, and she is sent wherever there is work. Sometimes she goes to work by bus, and sometimes, she gets a lift. Manjit has helped her a lot and continues to help her. The applicant testified that the appellant does cleaning work, and is employed by his paternal uncle's daughter, Manjit, but added that he never asked the appellant for details as to how she got the job exactly.

[47] Despite their ages, they discussed having children. Both testified that they went together to the hospital to see if it were possible for them to have children, and reports were done, and they were informed that the appellant can no longer bear children. The appellant explained that "there are no eggs anymore," and her "age is too much." Neither of them mind that they will not be able to have children. The applicant testified that they went to the doctor together, and were told that she can't have children anymore, so he thinks "they'll stay well together just the two of us." The applicant added that it is "in God's will if we were to get a child," but if they don't get a child, that is ok too because the appellant has stopped getting her "monthly dates."

[48] The appellant testified that she traveled to India earlier than planned in May 2017 because his brother had an accident, and she wanted to be there with her husband and his family. In May 2017, after having waited more than two years for the hearing of this appeal, counsel for the appellant requested and was granted a postponement because the appellant was in India due to a

³⁰ Exhibit A-3, p. 6 for an entry stamp to India on September 9, 2014 and an exit stamp from India on October 7, 2014; Exhibit A-4, p. 2 for illegible stamps which appear to be in 2015 and an entry stamp on February 17, 2016 and an exit stamp on August 8, 2016, an entry stamp on May 2, 2017 and an exit stamp on September 2, 2017; and most recently, an entry stamp on October 26, 2017 and an exit stamp on December 11, 2017.

family emergency. The appellant disclosed several photos of herself and the applicant on his rented land in November 2017 – during her last trip from October to December 2017.³¹

[49] If the applicant is permitted to come to Canada, the appellant testified that he is ready to do any work he finds – he can work at a factory or a warehouse. The applicant testified that he will start working in Canada in whatever work he can find, or maybe some dairy work. The appellant testified that when the applicant arrives to Canada, they will work towards getting a house in Canada – they will work slowly towards this goal. It will take some time.

[50] The appellant testified that she ends up getting sick when she goes to India and suffers blisters and bumps on her skin because of the very hot weather. Nevertheless, if this appeal is dismissed, she will return to India to live with the applicant there. They will stay together no matter where – whether in India or in Canada. She would like him to come here (to Canada) because her life here is better. The applicant confirmed in his testimony that if this appeal is dismissed, they will stay together in India. If the appeal is allowed, they will stay together in Canada. He added that his mother and father are old, and they are living in Canada as well. When asked, the applicant confirmed that he also has a sister, a paternal uncle, and his maternal uncle and his wife (who introduced him to the appellant) living in Canada.

[51] Counsel for the appellant submitted that this is a unique case with extreme circumstances where the appellant lived in the basement of her former spouse's home prior to her marriage to the applicant. Counsel for the appellant stressed that the appellant had no family support, no friendship circle, low literacy and a quite low cognitive level, and in that situation, the appellant had nowhere else to turn, and no other options until she was introduced to the applicant. Counsel for the appellant observed that we do not know what her former husband's thought process was when he decided to end his marriage with the appellant, and similarly, we don't know what his thought process was when he allowed her to stay in the basement. Counsel for the appellant surmised that it could be that he felt guilty and wanted to support her to some extent.

[52] Neither the visa officer nor the Minister disputed the appellant's account of her living situation prior to her marriage to the applicant. As noted above, the visa officer observed that the

³¹ Exhibit A-4, pp. 5-8.

sponsor had suffered a bad marriage before; her husband brought home a woman and lived with her in the same house as sponsor, and she has two grown up children from her first marriage. The visa officer also stressed that it would be normal to expect that a woman who had allegedly suffered such things would be cautious and take sufficient time to get to know any prospective martial partner well before agreeing to marry. The Minister submitted that no medical documents were provided to substantiate a finding that the appellant has a low cognitive level, and relied upon *Garcia*³² in this regard.³³

[53] I concur with the Minister that counsel for the appellant submitted no documentary evidence to substantiate his assertion that the appellant has a “quite low cognitive level.” However, as was evident from available documentary evidence, the appellant does not have an advanced level of education. As was also apparent from the appellant’s testimony, she has limited capacity in English, and low numerical literacy. As such, I find it more likely than not – as argued by counsel for the appellant – that the appellant was hampered in her ability to move on from her first failed marriage by both her social isolation, and by her limited literacy.

[54] I have found the appellant to be a credible witness. The respondent has provided no evidence to rebut the appellant’s account of her life prior to her entering into this marriage. As such, I find it more likely than not that she did suffer a disastrous end to her first marriage, was estranged from her family, and lived in the basement of her marital home for years, alone and without support, before being presented with a prospective new partner in the applicant.

[55] As above, the visa officer noted that the applicant had also suffered two bad marriages, and drew a negative inference from the fact that in the context of his past prior failed marriages, he decided to marry the sponsor even before he had met her in person. The visa post drew a negative inference from the fact that the sponsor consented to marry the applicant on the very day she met him in person for the first time in the context of her prior failed marriage. The visa officer found their haste in the decision to marry significantly negative.

[56] In her written submissions, the Minister echoed the visa officer’s concerns. The Minister noted that the appellant and the applicant met each other 15 days before the date of their

³² *Garcia v. Minister of Citizenship and Immigration*, 2014 FC 832.

³³ Written submissions, dated January 26, 2018, at p. 6 of 7.

marriage. The appellant proposed to the applicant before they met in person. The proposal took place before the marriage was arranged. This demonstrates their haste to enter into marriage. The Minister stressed: “After previous failed marriages, one would take their time to get to know their future life partner before committing to marriage.”³⁴

[57] Counsel for the appellant submitted that the appellant and the applicant have a genuine marriage; they are happy, and very committed to one another. As the applicant testified, they are at a point in their lives where they don’t have many options. The appellant testified that she didn’t have any other options, and no other potential matches. The applicant clearly explained in his testimony that he didn’t have many options in India because of his lack of land, and his lack of good business. They each found a match in the other.

[58] In written submissions, the Minister noted that the appellant and the applicant were introduced to one another by a friend of the appellant, and an aunt of the applicant. The applicant testified that he married the appellant because no one else wants him due to his lack of land. The Minister submitted that the appellant’s reasons for wanting to marry the applicant were generic and can apply to anyone. The appellant stated that she trusts the applicant because he has all the qualities not present in her previous spouse. The Minister concluded: “Neither party has indicated any compelling reasons why they decided to marry each other.”³⁵

[59] With due respect to the Minister, I find that both the appellant and the applicant provided compelling reasons, as noted extensively above, as to why each decided to marry the other. In particular, I disagree with the Minister’s conclusion that the appellant’s reasons for marrying the applicant were generic, and could apply to anyone. The appellant’s situation was extreme and unique, and could hardly apply to anyone. Both the appellant and the applicant had suffered previous failed marriages, each was older, and each was looking for a life partner in the context of their failed past relationships. Both had limited options, and both found a match in the other. They relied upon their respective matchmakers, and upon the trust each had in the other that each had a genuine interest in a committed lifelong marriage in making their decisions to marry.

³⁴ *Ibid.* at p. 4 of 7.

³⁵ *Ibid.* at pp. 4-5 of 7.

[60] The Minister observed that the visa officer had concerns regarding the parties' knowledge of each other. The Minister submitted that these concerns have not been alleviated. Despite providing phone records to show communication between the parties, the Minister submitted that they have not demonstrated sufficient in-depth knowledge of each other. The applicant's cousin, Manjit, is the appellant's employer, has helped her to secure employment, and continues to support her. The applicant testified that he did not discuss this with the appellant. The appellant testified that if the applicant gets a visa to come to Canada, he will work. She made no mention of life together, or their plans together as a couple.³⁶

[61] Counsel for the appellant conceded that the applicant, in his testimony, was not forthright with respect as to who arranged the appellant's current employment. His testimony that he did not talk with the appellant in detail as to the circumstances of her becoming employed by Manjit certainly doesn't seem to be very credible. Other than this issue, counsel for the appellant submitted that both the applicant and the appellant's testimony was clear and reliable, and that they demonstrated good knowledge of one another, and an ongoing commitment to one another.

[62] I concur with both the Minister and with counsel for the appellant that the applicant's testimony regarding the appellant's employment with Manjit was curious, and not wholly credible. He testified that the appellant works as a cleaner for Manjit, and explained his family relationship to Manjit. It is clear that the applicant knows the appellant is working for his cousin, and in what capacity. It remains unclear as to why he testified that he did not discuss with the appellant the details of her becoming employed with Manjit.

[63] Nevertheless, I concur with counsel for the appellant that other than this issue, the applicant's testimony was clear and reliable, and overall, I have found him to be a credible witness. As such, I do not concur with the Minister that the parties to this marriage have not demonstrated sufficient in-depth knowledge of each other. Other than this one issue, their testimony was consistent and clear, and I note that they demonstrated a great deal of knowledge about one another. Furthermore, I do not concur with the Minister that the appellant made no mention of their plans together as a couple. The appellant and the applicant indicated that they

³⁶ *Ibid.* at pp. 5-6 of 7.

will live together – whether in India or in Canada. Specific job prospects for the applicant were named, as was the long-term plan for them to work towards buying a house together in Canada.

[64] The appellant and the applicant were matched by her friend, Parmjit, and his aunt. They have shared details and knowledge of one another from their first phone conversation in April 2012. They are both previously married and divorced. They have both suffered bad prior marriages. They are not young (the appellant is now 50 and the applicant is now 58 years old). They have both been previously disappointed in love, and they both testified credibly that when they were introduced, they were each looking for a life partner. They agreed to marry over the phone in June 2012, pending an in-person meeting in July 2012. After they had met in-person in July 2012, they married later that same month. The appellant remained in India, and lived with the appellant until November 2012. Upon her return to Canada in November 2012, she moved in with his parents. She testified to being very happy, and happily busy in her new home with her in-laws. Since the marriage, the applicant's extended family has supported the appellant, and since 2013, she has been employed as a cleaner. For the first time since the breakdown of her first marriage, the appellant has the support of close family (in her in-laws). For the first time in her life, the appellant has financial independence through her work. The sponsorship application which is the subject of this appeal was filed in August 2013. Since their marriage, they have spent lengthy periods of time together in India. They have intermingled their lives. The appellant and the applicant have made plans for the future in Canada. If this appeal is dismissed, she will join him on the farm in India.

[65] I find that the concerns of both the immigration officer and the Minister regarding the genuineness of this marriage are satisfied. I concur with counsel for the appellant that this is a genuine marriage. Both are divorced, both are older, and both are looking for lifelong companionship in the other. The appellant's prior marriage, which lasted for 15 years before legal separation, was arranged; she met her first husband only 10 days before their wedding. The applicant's previous marriages were also arranged by family. Their own marriage discussions were instigated by the appellant in conversation with her friend, Parmjit, who then introduced the appellant to the applicant's aunt for the purpose of discussing a prospective match. Their marriage was arranged with the facilitation of matchmakers, and through phone conversations between the couple from April 2012 until June 2010. Given their ages, and their prior romantic

failures, each testified to having made a pragmatic decision about the other, and believed that because each had been hurt in the past, they could trust one another, and could trust in the judgement of their respective matchmakers (her friend and his aunt). When the appellant flew to India in July 2010, they had agreed to meet in-person to be sure of their decision before the wedding. They were married on July 25, 2012. Though the wedding was not attended by the appellant's family, it is clear that her parents are deceased, and that she was estranged from her brothers and her children as has been detailed above. She was, however, embraced by the applicant's family, who supported the union, and celebrated with the couple. Since the wedding trip, the appellant has travelled to India on several occasions to spend time with the applicant. The appellant has been warmly welcomed into the applicant's family – she has lived with his parents for more than five years, and has worked for his cousin for the past five years. Should this appeal be dismissed, the appellant will return to India to reunite with the applicant. For all of these reasons, I find that the relationship is *bona fide* and genuine.

Primary purpose of immigration status

[66] In assessing whether the relationship was entered into primarily for the purpose of acquiring any status or privilege under the *IRPA*, the focus is on the intention of one or both of the spouses when they entered into the marriage. If, for at least one spouse, the *primary* purpose of entering into the marriage is to gain an immigration advantage, the test will not be met. The test looks back to the time of entering into the marriage.

[67] Much of the usual *indicia* characteristic of a marriage of convenience is missing here. The appellant and the applicant have good knowledge of one another, and their accounts of the development of their relationship are consistent. They have been in a romantic relationship since mid-2012 (now almost six years). The evidence is consistent that they have intermingled their lives, and that the appellant has been warmly embraced by the applicant's family. The appellant has been living with his family in Canada since November 2012, and his family has also provided her with her first long-term employment. The appellant testified credibly that being welcomed into his family has provided her with the supportive family environment that she had missed since the breakdown of her first marriage in 2004, and that the job has given her new confidence and independence. She has traveled to India to spend time with the applicant on

several occasions since their wedding. They have made forward-looking plans for their life together in Canada. In May 2017, after having waited more than two years for the hearing of this appeal, counsel for the appellant requested a postponement because the appellant was in India due to a family emergency.³⁷ They have also testified credibly that if this appeal is not allowed, the appellant will return to India to live with the applicant there. As such, and as detailed above, I have found that their marriage is genuine.

[68] The Minister stressed that there are two disjunctive elements to be determined – whether this is a genuine marriage, and whether this marriage was entered into primarily for an immigration purpose.³⁸ The Minister submitted the applicant was married and divorced on two previous occasions. Both of these women lived in Canada. His first wife from Canada withdrew the sponsorship she had submitted for him. Then, he married another woman from Canada. She did not submit a sponsorship application for him. The applicant is determined to gain status in Canada by marrying women from Canada. The appellant had one previous divorce after 15 years of marriage. She entered into this relationship very quickly, and married almost immediately after speaking to the applicant on the phone. The Minister submitted that the appellant married the applicant so that he could immigrate to Canada and gain permanent resident status.³⁹

[69] With due respect to the Minister, there is no question in my mind that for the appellant, this is a genuine marriage which she did not enter into for any immigration purpose. It is clear that the appellant was looking for a new start and a supportive partnership after the devastating breakdown of her first long-term marriage, estrangement from her immediate family, and years of being isolated and lonely. The question is whether their meeting through Parmjit and the applicant's aunt in April 2012 was a fortuitous circumstance for the applicant that provided him with a route of obtaining permanent resident status in Canada long after his family class sponsorship application had been unsuccessful, and after his previous marriages to two other Canadian women, and a prior spousal sponsorship application had also failed.

[70] The applicant's intent to this marriage in 2012 must be assessed. Counsel for the appellant and the Minister questioned both the appellant and the applicant extensively as to their

³⁷ The hearing was later postponed as the Minister was unavailable for the scheduled hearing on September 8, 2017.

³⁸ *Singh v. Canada (Citizenship and Immigration)*, [2015] 3 FCR 414, 2014 FC 1077 (CanLII).

³⁹ Written submissions, dated January 26, 2018, at p. 6 of 7.

motivations in marrying, and referenced his immigration history as noted by the visa post.⁴⁰ As above, the visa officer and the Minister made reference to the applicant's prior failed marriages. Because of his having suffered two bad prior marriages, both the visa officer and the Minister drew a negative inference from the applicant's decision to marry the appellant "in haste," noting that after previous failed marriages, one ought to take one's time to get to know one's future life partner before committing to marriage. Simultaneously, both the visa officer and the Minister concluded that the applicant's previous marriages were not genuine, and were arranged in attempts to gain his admission to Canada. With respect, I find the respondent's above-noted conclusions contradictory: **either** the applicant genuinely suffered two prior bad marriages, and ought not to have married the appellant "in haste" **or** the applicant did not suffer two prior bad marriages, but rather, married his first two spouses only for immigration purposes.

[71] The visa post, as above, observed that the norm for women in the applicant's community is to marry only once; his first two wives would not leave their husbands and divorce except if there are some serious issues. Because his first wife withdrew her sponsorship, and the second did not sponsor the applicant at all, the visa officer concluded that it would appear that those two marriages were not genuine and were arranged in attempts to gain his admission to Canada. As also noted above, the visa officer went on to observe that this marriage is not the applicant's first attempt to gain admission to Canada. In addition to his two marriages to Canadian women, he was removed from his parents' family class application because he did not meet the definition of a dependent. His marriage to the appellant appears to be another attempt to gain admission to Canada. The Minister echoed the concerns highlighted by the visa post, and submitted that the applicant has made at least three unsuccessful attempts to immigrate to Canada. His marriage to the applicant is his fourth attempt.⁴¹

[72] I note, however, that neither the visa officer nor the Minister provided any convincing evidence to establish that the applicant had entered into two marriages of convenience prior to his marriage to the appellant. In particular, neither the visa officer nor the Minister provided any evidence to rebut the applicant's testimony that both of his first two marriages failed not because of any action or decision he took, but rather, due to the life circumstances and related decisions

⁴⁰ Exhibit R-1, pp. 18-20 and 103-106.

⁴¹ Written submissions, dated January 26, 2018, at p. 4 of 7.

of his first two wives. As per the applicant's testimony, there were serious issues in his first two marriages: in the first, his wife had not told her parents about already having a boyfriend whom she wished to marry, and in the second, his wife had reconciled with her former husband.

[73] Aside from the applicant's testimony concerning his first two marriages, there is scant information before me. The visa post notes from August 2002 concerning the applicant's first marriage notes that it was a first marriage for both himself and his wife, that few wedding photos were submitted, and that he has limited education and works as a farmer. The visa post noted that the applicant's parents and one brother reside in Canada, and that the applicant was also included as part of his parents' application but was deleted from that file. The visa post notes that no proof of correspondence was submitted, and that the applicant is 19 years older than his sponsor. Because the couple appeared incompatible in age and education, and satisfactory evidence had not been provided, an interview was to be convoked to determine the *bona fides* of the relationship. In August 2002, the visa post also noted a poison pen letter on file which alleged that the sponsor had entered into a fictitious marriage with the applicant in order to enable him to enter Canada. In October 2002, the sponsor withdrew the application, and the application was consequently refused without further assessment or interview.⁴²

[74] Given that an interview was never convoked to address the *bona fides* of the applicant's first marriage, and given that no evidence was provided to rebut his testimony that his first wife withdrew the sponsorship because she had a boyfriend in India who was unknown to her parents and whom she later married, I decline to make a finding that the applicant's first marriage was a marriage of convenience entered into for an immigration purpose. Given that the applicant's second wife never submitted a sponsorship application on his behalf, and given that no evidence was provided to rebut his testimony that his second wife did not sponsor him because she reconciled with her former husband, I decline to make a finding that the applicant's second marriage was a marriage of convenience entered into for an immigration purpose.

[75] The Minister stressed that the applicant was removed from his parents' family class application because he did not meet the definition of a dependent. The Minister submitted that the applicant's several family members in Canada go to his primary purpose in marrying the

⁴² Exhibit R-1, p. 117.

appellant, and highlight his strong desire to live in Canada. His aunt assisted in arranging the marriage. He testified that he wants to work in Canada, and to be near his parents who are old.⁴³

[76] Counsel for the appellant submitted that the appellant and the applicant have been married since 2012. If either of them did not have the intention to stay in this committed marriage, or if this were a marriage of convenience for either or both of them, the marriage would not have lasted so long. Since their marriage, the appellant has traveled repeatedly to India, and has stayed with her husband for extended periods of time. They went together to doctors to explore the possibility of having children and raising a family together. All of these facts point to this being a genuine marriage not entered into for an immigration purpose.

[77] In her testimony, as above, the appellant confirmed that she knew about the applicant's prior marriages. She testified that she does not believe that the applicant married her to come to Canada and to join his family in Canada. She has gone back to India and spent a lot of time with him there, and he shares everything with her. She knows that he loves her, and it is not true that he married her to come to Canada. She completely trusts him. He would not do such a thing to her. She was already very sad, and she is very sure that he did not marry her just to come to Canada. The appellant also testified that she is no longer depressed, and feels much better since she moved out of that home and into her new home, with the applicant in India, and with his parents in Brampton. The applicant testified that he married the appellant to spend a life with her, and stressed their advanced ages, and the fact that they would have nowhere else to go if they left one another. He did not marry either of his first two wives to come to Canada, and the failure of those first two marriages cannot be held against him. He did not divorce either of his first two wives. It was they who left him, and it was they who requested the divorces.

[78] As above, the Minister submitted that the primary purpose of this marriage rests in the applicant's prior immigration history and in the existing pull factors (his family) to Canada.

[79] The Federal Court in *Gill* considered the reasonableness of the IAD's conclusion on the primary purpose of a marriage: "In its decision, the IAD appropriately acknowledged that it 'is always difficult to assess the primary purpose of a marriage because the decision to marry is

⁴³ Written submissions, dated January 26, 2018, at pp. 4-5 of 7.

intensely personal and private.’ The IAD also stated: ‘[W]here there is a genuine marriage, such as I have determined here, there needs to be compelling evidence that the primary purpose was other than to be in a genuine marriage, to overcome the implication that, while gaining admission to Canada was a significant factor, entering into a genuine marriage was the primary consideration.’⁴⁴ In *Sandhu*, the Federal Court provided:

“A finding that a marriage is genuine ‘weighs significantly in favour of a marriage that was not entered into for the purpose of gaining status in Canada.’ However, the finding that a marriage is genuine is not determinative of primary purpose. Evidence of commitment subsequent to the marriage can be used to prove the primary purpose of the marriage. This might include evidence of a continuing relationship ...”⁴⁵

It is therefore clear that my finding that this marriage is genuine is to be given significant weight in determining the primary purpose of this marriage. The Federal Court also makes it clear that evidence of a continuing relationship can be used to prove the primary purpose of a marriage.

[80] Each has been forthcoming with the other about their marital histories, and the applicant advised the appellant of his immigration history prior to their agreeing to marry. In addition, the applicant and the appellant have been forthcoming throughout this process, and have provided consistent accounts of his immigration history to the visa post, and to the IAD. I draw a positive inference from the couple’s frank disclosure of their marital histories and his immigration history to Canada – with one another, the visa post, and the IAD.

[81] While the applicant’s immigration history must be considered when assessing his primary purpose of entering into this marriage, such a history in and of itself is insufficient to find that the primary purpose of this marriage was to gain an immigration advantage. While the presence of the applicant’s sister and parents in Canada is a significant pull factor, and thus unquestionably, the applicant has reasons other than his marriage for wanting to come to Canada, the question is whether his desire to acquire status in Canada is his *primary* purpose for his marriage to the appellant. Based on the appellant and applicant’s testimony relating to their past failed marriages which informed their decisions to enter into this marriage, and their post-marriage activities, I find, on a balance of probabilities, that while the applicant is strongly

⁴⁴ *Gill v. Canada (Citizenship and Immigration)*, 2012 FC 1522 at para. 20.

⁴⁵ *Sandhu v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 834, at paras. 12-13.

motivated to acquire status in Canada, there is no compelling evidence to overcome the implication that, while gaining admission to Canada was a significant factor, entering into a genuine marriage with the appellant was the primary consideration.

[82] I find it more likely than not that the following supports a finding that the primary purpose of this marriage was not to gain immigration status: the appellant and the applicant have been married for almost six years; their commitment to one another subsequent to their marriage has been sufficiently demonstrated – by the appellant’s numerous trips to India; their cohabitation for lengthy periods in India since July 25, 2012; her living with his parents in Canada since their marriage; his family having supported her in long-term employment; the fact that they requested a previous postponement of the hearing of this appeal due to the fact that the appellant was in India with the applicant and dealing with a family emergency; and their credible testimony that if this appeal is dismissed, the appellant will return to India to reunite with the applicant there.

[83] I note that while I am looking also at the evidence relating to the behavior of the appellant and the applicant after the marriage took place, I am focused on the assessment of the applicant’s intent at the time of the marriage; while the evidence overlaps, and is used for both tests, the tests are disjunctive tests and I am finding disjunctively.

[84] As such, I find it more likely than not that despite the pull factor of the applicant’s family in Canada, and his previous failed applications for status in Canada, the applicant did not enter into this marriage primarily for an immigration purpose. There is sufficient evidence detailed above which, on a balance of probabilities, points to this being a genuine marriage which was not entered into primarily to acquire status or privilege under the *IRPA*.

CONCLUSION

[85] I find that the marriage is genuine. I find that the applicant’s motivation in marrying the appellant was not primarily for immigration purposes to Canada. The refusal is not valid in law and the applicant is therefore not excluded as a member of the family class.

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.

Maureen Kirkpatrick
Maureen Kirkpatrick

April 16, 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.