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2019 CanLII 145822 (CA IRB)

## Reasons and Decision – Motifs et décision

### Sponsorship Appeal

|                                     |  |   |
|-------------------------------------|--|---|
| <b>Appellant(s)</b>                 | A.B.C.   | <b>Appelant(e)(s)</b>                                 |
| <b>and</b>                          |  | <b>et</b>   |
| <b>Respondent</b>                   | Minister of Citizenship and Immigration<br>Le ministre de la Citoyenneté et de l'Immigration | <b>Intimé(e)</b>                                      |
| <b>Date(s) of Hearing</b>           | November 6, 2019   | <b>Date(s) de l'audience</b>                          |
| <b>Place of Hearing</b>             | Toronto, Ontario   | <b>Lieu de l'audience</b>                             |
| <b>Date of Decision</b>             | November 7, 2019   | <b>Date de la décision</b>                            |
| <b>Panel</b>                        | Benjamin R. Dolin  | <b>Tribunal</b>                                       |
| <b>Counsel for the Appellant(s)</b> | Harinder S Gahir   | <b>Conseil(s) de l'appelant(e) / des appelant(e)s</b> |
| <b>Designated Representative(s)</b> | N/A  | <b>Représentant(e)(s) désigné(e)(s)</b>               |
| <b>Counsel for the Minister</b>     | Debbie Henry   | <b>Conseil du ministre</b>                            |

## REASONS FOR DECISION

### INTRODUCTION

[1] These are the reasons for decision in the appeal of Mr. ABC (the Appellant) from the refusal of an application for a permanent resident visa made by Mrs. DEF (the Applicant). The Appellant married the Applicant in March 2018 and attempted to sponsor her as a member of the family class. That application was refused because a visa officer was not satisfied that the marriage is genuine or that it was not entered into primarily for the purpose of acquiring status under the *Immigration and Refugee Protection Act* (IRPA).

[2] By consent and pursuant to section 166(b)(i) of the IRPA, the names of the Appellant and Applicant have been anonymized in these reasons.

### BACKGROUND

[3] The Appellant is a 41-year-old Canadian citizen. He is originally from India and was landed when a teenager. This is his third marriage. He has one child: a daughter born in 2004. The Applicant is a 30-year-old citizen and resident of India. This is her first marriage and she has no children.

[4] This was an arranged marriage. The Appellant's sister-in-law's mother is good friends with the Applicant's aunt and it was through them that the introduction was made. The Appellant and Applicant first connected by phone in November 2017. The families subsequently agreed to the union. The Appellant and Applicant then met in person in India on March 6, 2018 and married two days later.

[5] When a sponsorship was initiated, the Applicant was called to a visa post interview. The officer's concerns, as set out in the GCMS notes,<sup>1</sup> include the following:

- The Applicant seemed to lack a fulsome knowledge of the Appellant's marital history;
- They are not compatible in terms of age and marital status;
- They married just two days after meeting in person; and,
- At the time of the interview, the Appellant had not visited the Applicant in India since the wedding trip.

[6] The Appellant, who was represented by counsel, appealed the refusal and testified at his *de novo* appeal. The Applicant testified by teleconference. Documentation was tendered by the Appellant in Exhibits A-1 and A-2 that included, *inter alia*, travel documents, photographs and communication records.

## ANALYSIS

[7] There is a presumption in law that sworn testimony should be considered truthful, unless there is good reason to doubt its veracity.<sup>2</sup> Inconsistencies and implausibilities may be taken into consideration in assessing the credibility of testimony, in addition to its rationality and common sense.<sup>3</sup> One must also be careful not to apply Canadian paradigms when assessing the plausibility of testimony involving other cultures.<sup>4</sup>

[8] I had no such concerns with respect to the *viva voce* evidence in this appeal. There were no substantive discrepancies in their testimony and nothing they said could be construed as implausible. Indeed, from my perspective, the relationship seems to be entirely consistent with the cultural norms of their community.

[9] I also find that the visa officer's concerns have been addressed to my satisfaction. The age gap is not exceptional; indeed, it would appear that such a gap is not uncommon in the families of the Appellant and Applicant. There was also no evidence before me to suggest that it is unusual for a never-married woman to marry a divorced man in this culture. That the marriage was agreed upon before they met in person and that the nuptials took place two days after their first in-person meeting is also culturally appropriate.

[10] In the case of arranged marriages, much of the background investigation of the prospective spouse is done by the families. As such, the Applicant's limited knowledge of the Appellant's second marriage at the visa post interview was not necessarily surprising. I note as well that she was able to provide some basic information about that relationship and possessed more in-depth knowledge of the Appellant's first marriage.

[11] As for the lack of visits, I note that they married in March 2018 and that the Applicant was notified of her April 2019 interview in February 2019. In my view, given that they were informed of an interview less than one year after the Appellant's trip to India for the wedding, it was reasonable for them to wait for the results of the interview. A genuine couple could realistically expect that the Applicant would be reuniting with the Appellant in Canada soon after the interview. I note that after the refusal the Appellant did travel to India with his daughter to spend time with the Applicant.

[12] Counsel for the Minister indicated that she has outstanding concerns that lead her to believe that the Appellant has not met his evidentiary onus. However, counsel has not pointed to any substantive inconsistencies in the evidence that, in my view, could justify a finding that their sworn testimony is not reliable. Rather, counsel emphasized the so-called incompatibilities of age and marital status and the suspicion that, given those incompatibilities, the Applicant probably entered the relationship with the primary objective of obtaining status in Canada.

## CONCLUSION

[13] The sworn testimony of the Appellant and Applicant was not impeached. With respect to the Appellant in particular, I find that his testimony was detailed, forthright and credible; the Applicant's *viva voce* evidence was not inconsistent. I find that, more likely than not, this is a genuine marriage and not one entered into primarily for immigration purposes.

[14] The appeal is allowed.

## NOTICE OF DECISION

The appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside and an officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

“Benjamin R. Dolin”

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**Benjamin R. Dolin**

November 7, 2019

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**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.

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<sup>1</sup> Appeal Record, pp. 43-46.

<sup>2</sup> *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.).

<sup>3</sup> *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 415 (F.C.A.).

<sup>4</sup> *Valtchev v. Canada*, 2001 FCT 776.