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: TB1-19551
Client ID No. / N° ID client: 5724-7506

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	**GURPREET SINGH RAI**	**Appelant(e)(s)**
Respondent	**The Minister of Citizenship and Immigration** **Le ministre de la Citoyenneté et de l'Immigration**	**Intimé(e)**
Date(s) of Hearing	**June 11, 2014**	**Date(s) et lieu de l'audience**
Place of Hearing	**Toronto, Ontario**	**Lieu de l'audience**
Date of Decision	**June 19, 2014**	**Date de la décision**
Panel	**Patricia Greenside**	**Tribunal**
Counsel for the Appellant(s)	**Gurpreet Khaira**	**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	**Yousuf Alam**	**Conseil du ministre**

Canada

REASONS FOR DECISION

INTRODUCTION

[1] These are the reasons for the decision of the Immigration Appeal Division ("IAD") in the appeal of Gurpreet Singh RAI (the "Appellant") from the refusal of a permanent resident visa application ("Application") made by his spouse, Amanpreet Kaur RAI (the "Applicant"). A visa officer in New Delhi refused the Application by way of letter dated October 21, 2011 on the basis that the marriage between the Appellant and Applicant was not a genuine marriage and was entered into primarily for the purposes of acquiring status or privilege under subsection 4(1) of the *Immigration and Refugee Protection Regulations* (*Regulations*).

[2] The reasons for the refusal are set out in the processing notes found in the Record of the appeal.[1] The primary concern of the visa officer was that the Applicant is nine years the Applicant's senior, he is a divorcee and the marriage appears to have been arranged in haste and looks staged.

[3] The Appellant filed a Notice of Appeal on December 1, 2011.

[4] The Appellant filed documentary disclosure entered as Exhibits A-1 through A-4. The Respondent filed disclosure entered as Exhibits R-1 and R-2 consisting of the Appellant's Application for Permanent Residence and the record.

[5] The Respondent, the Minister of Citizenship ad Immigration, reviewed the disclosure provided by the Appellant, including the DNA results of the child born to the Appellant and the Applicant on April 17, 2013 and recommended that the appeal be allowed in law pursuant to subsection 67(1)(a) of the *Immigration and Refugee Protection Act* (*IRPA*).

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[1] Exhibit R-1

[6] Having addressed the disclosure and evidence relating to the concerns of the visa officer in addition to the other relevant indicia of a genuine marriage, I find, based on a balance of probabilities that the recommendation of the minister is not unreasonable. I find that the marriage is genuine and was not entered into for the primary purpose of immigration.

[7] Consequently, no testimony was provided at the hearing.

ISSUE AND THE LAW

[8] The issue in this appeal is whether subsection 4(1) of the *Regulations* applies so as to exclude the Applicant from membership in the family class. This subsection provides as follows:

> **4.(1) Bad faith** -- For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership
>
> > (a) was entered into primarily for the purpose of acquiring and status or privilege under the Act; or
> > (b) is not genuine.

[9] In appeals under subsection 4(1) of the *Regulations*, the Appellant must prove on a balance of probabilities that the marriage is genuine and was not entered into primarily for the purpose of immigration. I must dismiss the appeal if the evidence establishes, on a balance of probabilities, that either the marriage is not genuine or was entered into primarily for immigration. In order for me to grant the appeal, the Appellant must discharge his onus in respect of both subsection 4(1)(a) and 4(1)(b).

[10] In determining whether the relationship was entered into primarily for immigration purposes, the focus is on the intention of one or both the spouses at the time of entering into the marriage. The marriage will be caught by subsection 4(1)(a) if one or both of the spouses primary purpose of entering into the marriage is to gain an advantage in immigration. The temporal element of the test is at the time of entering into the marriage and immigration purpose must be the primary purpose.

[11] "Genuineness is revealed by a shared relationship of some permanence, interdependence, shared responsibilities and a serious commitment".[2] The genuineness of the marriage is based on a number of factors.[3] They are not identical in every appeal as the genuineness can be affected by any number of different factors in each appeal. They can include, but are not limited to, such factors as: intent of the parties to the marriage, length of the relationship, amount of time spent together, conduct at the time of meeting, at time of an engagement, at time of the wedding, behaviour subsequent to wedding, the level of knowledge of each other's relationship histories, level of continuing contact and communication, the provision of financial support, the knowledge of and sharing of responsibility for the care of children brought into the marriage, the knowledge of and contact with extended families of the parties, as well as the level of knowledge of each other's daily lives.

DECISION

[12] The appeal is allowed.

BACKGROUND

[13] The Appellant is a 37-year-old man. He has been married once prior to this present marriage and he has no children from that relationship. The Applicant is a 28-year-old woman who is a citizen of and is currently living in India. She has no prior marriages.

[14] The Appellant and the Applicant first met on January 22, 2011 in India and were married on February 1, 2011 at a ceremony attended by approximately 500 people.

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[2] *Khan v. Canada,* [2006] FCJ No 1875, 2006 FC 1490

[3] *Chavez, Rodrigo v. M.C.I.* (IAD TA3-24409), Hoare, January 17, 2005 at paragraph 3

[15] Based on the disclosure, it is evident that the Appellant has visited the Applicant in India numerous times, they communicate regularly by telephone and the Appellant provides ongoing financial support to the Appellant.

[16] The Applicant gave birth to a child on April 17, 2013, and DNA results provided indicate that the Appellant is the child's natural father.

[17] Insufficient evidence was provided to indicate that the primary reason for entering into the marriage was for immigration purposes.

CONCLUSION

[18] Upon review of the development of the relationship, their marriage, their conduct after marriage and ongoing communications, I find that it is all consistent with that of a genuine relationship. The evidence of shared financial responsibilities and continuous and ongoing communication as well as the birth of a child is compelling of a conclusion that the marriage is genuine.

[19] I find on a balance of probabilities that the marriage was not entered into primarily for immigration and that it is genuine. The Applicant is therefore the spouse of the Appellant and a member of the family class. The refusal is not valid in law.

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

"Patricia Greenside"
Patricia Greenside

June 19, 2014
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.