

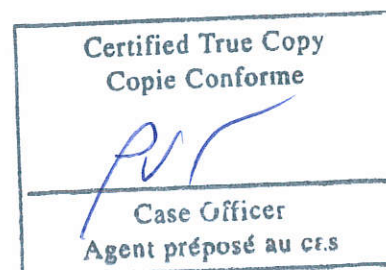


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Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	RAVDEEP SINGH NAGRA	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	January 26, 2018 October 4, 2018	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision	October 4, 2018	Date de la décision
Panel	T. Cheung	Tribunal
Counsel for the Appellant(s)	Gurpreet Khaira	Conseil(s) de l'appelant(e) / des appelant(e)(s)
Designated Representative(s)	Saradhi Puttagunta	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	Jennifer Bromley	Conseil du ministre



ORAL REASONS FOR DECISION

OVERVIEW

[1] These are the oral reasons in the appeal by the Appellant, Ravdeep Singh Nagra, who sponsored his wife Surjit Kaur (the Applicant) for immigration to Canada. The application was refused by the visa officer pursuant to section 4(1) of the *Immigration and Refugee Protection Regulations* (the *Regulations*) for reason that the marriage was entered into primarily for the Applicant's immigration to Canada or the marriage is not genuine. The Appellant appealed the refusal to the Immigration Appeal Division (IAD). These are the reasons for the decision in the appeal.

[2] The officer cited the following reasons for the refusal:

- The couple is not compatible in terms of social background;
- The Appellant was born, raised and educated in Canada, whereas the Applicant lived in her village in Punjab;
- The Appellant and the Applicant are the same age, which is against the norm of an arranged marriage in their community, where the male is usually four to five years older than the female;
- The Applicant is taller than the Appellant;
- The Applicant did not provide a credible explanation for the incompatibilities in the arranged marriage;
- The marriage appears to have been arranged in haste, in that the decision to marry was made before the couple met in person;
- The Appellant's sister did not attend the wedding of her only brother, which is one of the most important events in her life; and,

- The Appellant stayed in India for only three days after the wedding, and there was no satisfactory explanation for the short stay after the wedding. The Appellant has not visited the Applicant after the wedding.

DECISION

[3] I heard the testimonies of the Appellant and the Applicant. I have taken into consideration the documentary evidence and the submissions of both parties. I find the preponderance of evidence supports a finding that the marriage is genuine and was not entered into primarily for the Applicant's immigration. For the reasons that follow, the appeal is allowed.

ISSUE

[4] The issue in this appeal is whether the marriage is genuine and not entered into primarily for immigration. The test in section 4(1) of the *Regulations* has two prongs. The appeal can be dismissed if either the marriage is not genuine, or if the marriage was entered into primarily for the Applicant's immigration. The onus is on the Appellant to prove that both prongs of the test do not apply to the marriage.¹

[5] The analysis of the evidence overlaps both prongs of the test. The stronger the evidence of genuineness, the less likely immigration is the primary purpose of the marriage and *vice versa*. If there is strong evidence of immigration being the primary purpose, the less likely the marriage is genuine.

[6] In the assessment of whether the marriage was entered into primarily for the purpose of immigration, I considered the timing of the development of the relationship and the wedding, and the intention of the parties at the time the marriage was entered into.

[7] With respect to the genuineness of the marriage, I considered the following factors outlined in the *Chavez*² decision: the intent of the parties to the marriage; the length of the

¹ *Gill v. Canada (Citizenship and Immigration)*, 2014 FC 902.

² *Chavez v. Canada (Minister of Citizenship and Immigration)* (IAD TA3-24409), Hoare, February 11, 2005.

relationship; the amount of time spent together; conduct at the time of meeting, the engagement, and the wedding; behaviour subsequent to the wedding; knowledge of each other's relationship histories; continuing contact and communication; financial support; knowledge of each other's lives; and, contact with extended family. These factors are not exhaustive and weight assigned to each factor varies according to the circumstances of the case.

ANALYSIS AND FINDINGS OF FACT

Background

[8] This is the first marriage for both the Appellant and the Applicant. The Appellant's background consists of graduating from high school in 2010. Thereafter, he completed a two-year vocational college programme. The Appellant started searching for a marriage partner after his high school graduation. He testified that he had two girlfriends in Canada, but neither of them led to the prospect of marriage.

[9] The Applicant has never had any previous relationships. She completed Grade 12. Thereafter, she completed a three-month beautician course and spent one year in a co-op work program.

Credibility of the Appellant and Applicant

[10] The Appellant was a credible witness, such that the Minister's counsel submitted in closing that this marriage is likely genuine for the Appellant. Based on the evidence, I concur with the Minister's counsel that the marriage is genuine.

[11] The testimony of the two witnesses were substantially consistent on the following issues: the chronology of the arranged marriage; the parties involved in the marriage talks; the marriage ceremony; the reasons for the Appellant's short and infrequent visits to India; the couple's knowledge of each other's daily routines; their pattern of communications; and, their future plans.

[12] There was one inconsistency in the testimony that related to whether the Appellant and the Applicant are religious. The Appellant testified that they are not religious, whereas the

Applicant testified they are religious. In the re-examination of the Applicant, she testified in detail the frequency of the Appellant's visit to the gurdwara (temple) and for what occasions he would attend the temple. She testified that the Appellant's pattern of visits to the temple and his relationship with his religion can be described as infrequent visits to the temple. However, both the Appellant and Applicant respect religion, and both attend the gurdwara. But they differ in the frequency of their visits: the Applicant testified that she tries to attend weekly, but if she is short of time, it falls off to monthly attendance.

[13] I find that the initial inconsistency of whether the couple is religious has been resolved by the Applicant providing more details in her testimony in re-examination. Apart from this issue, the witnesses were materially consistent in their testimonies on the major aspects of their lives.

Introduction of the marriage match and the first meeting between the families

[14] The Appellant's family told his maternal uncle that they were interested in an arranged marriage for the Appellant. The uncle is a family friend of the Applicant's aunt, and has known the aunt's husband since 2006. The aunt told the Appellant's uncle about the criteria for the arranged marriage: that the couple be close in age; the Applicant is looking for a partner who is loving and caring; education is not a significant issue; and, height is not a criteria.

[15] The Appellant testified he wanted somebody from India because he was brought up with Indian culture in his home, in terms of the food and the language they speak at home. The Appellant speaks Punjabi, but he does not read or write Punjabi. The uncle thought that the Applicant would make a good match for his nephew. The uncle conveyed this message to the Applicant's aunt, who in turn spoke to the Applicant's family.

[16] From the Applicant's point of view, she testified that her parents made an effort to find a match for her to marry apart from the Appellant. Although the Applicant did not meet any other matches in person, she testified that there were some other marriage proposals which her family rejected because her parents did not like the behaviour or character of the other proposed matches.

[17] What is significant is that both witnesses testified in a consistent manner about how they were introduced through the Appellant's uncle and the Applicant's aunt in April 2013. The Appellant's maternal uncle talked to the Applicant's maternal aunt about his nephew in Canada who is educated, employed, and was 30 years old. The Applicant's maternal aunt told his uncle about the Applicant who was also 30 years old and had finished a beautician course. With this information, the two families decided to introduce the couple to each other by telephone. The Appellant's uncle suggested that the couple start off by talking on the phone, so as not to waste money on a trip to India in case the relationship or the marriage match did not work out.

[18] One of the visa officer's concerns is that the marriage was hasty, in that the decision to marry was made before the couple met in person. To address this concern, I note that the testimonies indicate that they were talking on the phone since July 2013, and the Appellant and Applicant each had the choice to say "no" to each other once they met in person in 2014 which was six months after the initial telephone introduction.

[19] The Sponsor Questionnaire – Additional Information From Sponsor states that the families started the marriage talks in July 2013, even though this date was not mentioned in question #1 of the Sponsored Spouse/Partner Questionnaire (SSPQ).³ Therefore, it cannot be said that the marriage was hasty because the families started the marriage talks, and the couple were talking to each other approximately seven months prior to the wedding.

[20] The Appellant testified that he and the Applicant spoke on the phone three or four times a week. They talked about each other's families, their education, their relatives and friends. The Appellant also told her about his medical conditions and his employment. The Applicant testified she got the impression that the Appellant is honest.

[21] In February 2014, the Appellant travelled to India with his mother, and that was when the two families met for the first time. The witnesses testified there were no investigations conducted because the Appellant's uncle was a family friend of the Applicant's aunt. The family

³ Record, p. 34, Additional Information From Sponsor; p. 24, SSPQ.

decided that they would meet each other first, and then decide whether to proceed to an arranged marriage.

[22] The Appellant arrived in India on February 18, 2014. Two days later, his family met her family in her village. The first meeting was attended by the Appellant's mother and stepfather, his maternal uncle, his uncle's wife, the Applicant's parents, her younger sister, and her maternal aunt. They discussed what the Appellant was looking for, what life was like in Canada, the fact that the Applicant had lived in the same village since her birth, and that she went to school in the village. The families talked for several hours, but no decision was made that day about the marriage.

[23] The Appellant testified that after the meeting, he decided to accept the arranged marriage, and two days later, a decision was made to proceed with the marriage. He testified that his mother asked him whether he wanted this arranged marriage and he answered in the affirmative because he liked the Applicant's qualities: she is trustworthy, truthful, well-mannered and caring. When he was asked to elaborate how he can tell that she is truthful and trustworthy, he said that he tested her with a question whereby he already knew the answer.

[24] The Appellant testified he could have said "no" to the wedding if he did not like the Applicant, because the intention of the trip to India was not to marry, but to determine if there was a suitable match. However, the decision was made to marry because he did not want to delay the wedding until another trip because of the expense of travelling, as the Appellant does not earn a high income from his employment. Moreover, the Appellant's medical conditions made it difficult for him to stay in India for a long period of time.⁴ As such, he wanted to minimise the amount of time he spent in India. For these two reasons, the decision was made to have the wedding during the same visit to India.

[25] After the decision was made to enter into the arranged marriage, the families held a *roka* ceremony. The Appellant also took the Applicant shopping, and they went to lunch. The Applicant testified to the same events occurring after the marriage proposal.

⁴ Exhibit A-1, p. 10, medical letter dated March 31, 2016.

Wedding ceremony

[26] The marriage took place on March 9, 2014. Both witnesses gave consistent testimony on the events of the wedding, namely, that it occurred at a gurdwara in the Applicant's hometown, and the reception was at a wedding palace. After the wedding, they stayed at the Appellant's stepfather's house.

[27] The Applicant was also knowledgeable about the Appellant's two sisters, and why they could not attend the wedding. One sister was working as a dental hygienist which requires her to give one-year notice to take a vacation, and the other sister was studying for exams.

Conduct after the marriage

[28] The Appellant only stayed in India for three days after the wedding because of a particular medical condition, which made it uncomfortable for him to remain in India for a substantial period of time. There is a medical note submitted to corroborate the Appellant's medical condition.⁵ The Applicant was also knowledgeable about her husband's medical conditions, which prevented him from staying longer in India. Both parties testified that they went on excursions, they visited relatives, and they went to lunch on the days after the wedding.

[29] After the marriage, the Appellant returned to India in February 2016.⁶ He stayed for only two to three weeks. He could not stay longer for the same reasons given above.

[30] After the marriage, the couple engaged in frequent communications. Both witnesses gave consistent testimony on the frequency and the timing of the communications. The Appellant testified that they talk every day for thirty minutes to two hours during his evenings and her mornings. After their telephone conversation, she would go to work. This testimony is substantiated by telephone records which I have examined.⁷ I note that the telephone records confirm the frequency of the calls, the length of the calls, and the timing of the communications. It is noteworthy that both the Appellant and the Applicant were able to give detailed information about when these calls occurred, and that their testimonies are corroborated by the documentary

⁵ Exhibit A-1, p. 10, medical letter dated March 31, 2016.

⁶ Exhibit A-1, pp. 1 to 3, boarding passes and airfare.

⁷ Exhibit A-1, pp. 20 to 45; exhibit A-2, pp. 5 to 43; exhibit A-3, 4 to 55, telephone records.

evidence. Given the frequency and length of their communications, I assign weight to the evidence of communications as a sign of a genuine marriage.

Knowledge about each other's lives

[31] The Applicant also exhibited detailed knowledge about her husband's employment, the hours of his employment, his daily routine, and the fact that he lives with his parents. The Applicant was able to describe his medical conditions, which have been corroborated by medical evidence.⁸ The Appellant testified that his wife accepts his medical issues because the conditions are stable. The Applicant is also aware of the medical reasons why her husband cannot visit India more frequently, or why he cannot stay longer in India. I am satisfied that the Appellant was honest and forthright with his wife about his medical history.

[32] The Appellant withheld information from the Applicant concerning his learning disability that relates to his reading.⁹ Having said that, the Appellant has completed high school and has attained a two-year certificate at a vocational college with the help of a learning assistant assigned to him as an accommodation. The Appellant testified that he has never told his wife about the learning disability because it has never come up. I find that the non-disclosure of the learning disability does not detract from the genuineness of the marriage, in light of the fact that the Appellant has overcome the learning disability by completing his education.

[33] At the visa office interview, the Applicant did not know much about the Appellants' parents' employment. The Appellant explained that that was because he did not tell her about the companies where his parents work, but he did tell her what his parents do for a living. At the IAD hearing, the Applicant was able to describe in detail his parents' occupations.

Future plans

[34] With respect to the couple's future plans, both of them testified that if the appeal is allowed, the couple will live with the Appellant's parents, the Applicant will work in a salon owned by her mother's friend, and they plan to have one child together. If the appeal is

⁸ Exhibit A-1, p. 10, medical letter dated March 31, 2016.

⁹ Exhibit A-4, psychological report dated March 19, 2018.

dismissed, both of them discussed the possibility of the Appellant moving to India to be with his wife, notwithstanding his medical conditions.

Primary purpose of the marriage

[35] The Appellant was asked whether he has considered the possibility that the Applicant could have married him primarily for her immigration to Canada, and whether he ever considered the possibility that she may leave him once she arrives in Canada. The Appellant responded, that he believes that the Applicant is truthful and trustworthy. I assign weight to this testimony because the Appellant has turned his mind to the consideration that the Applicant may be using the marriage for immigration, but he has assessed that possibility to be unlikely.

Concerns of the visa officer

[36] Initially, the visa officer noted that the couple is compatible in terms of age, education and marital status; however, the match was made in haste and they are not compatible in social background in that the Appellant was raised and educated in Canada and the Applicant was raised and educated in India.¹⁰

[37] Having heard the testimony, I find that both of these concerns have been addressed through the extensive testimony from the Appellant that the couple were introduced earlier by telephone in April 2013, and the fact that this date is documented in the Sponsor Questionnaire – Additional Information From Sponsor.¹¹ The date of the telephone introduction was not inserted after the visa officer's refusal. There was also an explanation in the testimonies that they were routinely communicating via telephone prior to meeting in person, and the intent of the original trip to India was not to marry, but to see whether the Appellant and Applicant would like each other once they met in person. There was a reasonable explanation as to why they decided to marry during the same trip. As noted above, the marriage was held during the first trip to India because of the Appellant's medical condition that made him feel uncomfortable in the warm climate and also because of the expense of travelling.

¹⁰ Record, p. 20, GCMS notes.

¹¹ Record, p. 34, Additional Information From Sponsor.

[38] With respect to compatibility and social background, I note that the couple has a similar level of education, and they are both of the same age. The witnesses testified to my satisfaction that they were not concerned with the fact that she is a few inches taller than him. They both testified that when they pose together in photographs,¹² they look similar in height, and that height was not a criteria in finding a match. With respect to the differences in culture, the Appellant testified that he speaks Punjabi.

[39] The visa officer was concerned that the Applicant was unaware whether the Appellant had a Bachelors of Arts (B.A.). The Appellant testified at the IAD hearing that he never told her he had a B.A., and that she made the wrong assumption that he would have a B.A. from attending a vocational college. After the visa officer's refusal, the Appellant explained to his wife the difference between a B.A. and a certificate diploma from a college. The Applicant admitted in her testimony that she had made up her answer that he has a B.A. based on her erroneous assumption. I am satisfied with the Appellant's explanation as to why the Applicant was mistaken about his diploma.

CONCLUSION

[40] Based on the testimonies and the other documentary evidence, I find that the marriage is genuine and was not entered into primarily for immigration. For all of the foregoing reasons, I allow the appeal.

[edited for grammar and syntax]

¹² Exhibit A-1, pp. 58 to 67, photographs.

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.

T. Cheung

T. Cheung

October 30, 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.