



IAD File No. / N° de dossier de la SAI : VB6-01731  
Client ID no. / N° ID client : 6069-3969

## Reasons and Decision – Motifs et décision

### SPONSORSHIP

<b>Appellant(s)</b>	Talwinder Singh BARIANA	<b>Appellant(e)(s)</b>
<b>and</b>		<b>et</b>
<b>Respondent</b>	The Minister of Citizenship and Immigration	<b>Intimé(e)</b>
<b>Date(s) of Hearing</b>	April 5, 2017	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Vancouver, BC	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	April 12, 2017	<b>Date de la décision</b>
<b>Panel</b>	Sterling Sunley	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	Amandeep Khaira	<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>	Stephanie Naqvi	<b>Conseil du ministre</b>

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## REASONS FOR DECISION

[1] These are the reasons and the decision of the Immigration Appeal Division (the “IAD”) in the appeal filed under s. 63(1) of the *Immigration and Refugee Protection Act* (the “Act”)<sup>1</sup> by Talwinder Singh BARIANA (the “appellant”). He is appealing the refusal made outside of Canada on the sponsorship application for a permanent resident visa made by his spouse, Harneet KAUR (the “applicant”), from India.

[2] The application was refused by Canadian immigration officials under s. 4(1) of the *Immigration and Refugee Protection Regulations* (the “Regulations”).<sup>2</sup> The visa officer’s decision was provided to the applicant in a letter dated May 6, 2016, from a member of the immigration section of the High Commission of Canada in New Delhi, India.<sup>3</sup>

### BACKGROUND<sup>4</sup>

[3] The appellant was born in 1992 and became a permanent resident of Canada in August 2010 at 18 years of age. His immigration to Canada was sponsored by his maternal aunt and uncle as his parents had both died before the appellant reached the age of majority. The appellant has a biological sister who lives in Canada and is married with a child. The appellant was educated to the 11<sup>th</sup> grade (in India) and has worked in different jobs since his landing in 2010. His marriage to the applicant is his first marriage. At the time of the hearing he was 24 years of age.

[4] The applicant was born in India in 1994 and was 22 years of age at the time of the hearing. Her marriage to the appellant is the applicant’s first marriage. She has undertaken post-secondary studies in India. The applicant is not presently employed outside of her home. The applicant’s parents both live in India, as does the applicant’s brother.

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>2</sup> *Immigration and Refugee Protection Regulations*, SOR/2010-208, s. 1.

<sup>3</sup> Record, pp. 181-182.

<sup>4</sup> Unless noted, the information in the Background section is taken from information contained in the Record.

[5] The appellant and the applicant were married on January 8, 2014, in the Punjab province of India. The index application was “locked-in” on October 7, 2014.

## ISSUE

[6] At issue in this appeal is whether s. 4(1) of the *Regulations* applies, thereby excluding the applicant from consideration as a member of the family class. The relevant disjunctive tests as articulated in the *Regulations* are that a foreign national shall not be considered a spouse if the marriage was entered into primarily for the purpose of acquiring any status or privilege under the *Act* or if the marriage is not genuine. To succeed in this appeal, the appellant must demonstrate that neither test applies to the relationship.

## LEGISLATION AND EVIDENCE

### Section 4(1) of the *Regulations*

[7] Section 4(1) of the *Regulations* deals with “bad faith” marriages, common-law partnerships and conjugal partnerships. The portion relevant to these appeal proceedings reads 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 any status or privilege under the Act; or
  - (b) is not genuine.

[8] The status or privilege that can be acquired under the *Act* in respect of marriage is that the appellant’s spouse is granted permanent resident status in Canada through membership in the family class when he or she qualifies for sponsorship to Canada. The onus lies with the appellant to prove, on a balance of probabilities, that the applicant is not disqualified as a spouse.

[9] It is self-evident that all applications for permanent residence seek the acquisition of status under the *Act* as a goal. However, this broad intent must be distinguished from the disqualification set out in the *Regulations*. A disqualification is established when the evidence shows, on a balance of probabilities, that the index relationship was entered into primarily to acquire any status or privilege under the *Act*.

[10] Counsel represented the appellant at the hearing; the Minister of Citizenship and Immigration (the “respondent”) was represented by Minister’s counsel. The panel entered into evidence two bundles of documents proffered by the appellant.<sup>5</sup> In addition to this documentary evidence, the panel heard *viva voce* evidence from the appellant and the applicant with the assistance of a Punjabi-English interpreter. The panel confirmed that all parties received a copy of the appeal record (the “Record”). Following the testimony of the last witness, the panel heard the oral submissions of respective counsel to the parties.

## ANALYSIS

[11] The focus of the first test in s. 4(1) of the *Regulations*, namely the marriage’s primary purpose, is the intention of the partners at the time they were married to one another. I am also guided by the Federal Court’s decision in *Mohamed*,<sup>6</sup> which leads me to examine the conduct of the couple after their marriage in order to seek additional evidence for what their likely intentions were at the time they married one another.

[12] The thread which must run through the majority of the evidence which informs my decision - whatever form that evidence might take - is the thread of credibility.

[13] The appellant and the applicant share the same primary language - Punjabi – and I find the couple to be linguistically compatible, and that they share similar cultural traditions. The age difference between them is minimal and they both self-describe themselves as “young.” This is

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<sup>5</sup> Exhibits A-1 and A-2.

<sup>6</sup> *Mohamed v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 696.

the first marriage for both of them. They both practice the Sikh faith. I find these to be areas of compatibility and positive factors in this appeal.

[14] There is other positive indicia in this appeal. For example, there is evidence that the appellant has made two return trips to India to see the applicant since their wedding in 2014 and there is evidence that the appellant and the applicant communicate with each other regularly (despite living in different countries).

[15] I find that the appellant's testimony was, for the most part, credible. He was able to discuss the genesis of the marriage and provide explanations for most of the concerns raised by the respondent, including the relative haste between the couple's first meeting and their agreement to marry and the brevity of the period between the engagement and the couple's marriage. Concerns about his employment history and his age at the time of the marriage were addressed to my satisfaction.

[16] Both spouses provided credible and consistent testimony with respect to the financial support provided by the appellant to the applicant, the fact that family "background checks" were undertaken, that there were "other choices" for marriage matches open to them, that they both sought a "small" wedding, that they both want to delay having children for a few years, and that they both planned to work and save money to buy a house together in Canada if the appeal is allowed.

[17] The respondent probed several areas of concern identified by both the visa officer and the respondent. For example, the appellant was asked about the sparsity of photos alleged by the visa officer and, in particular, whether a large "wedding album" of the kind often produced following Punjabi marriages was made for the couple. The appellant said that the applicant had a "big photo album" which she took to the interview with the visa officer. I am satisfied on a balance of probabilities that the couple's marriage was photographically well-documented.

appellant has met his onus. In my view, however, the rather blithe and cavalier willingness on the part of the appellant and the applicant to blame any errors, omissions, or inconsistencies made by the applicant at the interview on bias, ineffective note-taking, and poor interpretation did not help them to make their case. On the contrary, it diminished it.

**DECISION**

[26] For the reasons I have provided herein, the appeal of the refusal made under s. 4(1) of the *Regulations* 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.

*(signed)*

**"Sterling Sunley"**

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**Sterling Sunley**

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**April 12, 2017**

**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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**IRB Representative  
Représentant de la CISR**



Immigration and  
Refugee Board of Canada  
**Immigration Appeal  
Division**

Commission de l'immigration  
et du statut de réfugié du Canada  
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IAD File Number: VB6-01731  
Client ID: 60693969

**STATEMENT THAT A DOCUMENT WAS PROVIDED**

On April 19, 2017 I provided the **Reasons and Decision**

To the **appellant** at the following address:

Talwinder Singh Bariana  
11081 80A Avenue  
Delta, BC V4C 1W5

Personal Service:   
Prepaid Regular Mail:   
Courier:   
Fax:

To the **appellant's counsel** at the following address:

Amandeep Khaira, Cwc Immigration  
19-2565 Steeles Ave E  
Brampton, ON L6T 4L6

Personal Service:   
Prepaid Regular Mail:   
Courier:   
Fax:

To the **Minister's counsel** at the following address:

CANADA BORDER SERVICES AGENCY  
Immigration Appeals  
Suite 700, 300 West Georgia Street,  
Vancouver, BC V6B 6C8

Personal Service:   
Prepaid Regular Mail:   
Courier:   
Fax:

(Signature)

Alexander Li

- ❖ Once your appeal has been determined by the Immigration Appeal Division, the file is closed. The Immigration Appeal Division will not have any further information regarding the status of your matter.

Please refer to the chart for further information:

<u>Appeal type</u>	<u>Outcome</u>	<u>Responsibility/Next Steps</u>
Sponsorship s. 63(1)	Allowed	<ul style="list-style-type: none"> <li>The matter is returned by Canada Border Services Agency (CBSA) to Immigration, Refugees and Citizenship Canada (IRCC). You may access information regarding the continued processing of your sponsorship application at the following address: <a href="http://www.cic.gc.ca/english/my_application/status.asp?s=2">http://www.cic.gc.ca/english/my_application/status.asp?s=2</a></li> <li>If you want to make specific inquiries to the visa office, you can fill out the WEB form at the following address: <a href="http://www.cic.gc.ca/english/contacts/web-form.asp">http://www.cic.gc.ca/english/contacts/web-form.asp</a></li> </ul>
	Dismissed	<ul style="list-style-type: none"> <li>You may wish to seek legal advice.</li> </ul>
Removal Order s. 63(2)	Stayed	<ul style="list-style-type: none"> <li>Follow the terms and conditions of your stay. Keep in contact with CBSA until the IAD contacts you regarding the reconsideration of your appeal.</li> <li>Keep your contact information up-to-date with the IAD.</li> </ul>
	Allowed	<ul style="list-style-type: none"> <li>You are no longer subject to a removal order; contact IRCC regarding your status in Canada.</li> </ul>
	Dismissed	<ul style="list-style-type: none"> <li>CBSA will be in contact regarding your removal from Canada.</li> <li>You may wish to seek legal advice.</li> </ul>
Removal Order s. 63(3)	Stayed	<ul style="list-style-type: none"> <li>Follow the terms and conditions of your stay. Keep in contact with CBSA until the IAD contacts you regarding the reconsideration of your appeal.</li> <li>Keep your contact information up-to-date with the IAD.</li> </ul>
	Allowed	<ul style="list-style-type: none"> <li>You are no longer subject to a removal order and retain your permanent resident status.</li> </ul>
	Dismissed	<ul style="list-style-type: none"> <li>CBSA will be in contact regarding your removal from Canada.</li> <li>You may wish to seek legal advice.</li> </ul>
Residency Obligation Appeal s. 63(4)	Allowed	<ul style="list-style-type: none"> <li>IRCC will follow up with you after being advised of the decision.</li> </ul>
	Dismissed	<ul style="list-style-type: none"> <li>You are no longer a permanent resident of Canada.</li> <li>You may wish to seek legal advice.</li> </ul>
Minister's Appeal s. 63(5)	Allowed	<ul style="list-style-type: none"> <li>CBSA will be in contact regarding your removal from Canada.</li> <li>You may wish to seek legal advice.</li> </ul>