



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.:** TC2-07420  
**Unique Client Identifier (UCI):** 36959313

## **Statement that a document was provided**

On December 19, 2023, I provided the following:

### **Notice of Decision and Reasons**

**By e-mail to the Appellant Bahadur Singh SUMAL**  
**At the following address:** [sumalbob@gmail.com](mailto:sumalbob@gmail.com)

**By My Case portal to the appellant's counsel Gurpreet Singh Khaira** on  
December 19, 2023

**By e-mail to CBSA - Toronto - Hearings and Appeals Office**

Provided by:  
Wilma Valencia  
Case Management Officer  
Tel.: 416-954-1000 / 1-866-790-0581



IAD File No. / N° de dossier de la SAI : TC2-07420  
Client ID No. / N° ID client : 36959313

**Reasons and Decision – Motifs et décision**

**Sponsorship Appeal**

<b>Appellant(s)</b>	Bahadur Singh SUMAL	<b>Appelant(e)(s)</b>
<b>and Respondent</b>	Minister of Citizenship and Immigration	<b>et Intimé(e)</b>
<b>Date(s) of Hearing</b>	May 10, 2023 December 12, 2022	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, ON (by video-conference)	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	December 18, 2023	<b>Date de la décision</b>
<b>Panel</b>	Z. Mia	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	Gurpreet Singh Khaira	<b>Conseil 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>	Nathan Weiss	<b>Conseil du (de la) ministre</b>

## REASONS FOR DECISION

### INTRODUCTION

[1] The Appellant, Bahadur Singh SUMAL, sponsored Jaswinder Kaur KUMAL (Applicant), to come to Canada as his spouse. The sponsorship was refused because Canadian immigration officials were not satisfied that the marriage is genuine and was not entered into primarily for an immigration purpose.<sup>1</sup> The Appellant appeals the refusal.<sup>2</sup>

[2] The Appellant and the Applicant are, respectively, 53 and 41 years old. They married in January 2016 in India. He is a Canadian citizen who became a permanent resident of Canada in 1999. She is an Indian citizen.

[3] The Appellant testified from Canada and the Applicant testified from India. They both testified through a Punjabi-English interpreter.

[4] In this appeal, I must decide 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 for the Applicant to acquire any status or privilege under the *Immigration and Refugee Protection Act* (IRPA).

[5] Appellants at this tribunal have the benefit of a *de novo* hearing where they can address the concerns raised by immigration officials and, in cases such as this one involving a spousal sponsorship, show why the marriage is genuine and was not entered into primarily for an immigration purpose. In short, appellants have a chance to be heard and prove their case. They can do this by putting their best foot forward with reliable – clear, consistent, and credible – oral testimony and supporting evidence.

[6] As explained in these reasons, the Appellant successfully demonstrated that he and the Applicant are in a genuine marriage that was not motivated primarily by an immigration purpose. Therefore, they are not in a bad faith marriage. Despite the deficiencies in this case regarding the Appellant's first marriage and his ongoing issues with alcohol use, the full arc of the

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<sup>1</sup> *Immigration and Refugee Protection Regulations*, s. 4(1).

<sup>2</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c.27, s. 63(1).

relationship and totality of evidence and circumstances show that the couple are likely not in a bad faith marriage. The genesis and development of the relationship from the initial marital match to marriage was reasonably and consistently explained by the couple. The indicia of a genuine marriage includes their deep and detailed knowledge of each other, the fact that they have been married for several years, and the Appellant's visits to India to see the Applicant. In addition, the more than three-year period between marriage and sponsorship shows that there likely was no primary immigration purpose in this marriage. Although there were marked deficiencies in the couple's testimony on the topic of his alcohol use problems, I see those shortcomings in the context of this case not as evidence of bad faith marriage, but of a couple who have not fully come to terms with the problem.

## DECISION

[7] 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*.

[8] The appeal is allowed.

## LAW

[9] A Canadian citizen or permanent resident may sponsor foreign nationals as members of the family class, and spouses are members of the family class.<sup>3</sup> However, there is an exception to spousal family class membership for bad faith relationships as described in the *Immigration and Refugee Protection Regulations*.

### Bad faith

4. (1) 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.

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<sup>3</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c.27, s. 12(1); *Immigration and Refugee Protection Regulations*, s. 117(1)(a).

[10] To allow an appeal relating to bad faith relationships, appellants must prove, on a balance of probabilities, that the relationship is genuine and was not entered into primarily for the purpose of acquiring any status or privilege under the IRPA. Appeals must be dismissed if the evidence establishes, on a balance of probabilities, that either the relationship is not genuine or was entered into primarily for immigration purposes.

[11] 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 spouses when they entered into the relationship. The first part of the test will not be met if, for at least one party, the *primary* purpose of entering into the relationship is to gain an immigration advantage.

[12] The second part of the test involves assessing the genuineness of the relationship, which can be affected by several factors that were outlined in the *Chavez v. Canada*.<sup>4</sup> Those factors include:

- i) Intent of the parties to the marriage;
- ii) Length of the relationship;
- iii) Amount of time spent together;
- iv) Conduct at the time of meeting, engagement, and/or the wedding;
- v) Behaviour subsequent to the wedding;
- vi) Knowledge of each other's relationship histories;
- vii) Level of continuing contact and communication;
- viii) Financial support;
- ix) Knowledge of and sharing of responsibility for the care of children brought into the marriage;
- x) Knowledge of and contact with extended families of the parties; and
- xi) Knowledge about each other's daily lives.

[13] The applicability of these factors varies according to the circumstances of the case. These factors are non-exhaustive, and the weight assigned to them can vary from case to case.

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<sup>4</sup> *Chavez v. Canada (Minister of Citizenship and Immigration)* (IAD TA3-24409), Hoare, February 11, 2005.

## ANALYSIS

### **The Appellant's prior marriages and alcohol use issues.**

[14] The Appellant was twice married and divorced before he married the Applicant.

[15] The Appellant's first spouse was Paramjit Kaur AJJI and he became a permanent resident of Canada through her sponsorship. At the time of their marriage, the Appellant was in the United Kingdom seeking refugee protection. He landed in Canada in 1999 and the couple divorced in 2002.

[16] Thereafter, the Appellant married Baljeet Kaur SUMAL in 2003 and sponsored her for permanent residence in Canada. They had two children and the couple separated in the latter part of 2014 due to problems arising from the Appellant's alcohol use, which included criminal convictions. The Appellant and his second spouse divorced in 2014.

[17] The Appellant has no contact with his children, and they do not want to see him.

[18] The Appellant's alcohol use has resulted in several criminal convictions over the years, including impaired driving in June 2016.

[19] When asked about his alcohol use and crime, the Appellant downplayed his culpability. He said he attended addiction classes to address his alcohol use. When asked if he drinks alcohol now, the Appellant said no but his testimony was shifting and unclear. He ultimately said he had a beer in October 2022.

[20] The Appellant testified that he attended alcohol programs on three occasions. He said he told the Applicant about his alcohol issues, and she told him to give up alcohol.

[21] At the visa interview in March 2022, the Applicant said the Appellant had not used alcohol since they married in January 2016.<sup>5</sup> This was incorrect because the Appellant was involved in criminal incidents arising from his alcohol use after they married. For his part, the Appellant said he did not use alcohol after a 2013 incident with his second spouse, but then acknowledged the impaired driving offence in June 2016. He said he told the Applicant about

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<sup>5</sup> Appeal Record, p. 51.

the impaired driving offence and speculated that her incorrect response at the visa interview was due to nervousness.

[22] The Appellant clearly struggles with alcohol use, and it is likely that he continues to use the substance. The couple were inconsistent and not forthright about his alcohol use in several instances before me. While this type of defect in testimony can raise bad faith marriage concerns because it may reveal a lack of candour and knowledge in a relationship, I do not see it as such in this case. When the problematic testimony on alcohol is considered with the totality of evidence and circumstances in this case, the bad faith marriage concern is diminished. In my view, the couple are likely in a genuine relationship but have not fully come to terms with the Appellant's use of alcohol. They are in denial, but I do not see that as evidence or a non-genuine marriage or primary immigration purpose when considering the full scope of the relationship.

[23] I found the Appellant to be generally credible and forthright with respect to his marriages with the Applicant and his second spouse. However, he was evasive regarding his first spouse. There is a cloud of concern over the first marriage through which the Appellant obtaining status in Canada. Although there is insufficient evidence to make a reasonable conclusion regarding the first marriage, it is worth noting that the Appellant's testimony regarding his first spouse was sparse and evasive, which starkly contrasts with his testimony about his other two marriages.

**The genesis and development of the relationship.**

[24] The couple met in April 2015 when he was visiting India. The Appellant was having problems with alcohol use and was lonely after his divorce. He needed some time away and went to India.

[25] A friend of the Appellant's in India from their school days, Varinder KUMAR, introduced the couple. Mr. Kumar knew of the Applicant through her cousin, Jasbir SINGH. Mr. Kumar and Jasbir Singh were long-time friends. The Applicant said Jasbir Singh was looking for a marital match for her.

[26] When they met, the Applicant was in her mid-30s and never married. The Appellant explained that the typical marriage age in the Indian cultural context is the mid-20s. He said she

had not married because of her studies and duties of caring for her unwell mother. Although she began working in 2011, the Applicant could not find a suitable match in past.

[27] The Applicant said she was informed in advance during the match process of the Appellant's background, including his prior marriages and criminality. For his part, the Appellant said her family was told about his past and he explained to them that he had learned his lesson with respect to the alcohol use issues.

[28] The couple first met in April 2015 at Mr. Kumar's home. She was there with her brother, Parminder SINGH. The Appellant said Parminder Singh asked him questions and he and the Applicant had an opportunity to meet in private. They were satisfied with each other, and the families agreed to the union the next day – this was the *roka*, a pre-engagement commitment to marry. The Applicant said no rings were exchanged at the *roka* and they were not engaged at that time. During the time after their first meeting, the couple spent time together with family, worshipping at *gurdwara*, and dining out. The Appellant returned to Canada in May 2015.

[29] Although the *roka* was done in April 2015, the Appellant said they formally decided to marry at the end of November 2015. The Applicant explained that he asked her about their plan at that time and, in December 2015, she was satisfied to move forward with the marriage.

[30] When asked how he was a suitable match for her – he is older, twice divorced, had children, and a criminal record – the Appellant said he was forthright with the Applicant about his past. He said the age difference is not an issue because they understand each other. He explained that he disclosed his past marriages and criminality to the Applicant and her family. As well, he told her he would improve and she trusted him.

[31] The Applicant said she had been looking for a match since about 2010 or 2011 when she was about 30 years old. She did not marry sooner because she was caring for her sick mother and her brother had married. The Applicant first wanted to get a job, which she did around 2009, before looking for a marital match. She wanted someone mature and realized that may mean the person would have been previously married. Her prior matches did not work – one was unemployed, and another was more than two decades her senior. She said she found the Appellant honest, attractive, and mature. Additionally, she relied on the recommendation of Jasbir Singh, who knew the Appellant.



[32] The couple married in India in January 2016.

[33] After the wedding, the couple stayed at the Appellant's family home in Pandori Sumla, which is a village in Punjab, India. He returned to Canada in March 2016. During their post-marital period in India the couple spent time together and with their families, attended *gurdwara*, went to parks, and dined out. The Appellant said he would drive the Applicant to work and pick her up at the end of the day.

[34] The couple offered a consistent account of how they met and how their relationship developed to marriage, which supports a finding of genuineness. In my view, the development of the relationship has been reasonably explained and it followed a path that falls within the norm in the Indian cultural context. Moreover, I see nothing in the early part of the relationship leading to marriage that is a cause of concern with respect to a primary immigration purpose.

**The delay in filing the sponsorship application is evidence of a marriage that was not entered into primarily for an immigration purpose.**

[35] Although the couple married in January 2016, the sponsorship application was filed more than three years later, in October 2019. The Appellant said the delay was due to his criminality. His understanding, based on advice from his counsel at the time, was that he could not sponsor the Applicant for some time because of his criminal record.

[36] In my view, the more than three-year delay is a significant element in this case showing that the marriage was likely not motivated primarily by an immigration purpose. Arguably, applicants in a marriage of convenience want to come to Canada as soon as possible. The fact that the couple maintained their relationship for several years with no sponsorship in process indicates that the Applicant's primary motivation in the relationship was not immigration. Moreover, I see nothing showing that she was pushing the Appellant to sponsor her in the years between the marriage and the filing of the sponsorship.

**The Appellant's visits with the Applicant in India are evidence of a genuine marriage.**

[37] The Appellant and the Applicant spent time together during their courtship in 2015 and he spent several months in India after they married in 2016. He also visited the Applicant for

two months in 2019 and at the time of the second sitting in this appeal in May 2023 he had been in India with her since December 2022.

[38] The Appellant did not visit India during 2020 and 2021 because of the travel restrictions arising from the coronavirus disease pandemic. He also explained that he was trying to get a stable job and save money. In early 2022, the Appellant said he did not go to India because he was preparing for the appeal.

[39] The Appellant's visits to India to spend time with the Applicant support the genuineness of the relationship.

**The couple demonstrated knowledge of each other and interdependence, which supports a finding that they are in a genuine marriage.**

[40] The couple demonstrated detailed and spontaneous knowledge about each other's backgrounds, employment, and lives. Notably, the Applicant gave a thorough account of the Appellant's prior marriages and how they broke down. This is evidence of a genuine relationship.

[41] The Applicant lives with the Appellant's mother in Pandori Sumla.

[42] As noted earlier, although the couple's testimony regarding the Appellant's use of alcohol was deficient, those shortcomings, when viewed with the totality of the evidence, is more likely indicative of a couple who have not fully come to terms with the Appellant's use of alcohol rather than evidence of a bad faith marriage. In my view, the failure to fully come to terms with the Appellant's alcohol issues may not bode well for the prospect of a happy marriage in the future, but it is not evidence of a bad faith marriage in this case.

[43] The Applicant knew of the Appellant's criminality, including assaults and driving while impaired in Canada after they married. She credibly explained that she found out about the June 2016 impaired driving incident because she was not able to reach the Appellant. As a result, the Applicant called his workplace and learned of the incident. She was shocked to learn about the incident. In my view, her account of learning of the impaired driving incident bolsters the genuineness of the marriage because it shows that she and the Appellant were communicating, and she knew where he worked and reached out to his workplace when she was worried about

her spouse. The Applicant said the Appellant had to take “de-addiction” classes and was on probation for a year.

[44] During cross-examination, the Applicant mentioned that the Appellant has a cyst on his prostate that was causing him discomfort, including frequent urination. No corroborating evidence was before me about the prostate issue. As well, she mentioned that they want to have a child and the Appellant was told by a doctor in Canada that he should not have prostate surgery before they try to conceive a child because it could affect their ability to do so. On the matter of trying to have a child, the Applicant said she had been pregnant in early 2023 but later experienced heavy bleeding. Again, I had no corroborating evidence about the pregnancy.

[45] In his closing submission, Respondent’s counsel rightly pointed out the lack of corroborating evidence on these two important issues – the prostate issue and the pregnancy. Following the conclusion of the hearing, I asked the Appellant, through his counsel to provide any supporting evidence on the prostate issue and pregnancy. I was provided with some medical documents on these matters in mid-July 2023.<sup>6</sup> The Respondent was not satisfied with the documents and reiterated that the appeal should be dismissed.<sup>7</sup> Appellant’s counsel provided a reply submission about two months late without reasonable excuse – counsel blamed his client for the delay.<sup>8</sup> The reply submission contained additional documents addressing the Respondent’s concerns. I am disappointed that counsel failed to disclose these documents prior to the two sittings in this appeal and was late in providing a reply to the Respondent’s submission. However, the material is probative and relevant in confirming the testimony regarding the Appellant’s prostate issue and the Applicant’s pregnancy. All told, this evidence is reliable and helpful to me in confirming the Applicant’s testimony, which shows interdependence and knowledge of each other. In my view, the Applicant’s knowledge of the Appellant’s prostate issue and the lost pregnancy support a finding that the couple are in a genuine relationship.

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<sup>6</sup> Appellant’s post-hearing submission dated July 18, 2023.

<sup>7</sup> Respondent’s post-hearing submission dated July 27, 2023.

<sup>8</sup> Appellant’s post-hearing reply submission dated October 10, 2023 and application for late submission dated October 13, 2023.

## CONCLUSION

[46] The aim for appellants in these hearings is not to show perfection, but to reasonably demonstrate why their marriage is genuine and was not motivated primarily by an immigration purpose.

[47] As explained in these reasons, the arc of the relationship has been reasonably and consistently explained. While there were deficiencies in the testimony regarding the Appellant's first marriage and his alcohol use issues, I do not see them as fatal in this appeal when considered against the elements showing a genuine relationship that was not motivated primarily by an immigration purpose.

[48] 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.

(Signed) Z. Mia  
**Z. Mia**

December 18, 2023  
**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.