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 : VB7-00100

Client ID no. / N° ID client : 3868-1621

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Hardeep Kaur GREWAL	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	April 24, 2018	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	May 1, 2018	**Date de la décision**
Panel	George Pemberton	**Tribunal**
Counsel for the Appellant(s)	Amandeep 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	Stephanie Naqvi	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (the "IAD") in an appeal by Hardeep Kaur GREWAL (the "appellant") against the refusal of the sponsored application for a permanent resident visa for her spouse, Baljinder SINGH (the "applicant") of India.

BACKGROUND

[2] The refusal was pursuant to subsection 4(1) of *the Immigration and Refugee Protection Regulations* (the "*Regulations*").[1] The visa officer found that the marriage between the appellant and the applicant is not genuine and was entered into primarily for the purpose of the applicant acquiring status under the *Immigration and Refugee Protection Act* (the "*Act*").[2]

[3] The appellant is a 38-year-old citizen of Canada. She became a permanent resident in 2000 after being sponsored by her first spouse. The applicant is a 33-year-old citizen of India. They were introduced through the appellant's sister and her husband. They met in person on June 24, 2014, and married on September 11, 2014.

[4] The appellant and applicant testified at the hearing. I have considered their testimony, the materials in the Record, additional material produced by the appellant,[3] and the parties' submissions.

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[1] *Immigration and Refugee Protection Regulations*, SOR/2010–208, s. 1.
[2] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[3] Exhibits A-1 – A-3.

ISSUES

[5] The issue is whether subsection 4(1) of the *Regulations* applies, thereby excluding the applicant from consideration as a member of the family class. The tests set out in subsection 4(1) of the *Regulations* are whether the marriage:

(a) was entered into primarily for the purpose of acquiring any status or privilege under the *Act*; or,

(b) is not genuine.

Only one test needs to be met to disqualify a spouse. The onus of proof is on the appellant to establish, on a balance of probabilities, that the applicant is not disqualified as a spouse.

DECISION

[6] I find the appellant has not met the onus on her of establishing, on a balance of probabilities that the marriage is genuine and was not entered into primarily for the purpose of acquiring a status or privilege under the *Act*. I find that the applicant is not a member of the family class. The appeal is dismissed.

ANALYSIS

[7] The visa officer's concerns included the fact that the marriage did not conform to cultural norms, and the applicant's immigration history in Australia.

[8] The appellant provided some evidence of genuineness of the marriage, including photos of the couple together, telephone bills and internet chat printouts. The appellant has returned once to visit the applicant. Notably, as of the hearing date, the appellant was approximately

20-weeks pregnant. Despite the evidence of genuineness, in key areas, examples of which are below, the testimony was not credible or there were significant irreconcilable inconsistencies.

[9] The couple was introduced by the appellant's brother-in-law, who is related to the applicant. They spoke by telephone on December 15, 2013. Their relationship developed to the point that in June 2014 the appellant travelled to Australia for three weeks to meet the applicant. She returned on September 8, 2014. They married on September 11, 2014. For significant periods between 2011 and 2015 the applicant was living illegally in Australia.

[10] An applicant's immigration history is a relevant consideration, but is not necessarily determinative. The applicant entered Australia in 2009. He went as an accompanying dependent of his first wife, who had a student visa. They separated in 2010. The applicant's status as her dependent expired March 15, 2011. The applicant remained in Australia without status. He made a refugee claim in January 2014. The refugee claim was refused in October 2014. In October 2015 the applicant was deported from Australia after having been caught working without a permit.

[11] There were inconsistent explanations about the breakdown of the applicant's first marriage. The appellant testified that two weeks after going to Australia the applicant moved away to another city for work. His wife remained at school. The appellant's testimony about her knowledge of the breakdown of the applicant's marriage was evasive. She testified that they were fighting over the telephone, on one occasion the applicant's ex-wife refused to send him his medical card and at some point the ex-wife told the applicant she had found another man and not to call her. The applicant testified that the marriage breakdown was caused by the refusal to send him his medical card. When pressed, he testified that he suspected that she might have another man, but the main reason for the breakdown was her refusal to send his medical card. First, it is not credible that the applicant would divorce his wife because she refused to mail him his medical card. Second, whatever the reason for the breakdown, it is not reasonable that the appellant and applicant have different explanations. It is not unusual that spouses are circumspect

about failed relationships. However, if, as in this case, the new partner claims to know the reason a prior marriage failed, the testimony should be relatively consistent.

[12] After his status expired in Australia the applicant remained illegally because he and his family were facing threats from his ex-wife's family. The witnesses testified that the ex-wife demanded that the appellant reimburse her family for the cost of the marriage and return the wedding jewelry. The applicant's testimony about the timing and nature of the threats was vague and evasive. At best it can be said that the threats were made sometime in 2010. In September 2015 the applicant was arrested by Australian authorities. He testified that while he was in detention his parents paid his ex-wife's family the money so he could safely return to India. If they were willing to pay in 2015, there is no reasonable explanation for not having negotiated a deal sooner. Testimony regarding how much was owed and how it was re-paid was inconsistent. For example, the appellant testified that the applicant's family borrowed the money from family and friends and is re-paying it. The applicant testified that the money came from his parents' savings and there is no need to re-pay anything. The couple had been married for a year at that point and were anxious to re-unite. If the marriage is genuine, it is reasonable to expect that the appellant would have a clearer understanding of the situation.

[13] The appellant had no status in Australia between March 2011 and January 2014 or after October 2014. He worked without authorization during those periods. He testified that it was only after his arrest in 2015 that he realized he needed a work permit. He knew however that he needed a work permit when he first arrived in Australia. The applicant did not disclose the employment on his application for Canadian permanent residence.[4] I find his claim that he did not know he needed a work permit to work in Australia is not credible.

[14] Given the vague and evasive testimony regarding the alleged threats, the inconsistent explanations about how the supposed debt was repaid, and the unexplained 5 year delay in repaying, I find the story not credible. In the absence of a credible explanation for not returning

[4] Record, p. 136.

to India, the most reasonable inference is that the applicant wanted to stay and work in Australia, whether legally or not.

[15] The applicant made his refugee claim in January 2014. The appellant testified that the reason he made the claim then, and not earlier, is that without legal status in Australia he could not file for divorce from his then wife. The applicant testified that until then he was unaware he could make a refugee claim. He consulted with a lawyer after the appellant suggested it. If the applicant needed a divorce, there is no reasonable explanation for not having returned to India, where the marriage had taken place, to file the divorce, except that he was motivated to remain in Australia. It is not reasonable that the explanations for the timing of the refugee claim are inconsistent. If the purpose of the refugee claim was to normalize his status so he could divorce, that is indicative that in January 2014 a decision had already been taken to re-marry. The witnesses testified that they did not agree to marry until April or June 2014.

[16] The appellant's refugee claim was dismissed after he failed to appear for an interview on September 3, 2014. The appellant testified that the applicant was not notified about the interview. She testified that he learned later from his lawyer that he had missed it. The applicant testified that he knew about the interview but by the time the friend he had enlisted to help with interpretation had finished work it was too late to get to the interview. The invitation letter explained that a Punjabi interpreter would be provided.[5] The applicant's explanation is not credible. This was days before the appellant's marriage. It is not reasonable that in a genuine relationship they would not have a consistent understanding of such a significant event.

[17] The appellant provided several hundred pages of texts and screen shots of internet messaging, all in English. The applicant testified that he is not technically proficient and is not proficient in English. He testified that they only communicated by telephone, and only rarely by email. That testimony is not reconcilable with the documentary disclosure. As early as February 13, 2014, the appellant referred to the applicant as "my dear Husband",[6] two to four months before they agreed to marry. The testimony regarding why the communication was in English

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[5] Record, p. 180.
[6] Record, p. 214.

rather than Punjabi was inconsistent. I give little weight to the documentary evidence of email and other internet communication. The lack of reliability of the chat messaging evidence raises concerns about the reliability of other documentary evidence of ongoing communication.

[18] The appellant did not return to visit the appellant until December 2017, three years after the marriage. Her explanation was that she could not travel because of planned surgeries. When confronted with an inconsistent explanation the applicant gave to the visa officer, she modified her answer to say that money was also an issue. The applicant told the visa officer that the reason the appellant had not visited was because of financial reasons. At the hearing he again testified that the appellant had financial problems. When given a second chance by his counsel, the only additional reason he could offer was that he too had financial issues at that time. Either explanation – lack of funds or medical restrictions – would be reasonable. However, in a genuine relationship it is reasonable to expect that the couple would have a shared understanding of what has kept them apart for three years.

[19] The appellant's first husband was mentally abusive towards her and had an alcohol problem. She testified that a primary consideration for her was the welfare of her two teenage daughters. She wanted a good father for them. That makes sense, but is not consistent with her agreeing to marry so quickly and before her daughters had met the applicant. It is not consistent with her agreeing to marry a man she knew had had no status in Australia, was working illegally, had separated from his first wife soon after they married, and was, purportedly, facing death threats.

[20] The appellant and applicant agreed to marry in June 2014 (though the appellant had been addressing the applicant as her husband at least as early as February). The applicant's divorce was approved on August 7, 2014. It took effect on September 8, 2014. The applicant went that day to collect proof of his divorce. Once he had that, the appellant purchased an air ticket and left Canada the same day. She arrived in Australia on September 10, 2014. The couple were married in a civil ceremony the next day. Two friends witnessed the marriage, but none of the applicant's or appellant's family members were present.

[21] The appellant testified that they had to marry on that day because the person who scheduled the ceremony for them had surgery scheduled the next day. The marriage took place at the government registry. There was little reasonable explanation why it could not have taken place on any other regular working day. Other than that they had agreed to get married and wanted to proceed, there was no reasonable explanation for the haste of the marriage. The appellant's daughters are her priority. If the applicant is to be their step-father and the marriage is meant to be for a lifetime, there is no reasonable explanation for not arranging the wedding at a time and place that at least they could be present. The applicant's aborted refugee interview had been scheduled for September 3, 2014, a week prior to the marriage. In the circumstances, the most reasonable conclusion is that the marriage was rushed because the applicant knew his refugee claim was about to be refused. He would soon lose what status he had in Australia.

[22] The appellant lived and worked illegally in Australia for several years. His explanation for not returning to India is not credible. His claim not to have known he could not work without authorization is not credible. If he thought he had a legitimate refugee claim, there is no reasonable explanation for not having appeared for the interview. As noted above, a negative immigration history is not determinative. In the circumstances of this case I find that it weighs heavily against the applicant's claim that this marriage was not entered into primarily for the purpose of gaining status.

[23] Most of the evidence indicates that this is not a genuine marriage. The stories do not make sense. However, the appellant is pregnant. That is a significant factor indicating that the marriage is genuine. Both witnesses testified that they have always wanted children but until recently the appellant's health issues prevented her from conceiving.

[24] I give the appellant's pregnancy significant weight as proof of the genuineness of the marriage. Other evidence of genuineness – for example the one return visit, telephone bills and photos of the couple together – have less weight. Most of the evidence points unmistakably to this marriage not being genuine. Even taking into account the pregnancy, I find that the marriage is not genuine.

[25] If I am mistaken and the marriage is now genuine, it still does not overcome my conclusion that the marriage was entered into primarily for the purpose of the applicant acquiring a status or privilege under the *Act*.

CONCLUSION

[26] The appellant has not met the onus of establishing, on a balance of probabilities that the marriage is genuine and was not entered into primarily for the purpose of acquiring a status or privilege under the *Act*. I therefore find that the applicant is excluded as a member of the family class.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"George Pemberton"**

George Pemberton

May 1, 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.

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Commission de l'immigration et du statut de réfugié du Canada
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Client ID: 38681621

STATEMENT THAT A DOCUMENT WAS PROVIDED

On May 3, 2018 I provided the **Reasons and Decision**

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

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

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