



IAD File No. / N° de dossier de la SAI: VB8-02251E

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Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Kalaiarasy BALAKRISHNAN	Appelant(e)(s)
and		et
Respondent	The Minister of Citizenship and Immigration	Intimé(e)
Date(s) of Hearing	May 23, 2019	Date(s) de l'audience
Place of Hearing	Heard by videoconference between Edmonton, AB and Toronto, ON	Lieu de l'audience
Date of Decision	June 14, 2019	Date de la décision
Panel	Leslie Belloc-Pinder	Tribunal
Counsel for the Appellant(s)	Sonia Matkowsky Barrister and Solicitor	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	Mandeep Randhawa	Conseil du ministre

REASONS FOR DECISION

[1] These are the reasons and decision in an appeal by Kalaiarasy BALAKRISHNAN (Appellant) from the refusal of a sponsored application for a permanent residence visa for her spouse, Yogeswaran MANOHARAN (Applicant).

BACKGROUND

[2] The Appellant is a 52-year-old citizen of Canada who was born in Sri Lanka. The Applicant is 34 years old. He was born and still resides in Sri Lanka.

[3] The Appellant and Applicant are from the same village in Sri Lanka but did not know each other there. They “met” via Facebook and got to know each other communicating through this social network. The Appellant travelled to see the Applicant in 2014 and returned, for a second time, in 2015. They married in 2016 and have had two other in-person visits in 2017 and 2018, respectively.

[4] After interviewing the Applicant in person, the visa officer concluded that section 4(1) of the *Immigration and Refugee Protection Regulations* (IRPR)¹ disqualified the Applicant from entering Canada. The officer noted four concerns following the Applicant’s interview:

1. Documentary support for the application was limited; there were few wedding photos and minimal proof of communication;
2. The wedding was arranged and conducted with haste;
3. The couple appears incompatible based on Hindu culture; there is a considerable age gap between them, the Appellant was previously married and has five children while the Applicant is a childless bachelor;

4. The circumstances of the parties meeting is improbable (i.e. Facebook) particularly since one or more of the Appellant's brothers is personally well acquainted with the Applicant.

In addition to reciting the visa's officer's concerns, the Minister's counsel at the hearing emphasized the 17-year age gap between the Appellant and Applicant and "credibility concerns" arising from the Applicant's testimony.

[5] As set out in the refusal letter dated April 11, 2018, the refusal was pursuant to section 4(1) of the *Immigration and Refugee Protection Regulations* (IRPR). The visa officer found 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* (IRPA).²

ISSUES AND HEARING PROCESS

[6] The issue in this appeal is whether section 4(1) of the IRPR applies.

[7] Section 4(1) provides that a spouse is disqualified as family class member if the marriage:

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

(b) is not genuine.

For this appeal to succeed, the Appellant must prove, on a balance of probabilities, that her spouse is not disqualified. Therefore, if the evidence establishes that either one of the above tests is met, then the Applicant is disqualified because he is not a member of the family class.

[8] In addition to the Record, the Appellant filed Exhibit A-1 (113 pages). The Applicant and Appellant provided oral testimony and both counsel provided oral submissions.

DECISION

[9] Considering all the evidence, I find the Appellant has discharged her onus and has proven, 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 IRPA. As a result, the Applicant is a member of the family class and the appeal is allowed.

ANALYSIS

[10] For an appeal of this kind to succeed, the evidence must demonstrate it is more probable than not a marriage is genuine and not entered into for the primary purpose of immigration. As a result, reliability of the witnesses' descriptions of events, circumstances, and their intentions must be analyzed. In this case, I did not form the impression either witness was deliberately trying to deceive me. Both seemed to be doing their utmost to answer questions thoughtfully and truthfully. There was remarkable consistency between their oral testimonies. Further, while demeanour is not determinative of credibility in this, or any, proceeding, the Appellant's tearfulness illustrated the depth of her feelings and despair, not just for herself. She appeared upset particularly while her husband testifying and describing challenges in his own life. While speaking about each other, both witnesses also exhibited empathy and care.

[11] The Appellant and Applicant's evidence about the genesis of their relationship, how and when they decided to marry, complications around their wedding day, and descriptions about the time they have spent together in Sri Lanka since 2014 was consistent, detailed, and candid. Further, their acknowledgment about some of the difficulties inherent in their lives prior to meeting each other, such as experiencing lack of love and warmth in the context of poor family relationships enhanced, rather than detracted from, their credibility overall. Their evidence

demonstrated the Appellant and Applicant know each other's struggles, sadness, and feelings well; they demonstrated an obvious emotional connection.

[12] The Appellant and Applicant also experienced a very difficult situation with the Appellant's violent former husband. They provided details and consistent descriptions of encounters with him, when they saw him in person and spoke on the telephone. For example, once the Appellant and Applicant decided their relationship was serious and they wanted to marry, they participated in a three-way telephone call with the Appellant's estranged husband to facilitate an amicable divorce. Unfortunately, their efforts failed. The Appellant experienced multi-faceted abuse at the hands of her former husband throughout their marriage and the ensuing divorce proceeding. Undaunted, the Appellant and Applicant carried on with their plans to marry only to find that the Appellant's former husband was actively seeking to turn her family members against their planned union and the Appellant personally. This intervention escalated to include personal confrontation at the international airport in Sri Lanka, threats of violence against the Applicant, and confrontational behaviour by several of the Appellant's family members. Despite these events, which resulted in the unwillingness of most family members from either side to even attend the parties' wedding, they persevered. That the Appellant and Applicant remained dedicated to getting married in the face of these unfortunate events is evidence of their commitment.

[13] Also due to her family's lack of support for her divorce and subsequent relationship, the Appellant had to go to great lengths to spend just a few days with the Applicant from time to time. They had two days together in April 2014 when the Appellant first travelled to Sri Lanka and two days at the end of that trip in May. Similarly, she travelled ostensibly to see her family in the spring of 2015 and spent two days with the Applicant at the beginning of that trip in April and two days at the end in May. The Appellant proposed to Applicant while they were apart and then their marriage plans began to develop which included the Appellant having to arrange for

her divorce. They began to make plans to marry the next time the Appellant could travel to Sri Lanka.

[14] The Appellant and Applicant both explained, consistently and credibly, the circumstances around their November marriage and were precise about the small number of days they spent together from 2014 onward. After their marriage, the couple had 12 days together in November 2016 and had another 12 days together in September 2017. In October 2018 they met in Dubai for convenience although they had only five days together while there. While the total amount of time the Appellant and Applicant have spent in each other's company is rather brief, they have compensated for the physical distance between them by ensuring they communicate on the phone and via the internet continually. They both testified about each other's lives while living apart, including being able to describe daily activities, work and living arrangements. They have frequent telephone conversations which happen often on speakerphone with the Appellant's children at home being welcome to participate. While recounting details of their ongoing communication and connection, neither witness's testimony sounded false, rehearsed, or far-fetched.

[15] The visa officer's concerns noted above were not borne out by the documentary or oral evidence advanced within this hearing. In fact, considered in its totality, the evidence well satisfies the Appellant's onus. It establishes that the Appellant and Applicant are compatible due to life experiences and a deep desire to love each other. While significant, the 17 year age gap between the Appellant and Applicant was adequately explained by them, in part by their unwillingness to agree with perhaps stereotypical and sexist assumptions. The Appellant and Applicant are culturally and religiously compatible, both being Tamil-Hindu people raised in the same village in Sri Lanka.

[16] Due to the Appellant's age, it is highly unlikely she will bear any children with the Applicant. Nevertheless, he is keen to know and love her children, and endeavours to deepen his

relationship with those who live with the Appellant and can participate in daily telephone calls with him. Four of the Appellant's five children signed a letter supporting their mother's marriage and sponsorship application. I do not draw negative inference from the fact that each signed an identical letter. Instead, I note that all children share the same view and they experienced the same hardship while their mother suffered in an abusive and violent relationship with their father. The children are, understandably, hopeful that their mother will be safer and happier living with her new husband, and they all state their willingness to accept him into the family.

[17] The Appellant noted her current husband is a better father to her children than their "real" father ever was. I can reasonably infer that the Applicant's role in his stepchildren's lives will become more prominent if he is permitted to live in Canada. Both parties described their further plans if the within appeal is successful, and the Applicant hopes to be employed. Their alternate plan, if the appeal is not successful, is also reasonable although not desired by them for obvious reasons. Two of the Appellant's five children are not yet finished school and self-sufficient and, as a result, the Appellant needs to remain in Canada with them. Nevertheless, she would travel to Sri Lanka to be with her husband approximately six months out of every year if he cannot live in Canada.

[18] During cross-examination of both witnesses, the Minister's counsel focused on minute inconsistencies and typographical errors in documents which led him to question and probe the Applicant's credibility. Further, while submitting the age gap was not the "biggest problem" with the case, the Minister's counsel emphasized it, nonetheless. The Minister's counsel also cross-examined the Appellant on her prior marital history and experience of domestic violence with an apparent lack of understanding regarding the complexities and multi-faceted negative consequences victims of such abuse experience. The Minister's counsel questioned the Appellant about why she simply did not leave her abusive marriage, call the police, or take other obvious practical steps to remove herself from the situation inferring that the situation was not as dire as she described. These questions occurred after the Appellant described being beaten on several

occasions, having her arm broken, being economically tied to her violent husband, and her lack of any practical alternatives for herself and the five children. Counsel's cross-examination made the Appellant's hearing experience worse than it needed to be, particularly when the focus ought to have been on the Appellant's current marriage which is the subject of the appeal.

[19] In submissions, the Minister's counsel submitted he was satisfied the Appellant was credible, but then focused on the Applicant's credibility and emphasized inconsistencies between his and the Appellant's evidence. These inconsistencies were minor and peripheral including such things as the witnesses not agreeing on the precise date they believed their relationship became "romantic" (i.e. December 2013 or February 2014), the exact time they knew their precise age gap (specific birthdates), and an apparent typographical mistake in a police report made by the Appellant the day prior to the wedding in Sri Lanka in November 2016.

[20] Overall, the evidence establishes that the Appellant and Applicant share an earnest desire to have a successful marriage and enjoy a full life together. There is ample evidence of a genuine connection between them which was corroborated by the Appellant's children's and sister's letters. The evidence establishes the Appellant and Applicant want to live together wherever they can. Due to the ages and circumstances of the Appellant's children, it is most desirable and sensible that the Applicant be permitted to join her in Canada. While the Applicant is willing to relocate here because of his marriage, and permanent resident status will facilitate his ability to work, this evidence does not lead to a reasonable inference that immigration was the Applicant's primary goal. The totality of the evidence is sufficient to discharge the Appellant's burden of proof in this appeal.

CONCLUSION

[21] For the foregoing reasons and on a balance of probabilities, I find the Applicant did not marry the Appellant primarily for the purpose of acquiring status or privilege under the IRPA and the marriage is genuine. As a result, the Applicant is a member of the family class.

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)

“Leslie Belloc-Pinder”

Leslie Belloc-Pinder

June 14, 2019

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.

¹ *Immigration and Refugee Protection Regulations*, SOR/2002–227.

² *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).