

Federal Court



Cour fédérale

Date: 20151123

Docket: IMM-2296-15

Citation: 2015 FC 1303

Ottawa, Ontario, November 23, 2015

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

GURVINDER SINGH SANDHU

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review by Gurvinder Singh Sandhu from a decision of the Immigration Appeal Division of the Immigration and Refugee Board [the Board].

Mr. Sandhu challenges the refusal of his application to sponsor his Indian spouse [the applicant] for permanent residency. At first instance, the application was denied by a visa officer on the basis of a concern that the marriage was not genuine and had been entered into primarily to

acquire immigration status. The Board upheld that decision on the basis of its own credibility concerns.

[2] I appreciate the difficulties inherent in determining the validity of arranged marriages. However, the Board must always be mindful of the serious consequences that will flow from a visa refusal in the face of a *bona fide* relationship. The task requires careful appraisal of all the evidence in the applicable cultural context. In this case the Board's assessment of the evidence was surprisingly shallow and most of its credibility determinations were unsound.

[3] The Board acknowledged some of the evidence favouring the grant of a visa but was essentially silent about the significance of other relevant matters. For instance, it acknowledged the fact of a failed pregnancy and said it carried "some weight". However, it made no particular findings concerning an asserted cohabitation of 6 months facilitated by Mr. Sandhu's resignation from his Canadian employment. Mr. Sandhu also returned to India on two occasions and ultimately moved to Vancouver to be closer to his wife's family. The Indian wedding was a significant event involving several hundred guests. If accepted, these are all strong indications of a *bona fide* marriage. The Board's ultimate treatment of this evidence came down to a bare assertion that it "does not overcome the lack of credibility of the witness testimony".

[4] The Board's conclusion was that Mr. Sandhu had not met the burden of showing both a genuine marriage and one that was not entered into primarily to acquire immigration status.

[5] The Board's credibility concerns were limited to four discrete areas, not one of which touched directly on the genuineness of the relationship or its primary purpose. These concerns were described as follows:

a. At the hearing the witnesses gave consistent answer on the connection between the appellant and the matchmaker. However, the explanation the applicant gave to the visa officer - that the appellant and matchmaker were close friends and had remained in phone contact after the appellant emigrated. - was significantly different. [emphasis added]

b. At the hearing the witnesses gave consistent testimony on why the appellant had the falling-out with his step-father - a dispute over the family land. However, at the interview the appellant stated that the reason was that they were not on the same "wavelength", and he refused to go along with his step-father's plan for him to marry. The visa officer raised that discrepancy with the appellant and applicant at the conclusion of the interview. Despite having the opportunity to correct or clarify his answer, the appellant still did not give the same explanation he provided at the hearing.

c. The witness testimony regarding their first meeting on December 7, 2011, and subsequent events was consistent. Both testified that no decision was made until December 9, 2011. They testified that on that day the appellant forwarded his agreement to the match through the matchmaker. The applicant's family relayed their agreement then went to the appellant's family home to hold an engagement ceremony. At the interview the applicant told the visa officer that the agreement was reached on December 7, 2011, and that the December 9, 2011, meeting was to set the date of the marriage.

d. At the interview the applicant gave inconsistent and vague answers regarding whether she and her family considered other proposals. The visa officer specifically asked if the family considered any matches from India. The applicant stated that they had not. Her testimony at the hearing was not consistent with what she told the visa officer. At the hearing she stated that the family had considered three prior proposals, including one from India, but had rejected them for different reasons.

[6] Even if the above-described inconsistencies were, in fact, present, they would represent a thin foundation for rejecting all of the other evidence favouring the genuineness of this marriage. The fundamental problem, however, with these credibility findings is that they are not, in every case, supported by the evidentiary record.

[7] For example, there is no apparent inconsistency in the evidence concerning the relationship between Mr. Sandhu and the matchmaker. Both parties testified that there was a long-standing family relationship. The fact that the applicant described the relationship as “close” is not inconsistent with Mr. Sandhu’s testimony that there was a personal and a family connection to the matchmaker over many years.

[8] There is also no obvious incongruity concerning the reasons for Mr. Sandhu’s falling out with his step-father. In the visa interview, Mr. Sandhu stated that they were not on the same “wavelength” and they disagreed about marriage arrangements. The visa officer failed to ask for further particulars about what was meant by “wavelength”. When the Board asked this question, both parties mentioned a disagreement over land in India. There is no inconsistency between the generic response given to the visa officer and the more specific answer provided to the Board when particulars were requested.

[9] There is an acknowledged disagreement in the record as to the date on which the agreement to marry was reached. The applicant erred by two days. This, however, is a trivial point where perfect recall should not have been expected by the Board.

[10] Finally, there was no inconsistency or vagueness about whether the applicant's family had considered other marriage proposals. The Board clearly overlooked clarifying evidence provided spontaneously at the visa interview on this issue. This was a glaring error by the Board.

[11] The Board's negative credibility assessment does not stand up in the face of the actual evidence and the decision is therefore unreasonable.

[12] I would add that the determination of whether a person's primary purpose for marriage is to obtain immigration status necessarily includes an assessment of the genuineness of the relationship. The two conjunctive aspects of s 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 are, thus, linked and must be considered together.

[13] There is also nothing inherently objectionable or suspicious about a desire to seek out a Canadian spouse in an arranged marriage with a view to family unification. Where both parties have a *bona fide* commitment to the long-term maintenance of the marital relationship, it will be a very rare case where the primary purpose of the marriage can be reasonably found to be to acquire immigration status. That is so because the primary purpose of a *bona fide* marriage has to be a long-term commitment to the relationship. The collateral advantage of gaining immigration status would, in almost every case, be secondary to that marital commitment.

[14] For the foregoing reasons, this application for judicial review is allowed and the matter is to be redetermined on the merits by a different decision-maker.

[15] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is to be redetermined on the merits by a different decision-maker.

THIS COURT'S FURTHER JUDGMENT is that no question is certified.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Mr. Charles Groos

FOR THE APPLICANT

Ms. Helen Park

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Charles Groos
Barrister and Solicitor
Surrey, BC

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT