

**Date: 20070918**

**Docket: IMM-1070-07**

**Citation: 2007 FC 928**

**Ottawa, Ontario, September 18, 2007**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**JASWANT KAUR NIJJAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Is Kulbir Singh Nijjar the prodigal husband who saw the error of his ways and remarried his wife out of love for her and family; or did he marry her in order to gain entry to Canada? The Immigration Appeal Division of the Immigration and Refugee Board found that the marriage was not genuine and was entered into primarily in order that Mr. Nijjar acquire status or privilege in Canada, contrary to Section 4 of the *Immigration and Refugee Protection Regulations*. This is a judicial review of that decision.

## **FACTS**

[2] Their families arranged that Mr. Nijjar marry Jaswant Kaur in India in 1974. They may or may not have had a happy marriage until 1991. That year, Mr Nijjar left his wife and three children in India in order to visit his sister in Germany for two months.

[3] He ended up staying in Germany five years. He promptly began an affair with one of his sister's German girlfriends, and within a month of his arrival claimed refugee status. His application was apparently a ploy to remain with the German woman and to gain a work permit. However, he continued to support his wife and children back in India.

[4] In 1996, his refugee claim was rejected, and he returned to India, and to his wife. All was not well. He was unhappy, abusive and had taken to drink. He said he wanted a divorce. At first his wife would have nothing to do with it, but after realizing what he had become and how he was treating her, she initiated divorce proceedings.

[5] The divorce proceeded *ex parte*. The real ground was adultery, but apparently Mrs. Nijjar was too embarrassed to say so. The divorce petition is not in the record, but the decree refers to allegations that Mr. Nijjar had thrown her out of the house for a five-year period, was complaining about the dowry, and was drinking. Both Mrs. Nijjar and her brother testified at court to the truth of the allegations.

[6] The divorce came through in 1997, and Mr. Nijjar married his girlfriend in 1998, which allowed him to return to Germany, on one-year renewable work permits.

[7] In 2001, their daughter called Mr. Nijjar to say that Mrs. Nijjar was quite ill and required a heart operation. He returned to India and stayed with her for several weeks, and also contributed to the cost of the operation. During this time, he confessed that his marriage in Germany was not going well and that he wanted reconciliation. He also came to learn that one of their sons who had moved to Canada was sponsoring Mrs. Nijjar, a sponsorship which came true in 2002.

[8] He divorced his German wife in 2004, and remarried Mrs. Nijjar in 2005, while she was visiting India. She was then living in Canada and thereafter attempted to sponsor him.

[9] The visa officer was of the view that the marriage was not genuine. Mrs. Nijjar appealed, but, as mentioned above, the IAD was of the same view.

### **STANDARD OF REVIEW**

[10] The standard of review for a finding of fact that a party is not in a *bona fide* marriage is patent unreasonableness (*Grewal v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 960, [2003] F.C.J. No. 1223; *Jaglal v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 685, [2003] F.C.J. No. 885).

[11] A finding in this context is hardly subject to scientific proof, as a party will not admit that a marriage is not genuine “and was entered into primarily for the purpose of acquiring any status or privilege under...” the *Immigration and Refugee Protection Act*. By necessity, the decision maker has to tread the line between inference and conjecture.

[12] As noted by Lord Wright in *Grant v. Australian Knitting Mills, Ltd.*, [1935] All. E.R. Rep. 209, [1936] A.C. 85: "Mathematical, or strict logical, demonstration is generally impossible; juries are in practice told that they must act on such reasonable balance of probabilities as would suffice to determine a reasonable man to take a decision in the grave affairs of life." Direct evidence is preferable in that it only contains one possible source of error (fallibility of assertion) while indirect evidence has, in addition, fallibility of inference (*Phipson on Evidence*, 15th Ed., 3rd Suppl., paragraph 1.06).

[13] The distinction between conjecture and inference is most important. As stated by Lord Macmillan in *Jones v. Great Western Railway Co.* (1930), 47 T.L.R. 39 at 45 (H.L.):

The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof.

[14] The finding of the IAD that the Nijjars' were untrustworthy was not patently unreasonable. Mr. Nijjar did not file a refugee claim in Germany because he feared persecution. He filed the claim in order to obtain a work permit and to live with a German woman. When asked about the divorce

petition in India, Mr. Nijjar said the whole thing was a lie, except for the drinking. They wanted a divorce and left it to the lawyer to draft something up. The petition apparently was in English, a language of which Mrs. Nijjar claims little knowledge. However, this does not sit well as she and her brother testified in court as to the truth of the allegations. Apparently, it is the end that counts, not the truth.

[15] If the marriage in Germany was not going well, Mr. Nijjar ran the risk that his work permit would not be renewed. There is ample material in the record to justify the IAD's finding as an inference as opposed to outright conjecture. It is quite true that some of the language in the reasons given by the IAD is somewhat loose, and some of the points seized upon appear to be irrelevant, but nevertheless a reasonable deductive thread runs through them.

[16] As noted by Mr. Justice Joyal in *Miranda v. Canada (Minister of Employment and Immigration)*, 63 F.T.R. 81 (Fed. T.D.), [1993] F.C.J. No. 437:

It is true that artful pleaders can find any number of errors when dealing with decisions of administrative tribunals. Yet we must always remind ourselves of what the Supreme Court of Canada said on a criminal appeal where the grounds for appeal were some 12 errors in the judge's charge to the jury. In rendering judgment, the Court stated that it had found 18 errors in the judge's charge, but that in the absence of any miscarriage of justice, the appeal could not succeed.

This is the point I am trying to establish here. One may look at the decision of the Board, then one may balance it off against the evidence found in the transcript and the evidence of the claimant himself in trying to justify his objective as well as subjective fears of persecution.

On the basis of that analysis, I find that the conclusions reached by the Refugee Board are well-founded on the evidence. There can always be conflict on the evidence. There is always the possibility of an opposite decision from a

differently constituted Board. Anyone might have reached a different conclusion. Different conclusions may often be reached if one perhaps subscribes to different value systems. But in spite of counsel for the applicant's thorough exposition, I have failed to grasp forcefully the kind of error in the Board's decision which would justify my intervention. The Board's decision, in my view, is fully consistent with the evidence.

**ORDER**

**THIS COURT ORDERS that:** the application for judicial review is dismissed. There is no question for certification.

“Sean Harrington”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1070-07

**STYLE OF CAUSE:** *JASWANT KAUR NIJJAR v.*  
*THE MINISTER OF CITIZENSHIP AND*  
*IMMIGRATION*

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** September 12 2007

**REASONS FOR ORDER  
AND ORDER:** HARRINGTON J.

**DATED:** September 18, 2007

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