



REASONS FOR DECISION AND ORDER

TA0-06734

APPELLANT (S) / APPLICANT (S)

JINDRI BHATOA

APPELLANT (S) / REQUÉRANT (S)

RESPONDENT

MINISTER OF CITIZENSHIP AND IMMIGRATION

INTIMÉ

DATE (S) OF HEARING

August 13, 2001

DATE (S) DE L'AUDITION

PLACE OF HEARING

Toronto, Ontario

LIEU DE L'AUDIENCE

DATE OF DECISION

November 5, 2001

DATE DE LA DÉCISION

CORAM

Eric Whist

CORAM

FOR THE APPELLANT (S) / APPLICANT (S)

Suresh Gupta

POUR L'APPELLANT (S) / REQUÉRANT (S)

FOR THE RESPONDENT

Yousuf Alam

POUR L'INTIMÉ

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These are the reasons for the decision in the appeal of Jindri BHATOIA (the "appellant") from a refusal of the application for permanent residence of Ashok Kumar Chandher (the "applicant").

Mr. Chandher's application was refused by a letter dated March 31, 2000 when the visa officer determined that the applicant entered into marriage with his sponsor primarily for the purposes of gaining admission to Canada as a member of the family class and not with the intention of living permanently with his spouse. He was therefore, a person described in section 4(3) of the *Immigration Regulations, 1978* (the "Regulations") and was not a member of the family class as defined under section 2 of the *Regulations*. Consequently, he was inadmissible under section 19(2)(d) of the *Immigration Act*.

The visa officer had a number of concerns in refusing the applicant. The visa officer had a concern as to whether the marriage ceremony itself was genuine. He was concerned that the appellant was nearly nine years older than the applicant was and that this potential incompatibility appeared not to have been explored or considered by the applicant or his family. The visa officer had a concern that a primary reason for the applicant agreeing to marry the appellant was in order to go to Canada to financially help his family. The visa officer had a concern about a lack of contact between the applicant and appellant since the wedding.

All of these issues or concerns were explored at the hearing. The panel heard evidence from the appellant, the applicant, an uncle of the appellant, Jit Lal and the appellant's father, Dass Ram. The panel also viewed a video of the marriage ceremony and there was extensive documentary evidence before the panel including wedding photographs, letters and telephone receipts. Having considered all the evidence and the arguments made by counsel the panel is of the opinion that the marriage before it is genuine and that the applicant's intentions are not

primarily to gain admission to Canada and that he intends to live permanently with his spouse.

The appellant testified that she was raised in India and landed in Canada as a dependent of her parents in 1993. She stated that once in Canada she cared for her sister's child and her parents and did not initially look to marry. She testified that later she looked for a boyfriend in Canada but did not find anyone who was a vegetarian and suitable.

The appellant testified that on October 5, 1999 she travelled to India accompanied by her mother, and father, two sisters a brother and a maternal aunt. The purpose of the trip was to find a husband.

The appellant testified that a particular concern of hers in looking for a spouse was to find a man who was a vegetarian and did not drink. The appellant explained that she and her family are Hindus and, except for her father, follow the teachings of a Rada Swami, a particular guru whose followers are required to be vegetarians and to not drink.

The appellant testified that arrangements had been made for her in India to look at four or five prospective spouses. She had already looked at two prospective spouses when she met the applicant.

The appellant explained that prior to her departure from Canada her family had talked to her elder brother, a shop owner in India, about her interest in marrying. He apparently spoke to the shopkeeper next to him, a Mr. Mohan Lal. Mohan Lal is a good friend of the applicant's grandfather and he suggested the applicant was a possible match for the appellant.

The appellant testified that initial negotiations took place between the two families followed by a meeting attended by the appellant and applicant. The meeting took place in a temple and while the appellant saw the applicant they did not talk directly to each other. According to the appellant her sister and brother talked to the applicant. They apparently discussed the ages, education and religious background of the appellant and applicant

with the applicant stating he was not concerned about these issues and that he was happy to be getting a girl he wanted. It was also confirmed that the applicant was also a follower of the guru Rada Swami as were the other members of his family.

The panel heard considerable evidence about the wedding itself. It took place on November 4, 1998 in the appellant's village and, according to the appellant, was attended by 150 persons, 100 from her side.

It should be added at this point that the applicant testified that although both he and the appellant are Hindus the ceremony they followed, living in the Punjab, was a Sikh ceremony. He stated that this is the practice where he lives and that Hindus also treat the Sikh holy book, the Guru Granth Sahib as holy.

The appellant testified, while referring to the wedding photographs in evidence,<sup>1</sup> that the ceremony included a ribbon cutting (photo #43), garlanding (photos #29 and #30), the mungal sutra (a ceremony in which the bridegroom shows his desire for his partner), various family members conferring affection on the couple (photos #38, #39 and #40) the reading of the holy scriptures (photo #49) and the solemnization of the marriage (photo #50). The appellant testified that after this solemnization she and her husband sat down and the lavans were performed, that is the ceremony in which the name of god is remembered. The appellant explained that while lavans usually involve a married couple circling the holy book the lavans at her marriage took place with she and the groom sitting (photos #52 and #53). The appellant stressed that conducting the lavans in this fashion is acceptable. After this the sagan or ritualistic giving was held involving various family members (photos #54 and #55). Later in the hearing the appellant showed a wedding video and provided commentary as to what was occurring in the video and pointed out various figures that were being shown.

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<sup>1</sup> Exhibit A-4

The appellant testified that after the marriage ceremony the appellant and applicant and some members of their families went to the town of Beas, where a holy shrine dedicated to their guru, Radha Swami is located. The appellant explained that they participated in a traditional religious ceremony for newly newly married couples in which they listened to the words of their guru (on video, the guru is now dead) and made promises to be together for life.

The appellant stated that following the marriage she stayed in India for another week before returning to Canada. The appellant testified that she had no more leave from her work and she had to return and continue to help pay for the house she co-owns with her brother.

The appellant testified that she has not returned to India since her wedding as she did not know that there would be a refusal of her husband's application and that it would take this long to resolve.

The appellant testified that she and the applicant are in ongoing contact. She apparently writes once, the applicant twice a month. According to the appellant she and the applicant are in telephone contact on average twice a month.

The appellant stated that she is now thirty-three and is keen to have a family.

As stated earlier the issue of whether a genuine marriage took place was a concern for the visa officer and it remained a concern for the Minister's counsel. The Minister's counsel argued that the marriage, as described, did not conform to a traditional marriage or wedding ceremony, in particular the performing of the lavans. He then noted that according to the Immigration Appeal Division's own guide on sponsorship appeals the onus is on the appellant to show that the custom or practice employed in a non-traditional marriage is, in fact, legitimate.<sup>2</sup>

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<sup>2</sup> Sponsorship Appeals, Immigration Appeal Division, April 1, 2000, sections 5 and 4

The panel did not have any expert testimony on whether it is acceptable for lavans to be conducted while the bride and bridegroom sit. However, the appellant did provide an affidavit from a Kushal Pannu stating that lavans can be performed going around the holy book or standing in front of the holy book and that Sikh wedding customs vary from in different regions and sects.<sup>3</sup> The panel also had the appellant's detailed, and enthusiastic description of the wedding ceremony she participated in along with photographic and video evidence. The panel found this evidence credible. This evidence, along with the credible indications that the appellant is a religious person, was sufficient for the panel to find that, on a balance of probabilities, the wedding ceremony itself was genuine.

The issue of the difference in age between the appellant and applicant was also examined. The applicant testified that he was aware of this age difference by the time he met the appellant prior to the marriage. He testified that the age difference did not matter to him as he found the appellant to be attractive. This testimony is not consistent with what the applicant told the visa officer at his interview. At the interview the applicant stated that he initially did not know how much older the appellant was than him and did not know the true age difference until the marriage was registered.

This is potentially a significant inconsistency. The panel accepts the Minister's counsel's contention that an age difference of eight years, particularly when it is the bride that is older, is unusual and would presumably be a factor of potential concern to the applicant's family.

The applicant testified at the hearing that he did indeed know the appellant was eight years older before the marriage took place and that he was simply confused at his interview with the visa officer when he gave a different answer. The panel did not

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<sup>3</sup> Exhibit A-3

find this explanation to be particularly persuasive. The panel is prepared to accept that the applicant knew the applicant was older but it is not clear to the panel that an explicit conversation took place about the appellant being eight years older before the marriage. The panel will return to this issue later.

The visa officer was concerned that the applicant expressed interest in the economic opportunities Canada presented. However, the applicant did say at his interview that this was simply one of the reasons for the match.<sup>4</sup> The panel has no difficulty with this rather understandable interest of the applicant's and it does not conclude, based on this disclosure, that the applicant's intention in marrying the appellant was **primarily** to gain admission to Canada.

The panel is also satisfied that the evidence before it shows ongoing contact between the appellant and applicant. There were many cards and letters in evidence including letters dated before the refusal. There were telephone records showing monthly telephone calls to the applicant, including for the months prior to the refusal in March 2000.

The Minister's counsel identified a number of further concerns. He argued the applicant did not display a great deal of knowledge of the appellant, for example, not knowing the name of her employer or her level of income. Initially the applicant got the appellant's date of birth wrong before correcting himself. However, in the panel's opinion he did display an awareness of the appellant and her circumstances, for example, he knew of her family composition and nature of work. In the panel's opinion the applicant's lack of some knowledge of the appellant was not serious.

There were inconsistencies in the testimony, including some between the appellant and applicant. For example, there was

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<sup>4</sup> Record, p.18

conflicting testimony as to whether the applicant was in college three or six years, whether the appellant's sister lived with her and whether the couple's plans were to have children right away or not. These may initially appear to be potentially significant but in the context of seven hours of testimony which was largely consistent and credible these inconsistencies were simply not significant, in the panel's opinion. The panel found the appellant and applicant to be generally credible as was the testimony of Jit Lal, the appellant's uncle whose testimony about the arrangements leading up to the wedding the panel found to be particularly helpful. The appellant's father, Ram Dass, brief testimony was also about the marriage arrangements and was consistent with the other evidence before the panel.

In the final analysis the panel found the evidence around the marriage arrangements, the marriage itself and the appellant and applicant's relationship since the wedding to be credible and sufficient for it to conclude that the marriage was genuine. The only persistent issue of concern to the panel was whether the applicant did really know that the appellant was a full eight years older before the marriage took place. However, this is not fatal to the appeal as the panel is satisfied that the applicant's interests in marrying the appellant are genuine. That is, the panel is satisfied that applicant's motivation in marrying the appellant is not primarily to gain admission to Canada and that the applicant's intention is to live permanently with the appellant. Consequently this appeal is allowed in law.

#### **ORDER**

The Immigration Appeal Division orders that the appeal be **allowed** because the refusal to approve the application for landing made by:

**Ashok Kumar Chandher**



is not in accordance with the law.

"Eric Whist"

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Eric Whist

DATED at Toronto this 5th day of November, 2001.

You have the right under ss. 82.1(1) of the *Immigration Act* to apply for a judicial review of this decision, with leave of a judge of the Federal Court - Trial Division. You may wish to consult with counsel immediately as your time for applying for leave is limited under that section.