SPONSORSHIP

Appellant(s)	**[REDACTED]**	**Appelant(e)(s)**
Respondent	**The Minister of Citizenship and Immigration** **Le ministre de la Citoyenneté et de l'Immigration**	**Intimé(e)**
Date(s) and Place of Hearing	**July 30, 2009** **Toronto, Ontario**	**Date(s) et lieu de l'audience**
Date of Decision	**September 23, 2009**	**Date de la décision**
Panel	**Irvin H. Sherman, Q.C.**	**Tribunal**
Counsel for theAppellant(s)	**David Dmitri Genis** **Barrister and Solicitor**	**Conseil(s) de l'appelant(e) / des appelant(e)(s)**
Counsel for the Minister	**Yousuf Alam**	**Conseil du ministre**

Reasons for Decision

[1] This is the hearing of an appeal brought by [REDACTED] (the appellant) from the refusal to issue a permanent resident visa to her husband [REDACTED] (the applicant) because the applicant was determined by a visa officer not to meet the requirements for immigration to Canada because he entered into a marriage with the appellant that was not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the ~~*Immigration and Refugee Protection Act*~~ (the ~~*Act*~~).

[2] The particulars relating to the refusal are summarized by the visa officer in the Computer Assisted Immigration Processing System (CAIPS) notes made by the visa officer at the time the applicant was interviewed on April 3, 2007. The applicant demonstrated a lack of knowledge of the appellant, including the reasons why her family fled China. The union of the appellant and applicant did not appear to have created a reconstituted family. The applicant was never introduced to the appellant's elder son and could not provide a credible explanation for this fact. The applicant told the visa officer that the appellant's relationship with her elder son had nothing to do with him. The applicant demonstrated a lack of communication with the appellant. The applicant was unclear with respect to private matters such as personal finances. The applicant was unable to provide proof of communication originating from China to Canada. The applicant contradicted himself when he attempted to explain his lack of communication. The applicant was sometimes unresponsive during his interview. He disavowed the content of the description of the development of his relationship with the appellant.

[3] The appellant and applicant (by telephone) gave the only oral evidence at the hearing.

[4] The appellant and applicant have each been married previously. The appellant married her first husband in China in March 1994. They were divorced in Ontario in December 2005. The appellant and her first husband have two sons who are now 18 and 13 years old. The appellant has custody of her younger son, while her first husband has custody of the elder son.

[5] The applicant married his first wife in China in June 1991 and they were divorced in China in August 1998. The applicant and his first wife also have two children, a son who is now 17 years old and a 16-year-old daughter. These children remained in their mother's custody for approximately one year following their parents' divorce. Since then they have resided with the applicant.

[6] The appellant immigrated to Canada in July 2001 as a dependent of a CR5 refugee claimant who resides abroad and who has not been deemed to be a Convention refugee in her own

right. The appellant's first marriage broke up after she immigrated to Canada when she learned that her first husband was seeing another woman.

[7] In August 2005, which was four months prior to her divorce becoming final, the appellant was able to obtain the applicant's telephone number through her cousin's husband in China, who gave his telephone number to the appellant's mother, who was saddened at the appellant's marital discord. The appellant telephoned the applicant for the first time on August 8, 2005. Thereafter she communicated with the applicant by letter. The appellant flew to China on December 23, 2005 where she met the applicant on December 27, 2005. She left China four days later. Upon her return to Canada the appellant and applicant remained in regular telephone contact with each other.

[8] On April 7, 2006 the applicant wrote and telephoned the appellant to propose marriage to her. The appellant accepted the proposal. The appellant stated that she accepted the proposal after meeting the applicant for only a few days because she liked him and that she trusted Mr. Yao's judgement.

[9] The appellant visited China for the second time on June 25, 2006 where she remained for one month. The applicant proposed to the appellant in person on June 30, 2006. The appellant and applicant were married on July 3, 2006. A wedding reception was held on July 18, 2006 in the presence of 60 attendees which included the appellant's mother, younger son and the person who introduced her to the applicant, Jin Zhuo Yao. The appellant and applicant went on a brief honeymoon following their wedding.

[10] The appellant returned to the applicant in China for a month's visit in late June 2009. She was ill during that visit during which time she received traditional Chinese medical treatment.

[11] The appellant and applicant remain in regular telephone communication with each other when the appellant is in Canada. The appellant, who earns a modest income, sent the applicant the sum of $1,000 as a gift for the applicant's children in September 2006.

[12] The appellant stated that were the applicant and his children to immigrate to Canada then their three children would continue with their schooling in Canada. The applicant would seek employment. Were he to obtain stable employment they would consider buying a home. The applicant owns his own home in China where the appellant stated that she and applicant may return on occasion.

[13] Were the applicant unable to immigrate to Canada then the appellant stated that she did not know what would happen. Her son has limited fluency in Chinese. She would have to go to and from China which, over time, may affect her younger son's future.

[14] The appellant has been experiencing heath problems. She also works for a freezer company. Her hands are sometimes swollen such that she cannot wear her wedding ring.

[15] When questioned during cross-examination about the applicant's past, the appellant stated that she and the applicant had a limited education, were poor and that they did not talk much about their past experiences. She was able however to state that the applicant received a scar on his leg following his being in a fight as a youth.

[16] The appellant retained an agent to assist her with the completion of the sponsorship application forms. The name of the person who assisted her in this task is not noted on the application. The appellant did not know why this was so. The visa officer records in the CAIPS notes that the agent who assisted the appellant was a "revoked CSIC" member.

[17] The appellant stated that the applicant got custody of his children about one year following his divorce. The applicant's family registration card or Hukou[1] reveals that the applicant's first wife "moved out on July 27, 2006". The Hukou was registered three weeks earlier on July 4, 2006. When questioned about this matter, the appellant gave contradictory evidence. She stated

that she did to know about this matter. She subsequently stated that the applicant told her about this issue at the time of their marriage. The appellant also stated that the Hukou was required to be registered in order for her and the applicant to get married. The applicant never thought of immigrating to Canada prior to their marriage. The appellant also stated that the official at the Hukou registration office filled in the dates on the Hukou while she was waiting for the applicant outside the Hukou registration office.

[18] The appellant did not know the name of the friend who invited the applicant to his wedding at the time the applicant proposed to the appellant. The friend was a guest at the applicant's wedding.

[19] The appellant was accompanied on her 2009 visit to China by her elder son who met the applicant when he drove the son and appellant to and from the airport. They also dined together on two occasions. The appellant and her elder son do not have a close relationship.

[20] The applicant in his oral evidence corroborated the evidence given by the appellant with respect to their introduction, first meeting, their marriage, the cost of the wedding banquet, the appellant's three visits to China, their telephone communication and the $1,000 gift he received from the appellant. He knew of the appellant's medical problems and of her swollen fingers. He corroborated the evidence given by the appellant with respect to their future plans.

[21] The applicant surprisingly was unable to state the first name of Mr. You's wife. Mr. You is the husband of the appellant's cousin who introduced the appellant to the applicant. The appellant and Mr. You knew each other because Mr. You's son rented premises near the applicant's resident. Mr. You's wife and their other children resided at the family's rented residence. The applicant referred to Mr. You in a formal manner.

[22] With respect to the Hukou issue, the applicant stated that he could not find his first wife. He stated that his children have not spoken to or seen their mother in a decade.

[23] The applicant stated that he received the $1,000 gift from the appellant in 2007 when the record shows such gift was made in 2006. Nothing material arises from this error.

[24] The applicant stated that he and the appellant went on a three-day honeymoon. The appellant stated that they went on a one-day honeymoon. The appellant filed as an exhibit 12 pages of photographs taken on the honeymoon.~~[2]~~ The panel is satisfied on the balance of probabilities that the appellant and applicant went on a honeymoon following their marriage. The exact number of days of the honeymoon does not denigrate from the genuineness of the marriage.

[25] The appellant and applicant resided together as man and wife following their marriage until the appellant returned to Canada on July 27, 2006.

[26] The appellant, in her testimony, knew the birth dates of the applicant's two children. She corroborated the evidence given by the applicant with respect to the reasons leading to the break up of the applicant's first marriage. She knew the approximate amount of savings that the applicant currently has and his recent work history.

Analysis

[27] The hearing of a sponsorship appeal is a hearing *de novo* in a broad sense. It is undertaken as if the matter came before the Immigration Appeal Division for the first time. The issue is not how the visa officer came to a decision denying the applicant his permanent resident visa, but whether the applicant is a member of the family class as a spouse under ~~paragraph 117(9)~~(a) of the ~~*Immigration and Refugee Protection Regulations*~~(the ~~*Regulations*~~).~~[3]~~ Under ~~section 4~~ of the ~~*Regulations*~~ a foreign national (the applicant) shall not be considered a spouse (a) if his marriage to the appellant is not genuine and (b) if this marriage was entered into primarily for the purpose of acquiring any status or privilege under the ~~*Act*~~. Both conditions must be met for the section to

apply. A failed applicant need only demonstrate that one of these conditions has not been met to be considered a spouse for immigration purposes and to fall outside this exclusion.[4]

[28] Genuineness of a marriage is revealed by a shared relationship of some permanence, inter dependence, shared responsibilities and a serious commitment. The genuineness of the marriage must be examined through the eyes of the parties themselves against the cultural background in which they have lived.[5] Regard must also be had to the fact that the appellant and applicant are each living several thousand miles apart from each other.

[29] Minister's counsel, in his thorough submissions, submitted that the inconsistencies in the evidence were such that the appellant did not meet the burden incumbent upon her of proving on the balance of probabilities that her marriage to the applicant did not offend section 4 of the *Regulations*.

[30] The applicant is a self-supporting driver in China. He is the father of two children who are pursuing their education there. They are not in need. The appellant stated that when she saw the applicant for the first time, that he maintained his house well and that his children were well looked after. The applicant has made no prior attempts to come to Canada either permanently or for a temporary purpose. The applicant's widowed mother and married brother (his only sibling) reside in China.

[31] The appellant and applicant are compatible as to language, ethnic and social economic background, place of origin and education.

[32] Notwithstanding the minor inconsistencies in some of the evidence, the appellant and applicant gave credible and consistent evidence at the hearing.

[33] The applicant decided to propose to the appellant upon receiving an invitation to a friend's wedding. The proposal was made by a telephone call and by letter that occurred sometime after the telephone call was made. The appellant and applicant gave inconsistent dates as to the date the telephone call was made. The stimulus leading to the decision to propose marriage is, on the facts of this case, irrelevant. The applicant, upon realizing that his friend would soon be marrying, decided that he too would love to be married. He wrote the appellant and telephoned her, proposing marriage. Regardless of the date of the telephone call the appellant accepted the proposal immediately and became the applicant's wife three months later.

[34] The appellant sees her elder son in Canada. Her younger son visits his father twice monthly. The elder son accompanied the appellant to China during the latter's 2009 visit there. Notwithstanding this contact with her elder son, who lives with his father (the appellant's first husband), the appellant was unaware of the marital status of her first husband. The appellant's marriage to her first husband was not a happy marriage that ended in divorce. The appellant upon her separation and divorce focused her attention on her employment and her younger son. She worried about her future. Her marriage to her first husband was over. The fact that she did not know of his current marital status is irrelevant because the panel's focus at this hearing must be on the genuineness of the appellant's current marriage.

[35] The applicant did not know that the appellant's first husband had an affair while he was married to the appellant. The applicant knew that the appellant has an unhappy marriage that ended in divorce.

[36] This latter issue relates in part to the submission that the appellant and applicant seemed to know little of the other's past life experiences.

[37] The appellant and applicant each came from modest backgrounds and are not sophisticated people. They knew of the other's marital history, current employment conditions and family obligations. They have met the other's children and members of the other's family. Their focus has been on the present and their future life together.

[38] The appellant and applicant each stated that were the applicant denied permanent resident status then the appellant would have to return to China from time to time. The appellant would like her younger son to remain in Canada and complete his education here. The panel finds that the appellant and applicant discussed the consequences of the applicant being denied his visa to come to Canada. They each stated that were the applicant to immigrate to Canada he would have to secure employment and get established which is reasonable.

[39] The panel finds on the balance of probabilities that the applicant regained custody of his children about one year following his divorce. The applicant has had no knowledge of his first wife's whereabouts for some time. The inconsistencies in the date relating to the first wife, as found in the Hukou, arose by bureaucratic error and are not a significant factor in this appeal.

[40] Minister's counsel submitted that the $1,000 gift sent by the appellant to the applicant was a financial benefit and notification for their entering into a marriage of convenience. The appellant had $7,000 to $8,000 in savings when she sent this one-time gift to the applicant for his children's benefit. The panel finds that this was a gesture of kindness that was made almost two months after she and the applicant were married. There is no evidence of financial need. The applicant is gainfully employed. He paid for the wedding banquet. The panel finds that the applicant was mistakenly stated he received the gift in 2007 and not in 2006. This is error is not significant.

[41] The panel if satisfied that the appellant has on the balance of probabilities, established that she has entered into a genuine marriage with the applicant and which was not entered into primarily for the purpose of acquiring any status or privilege under the ~~*Act*~~.

[42] The refusal is not valid in law. This appeal is allowed.

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.