Sponsorship Appeal

Appellant(s) **Appelant(s)**	**[REDACTED]**
Respondent	**Intimé** **The Minister of Citizenship and Immigration** **Le Ministre de la Citoyenneté et de l'Immigration**
Date(s) and Place of Hearing	**Date(s) et Lieu de l'audience** **July 8, 2009** **Toronto, Ontario**
Date of Decision	**Date de la Décision** **July 13, 2009**
Panel	**Tribunal** **Pamila Ahlfeld**
Appellant's Counsel **l'appelant(s)**	**Conseil de** **David Dmitri Genis** **Barrister and Solicitor**
Minister's Counsel **l'intimé**	**Conseil de** **Cathy Poulis**

Reasons for Decision

INTRODUCTION

[1] These are the reasons for the decision regarding [REDACTED] (the appellant) who sponsored his wife, [REDACTED] (the applicant), to Canada. His wife's application for a permanent resident visa was refused by a visa officer at the Canadian High Commission in Hong Kong, China. The visa officer found that his wife was not his "spouse" for the purposes of Canadian immigration law. The appellant appeals the visa officer's refusal to issue the visa.

[2] The appellant contends that the marriage is genuine and was not entered into primarily for an immigration purpose. The respondent opposes this position and asks that the appeal be dismissed.

ISSUE

[3] At issue in this case is whether the applicant falls within the class of persons described in ~~section 4~~ of the ~~Immigration and Refugee Protection Regulations~~ (the IRP Regulations), thereby excluding the applicant from consideration as a spouse for the purpose of the IRP Regulations.

DECISION

[4] Having considered the evidence and submissions of the parties, I find that, on a balance of probabilities, the marriage is genuine and that the marriage was not entered into primarily in order for the applicant to gain admission to Canada.

BACKGROUND

[5] The appellant is a 33-year old Canadian citizen. The applicant is 25 years old. She was born in China and currently resides there.

[6] The appellant and the applicant were married in China on April 26, 2006.[1] The appellant returned to Canada and sponsored the applicant.

ANALYSIS AND FINDINGS OF FACT

[7] The visa officer found that the applicant is not the appellant's spouse because of section 4 of the IRP Regulations), which reads as follows:

4. Bad Faith – For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[8] In considering whether a marriage is genuine and whether the "bad faith" section 4 of the IRP Regulations applies to it, the Immigration Appeal Division (IAD) tends to look at a number of the same factors. However, these factors are not identical in every appeal as the genuineness of the marriage can be affected by any number of different factors in every appeal. The factors considered can include, but are not limited to the:

i) intent of the parties to the marriage;

ii) length of the relationship;

iii) amount of time spent together;

iv) conduct at the time of meeting, engagement and/or the wedding;

v) behaviour subsequent to the wedding;

vi) knowledge of each other's relationship histories;

vii) levels of continuing contact and communication;

viii) provision of financial support;

ix) knowledge of and sharing of responsibility for the care of children brought into the marriage;

x) knowledge of and contact with extended families of the parties, and

xi) knowledge about each other's daily lives.[2]

[9] All of these factors can be considered in determining the genuineness of a marriage.[3] The second prong of the test – whether the relationship was entered into primarily for the purpose of acquiring any status or privilege under the ~~Immigration and Refugee Protection Act~~ (~~IRPA~~) – is self-evident and self-explanatory: the advantage sought in spousal appeals is generally entry to Canada and the granting to the applicant of permanent resident status as a member of the family class.[4]

[10] The visa officer expressed the following major concerns:

i) The visa officer did not find credible the fact that the applicant never met the appellant's father.

ii) The visa officer did not find credible the applicant's explanation as to why there was only one DVD made of the wedding.

iii) The visa officer did not find credible the applicant's explanation as to why only four photographs of their wedding were submitted.

iv) The visa officer was concerned that there was another wedding going on at the same time as hers which calls into question the number of guests at the wedding.

v) The visa officer did not find credible the fact that the first proposal took place in November 2005 and the applicant and appellant continued to have regular telephone conversations with that hanging over their head until the applicant accepted the proposal on February 8, 2006.

vi) The visa officer found that there were significant linguistic and cultural differences between the appellant and the applicant.

vii) The visa officer found that the appellant and the applicant are not compatible because they do not have an email relationship.

viii) The visa officer was concerned that the applicant obtained a passport in order to go to Canada or some other country and she was attempting to hide that fact.[5]

[11] Only the appellant testified at the hearing. The applicant was scheduled to testify but in view of the lack of time and the amount of time it would take to get a resumption date, the appellant chose not to call the applicant.

[12] The appellant testified that he met the applicant through the applicant's cousin who the appellant knew through his business dealings. He stated that he and the applicant met in March 2005, one day before he returned to Hong Kong. He told the panel that the applicant's cousin brought together a group of people to go out with, the applicant being one of them. The appellant testified that he returned to China in May 2005 and during that trip, he went out again with the same group of people. He stated that he asked the applicant for her telephone number and after he left China, he started to communicate with her either by telephone or on QQ (MSN).

[13] The appellant testified that he visited the applicant in July 2005 and again in September 2005, on both occasions spending time alone with the applicant. The appellant could not explain why the applicant's application form does not disclose the July 2005 trip and seems to indicate that the next time she saw the appellant was in September 2005.[6] He was adamant that he visited China in July 2005.

[14] I did not find the appellant to be very good with dates during his testimony. In fact, he stated emphatically on the record that he had first proposed to the appellant on October 18, 2005 until Minister's counsel pointed out that the applicant stated that the first proposal was on December

13, 2005.[7] He then stated that the applicant was correct and that the proposal had in fact taken place sometime between December 11th and 19th, 2005. He stated that he proposed to the applicant after he came back to Canada and according to the dates of trips abroad supplied by the appellant in his sponsorship application ,those dates are consistent with when he was back in Canada.[8] Moreover, according to those dates, it does not appear that the appellant was in China in July 2005, and I am of the view that the appellant was merely confused about the dates of the trips. According to the application form, the appellant was in China in March 2005, May 2005, September 2005 and November 2005.[9] That information is also consistent with the applicant's version of events.

[15] I found the appellant to be a credible witness and I am of the view that his inability to remember dates is what it is and in my view, given all of the other evidence in this case that support the genuineness of this marriage, I do not find his confusion in this regard to be fatal to this appeal. I find that both the appellant's and the applicant's account of how they met and how their relationship progressed is consistent. I find their explanations regarding the need for a second proposal credible; the applicant having told the visa officer that she wanted her parent's consent for such a serious event in her life[10] and the appellant's testimony that the applicant needed time to consider moving away from her family to live in Canada. Contrary to the visa officer's concerns, the appellant testified that after his first proposal was rejected, he did not give up and he was confident that he could persuade the applicant to marry him. I find that his testimony in this regard is not only reasonable but is indicative of a person who was genuinely interested in having a long term relationship. In view of the fact that he testified that he was not bothered by the first rejection, I accept his explanation that he and the applicant had no problems continuing on the relationship as cited as a concern by the visa officer.

[16] I do not find the applicant's inability to recite the appellant's email address fatal to this appeal. Both the appellant and the applicant indicated that they communicate by phone and QQ, which is similar to MSN, and that they did not communicate with email. I find this reasonable.

[17] I had some concerns that none of the appellant's family attended his wedding. Although I accept the appellant's explanation that his father was against the marriage because he was afraid that the applicant was only interested in his money, it is still difficult to understand why the appellant's sister, who resides in Hong Kong, did not attend the wedding. He testified that his sister has a 7-year old child who needed attending and who was in school and could not come to the wedding. Considering that the appellant is the only son in his family, I find it unusual that no one from his family would attend; however, given that this was my only concern, I do not find it fatal to the appeal.

[18] Regarding the appellant's and applicant's wedding, the appellant testified that he gave his father-in-law the money to organize the wedding and he did so at a restaurant. He stated that 100 people attended his wedding and contrary to the visa officer's concerns which, in my view, were speculative, there was no other wedding taking place at the same time. He testified that only one DVD was made because he believed that the applicant would be joining him in Canada shortly and there was no reason to get copies at that time. With respect to the photos submitted for their application, the appellant testified that the immigration consultant who prepared their application

advised them to pick the four best photographs and that is what he did. I find all of the appellant's explanations regarding his wedding to be reasonable.

[19] Contrary to the visa officer's concerns, I am persuaded that the appellant and the applicant are compatible. They are basically the same age, and although the appellant has a college diploma, he did not find this to be a problem. He stated that he and the applicant speak the same language and even though the appellant testified that his abilities in Cantonese are better than in Mandarin, he told the panel that he and the applicant have no problems communicating. The appellant testified that although he is from Hong Kong and the applicant is from mainland China, he finds that they are culturally compatible and I accept his contention.

[20] Lastly, the visa officer was concerned about the fact that the applicant had secured a passport before she met and married the appellant. I found the applicant's explanation to the visa officer perfectly logical; that she applied for a passport at a time when it was easier to get them; that she contemplated visiting her aunt, only the cost was too high and, therefore, did not end up applying for a visa.~~[11]~~ I do not share the visa officer's concern that the application for the passport was in order to facilitate the applicant's desire to travel and remain in Canada. I am persuaded that the applicant married the appellant primarily to share her life with him and not primarily to come to Canada.

[21] The appellant has submitted a significant amount of documentation consisting of phone records,~~[12]~~ photographs,~~[13]~~ and proof of travel~~[14]~~ which in my view all support his contention that his marriage to the appellant is genuine and that their marriage was not entered primarily in order for the applicant to gain status in Canada.

CONCLUSION

[22] Therefore, having considered all of the evidence in its entirety, I find that on a balance of probabilities, this is a genuine marriage and was not entered into primarily to assist the applicant gaining status in Canada as a permanent resident. The applicant does not fall within section 4 of the IRP Regulations.

[23] Accordingly, the appeal is allowed.