

Date: 20090716

Docket: IMM-5042-08

Citation: 2009 FC 728

Calgary, Alberta, July 16, 2009

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

VARINDER SINGH SAROYA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application challenges a decision of the IAD in which the Applicant's application to land his wife was rejected on a finding that their marriage is not genuine and was entered into for immigration purposes. The decision under review is based on negative credibility findings of both the Applicant and his wife.

[2] With respect to the negative credibility findings, the following passages in the decision under review are critical:

[14] The appellant testified that his intent, when he went back to India, was to find a suitable life partner and marry. He testified that he found life lonely after his divorce. However, the intent of the applicant is not quite as clear.

[15] At the hearing, the applicant was asked why she waited until she was thirty years old to get married. She gave the same reply she had given at the interview, namely that she had been studying and added that she had not found any suitable match. The Panel does not find this explanation to be satisfactory. First, the applicant's studies were completed in 1995, that is to say ten years before the marriage.

[16] In addition, although the Panel finds credible the applicant's explanation that in India it is difficult for a woman over thirty years of age to find a husband who has never been married and has no children, there is evidence that the only match the applicant seems to have seriously considered, according to her testimony, was a man who was permanently residing in Italy. Consequently, the Panel is of the opinion that on a balance of probabilities, the applicant was not looking for just any suitable match, but for a match that would allow her to leave India.

[...]

[20] The Panel finds satisfactory the appellant's explanation that it was his family who pressed the applicant's family for a quick marriage, because his sister had to return to Canada by the 12th of October 2005 and he had to return by the 25th. However, what is puzzling is that the appellant would have given himself so little time in India. According to the stamps in his passport, the appellant arrived in India on September 20, 2005. The appellant testified that he saw other potential matches but that all of them, including the meeting with the applicant were arranged after he arrived in India. The Panel finds it difficult to believe that the appellant would have come to India expecting to find a wife and marry within just a little over a month, and weighing this in light of its other concerns is of the opinion that, on a balance of probabilities, his meeting with the applicant was arranged before he left Canada. The fact that the meeting may have been arranged in advance would not necessarily

be a negative factor. However, the lack of transparency on the part of the appellant does impact negatively on his credibility.

[21] In light of the foregoing facts, that Panel finds that on a balance of probabilities the appellant's marriage to the applicant was entered into primarily for immigration purposes.

[Emphasis added]

[3] With respect to the Applicant's wife, I find that the IAD's negative credibility conclusion expressed in paragraph 16 of the decision as emphasized is unfounded and remarkably unfair.

[4] With respect to the Applicant, it is admitted that the IAD made an error in fact in finding that he arrived in India on September 20, 2005; in fact he arrived in June 2005. Since a critical element of the negative credibility finding with respect to the Applicant is based on this error, I find that the negative credibility finding is erroneous.

[5] As a result I find that the IAD's decision is made in reviewable error.

ORDER

THIS COURT ORDERS that the decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

Douglas R. Campbell"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: VARINDER SINGH SAROYA v.
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PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: July 16, 2009

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

DATED: July 16, 2009

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