

Federal Court



Cour fédérale

Date: 20120131

Docket: IMM-1799-11

Citation: 2012 FC 120

Toronto, Ontario, January 31, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**SARANJIT KAUR SANDHU
(a.k.a. SARANJIT KAUR SANGHA)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant challenges the decision of the Immigration Appeal Division of the Immigration and Refugee Board, dated February 23, 2011, refusing her application to sponsor her spouse, Kulwinder Singh Sangha, on the basis that their marriage was not genuine and was entered into primarily for immigration purposes.

[2] The applicant married her spouse in India on January 19, 2008. Their daughter was born in November 2010.

[3] This application must be allowed. The Board Member, Patricia E. McGuire, made a material, unsupported, and speculative finding of fact regarding this couple's child.

[4] The portion of her decision that is problematic is the following:

In addition, and of significance, the panel considers that there is a child born to the couple. There is no contention about paternity. The panel is mindful of the probative value of a child born to a couple in establishing the genuineness of an impugned marriage. There is the view that significant weight should be ascribed to this factor, especially where the paternity is not in issue. A reason given for this approach includes Federal Court Justice Barnes' view in *Gill* [2010 FC 122, para 8]. In his view, parties to a fraudulent marriage are unlikely to risk the lifetime responsibilities associated with raising a child, especially where the parties are of modest means. Nonetheless, the panel is aware of cases before the IAD where people of modest means or less than modest means would take this risk without any thought that raising the child is his or her lifetime responsibility, just to obtain permanent residence status in Canada.²⁹ The reality of fraudulent immigration marriages (fraud) is that people who enter into "fraudulent" marriages do so to obtain a permanent residence visa or a green card. They are unscrupulous people. They are people with a specific objective – to perpetrate a fraud against an immigration system, with a dominant purpose, to enter the country. They are more interested in obtaining a permanent residence visa or green card than in the person who holds the card and likely a child from a fake marriage. To such persons, having a child is seen as a means to an end. In *Lokmane*, there was sufficient evidence to find that the couple had turned their mind to having a child to enhance their chance to succeed in the appeal. Thus, while a child should be given significant probative value in establishing genuineness of a marriage, it should not be done as a matter of course. Second, a child is not conclusive proof of the primary purpose of the impugned marriage.

...

In all the circumstances of this case, it is not unreasonable to conclude that there was desire to have a child to enhance a successful outcome of the appeal.

29. *Lokmane v. Canada (Minister of Citizenship and Immigration)*, 2009 CanLII 32171 (I.R.B.).

[5] The Member cites her previous decision in *Lokmane v Canada (Minister of Citizenship and Immigration)*, 2009 CanLII 32171 as authority for her statement that, notwithstanding Justice Barnes' view in *Gill*, the panel is aware of cases where people of modest means have a child "just to obtain permanent residence status in Canada." *Lokmane* does not support that statement; it is not an example where a couple had a child to support their claim for permanent residency.

[6] *Lokmane* involved a 46-year old Canadian woman who married a 35-year old Moroccan man with "a keen desire to have children." The Member found that the sponsor's age and health made the possibility of her being able to conceive a child unlikely and thus, given his desire to have children, the Member found it probable that the marriage was not genuine.

[7] There is not a shred of evidence in the record that supports the Member's view that this couple had a child to enhance their chances of obtaining permanent residency in Canada. That finding is perverse and, in my view, tainted the Member's other findings, including her findings on credibility. Furthermore, it was a very significant factor in the Member concluding that the marriage was fraudulent. The decision must be set aside.

[8] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the application is returned to the Immigration Appeal Division of the Immigration and Refugee Board for determination by a different member, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1799-11

STYLE OF CAUSE: SARANJIT KAUR SANDHU
(SARANJIT KAUR SANGHA) v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 29, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: January 31, 2012

APPEARANCES:

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