

Federal Court



Cour fédérale

**Date: 20121018**

**Docket: IMM-1409-12**

**Citation: 2012 FC 1217**

**Toronto, Ontario, October 18, 2012**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**MANJINDER SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a determination by a Member of the Immigration Appeal Division (IAD) dated January 17, 2011 upholding an appeal from a decision of a Visa Officer who had determined that the marriage between the Applicant (appellant) and a woman in India seeking a permanent resident visa (applicant) was entered into primarily for the purpose of acquiring status and privilege under the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)* and is not genuine.

[2] The Applicant is an adult male person born in India and has been granted permanent residence in Canada in 1989 as a dependent in his family's sponsorship. He claims to have married Gurmeet Kaur in India and seeks approval of her application for a permanent resident visa in Canada.

[3] The application by Ms. Kaur was rejected for two reasons. The first was that the Applicant, Singh, lacked the requisite mental capacity to consent of his own free will to enter a marriage and that his capacity to do so was undermined by undue influence. The second ground was whether the Applicant Singh had demonstrated on a balance of probabilities that the marriage was not entered into primarily for the purpose of Kaur gaining privilege under IRPA and that the marriage was genuine. The matter was determined against the Applicant on both grounds.

[4] On the first ground, mental capacity and undue influence, the Applicant's own lawyer (at the time) submitted a report from a Registered Clinical and Forensic Psychologist, Dr. Berry, who provided a lengthy opinion supported by a lengthy Intellectual & Psychological Evaluation, in which he concluded in bold letters:

*It the opinion of the undersigned that Mr. Manjinder Singh was not able to consent to his December 26, 2006 marriage to Ms. Gurmeet Kaur as a result of undue parental influence and his compromised intellectual functioning.*

[5] At the hearing before me Applicant's counsel sought to distance his client from this opinion, arguing that Dr. Berry had applied the wrong test and did not have all the necessary qualifications. I take all this with great circumspection. The Applicant's own lawyer submitted this document for

consideration and at no time sought to distance his client from that opinion or to distinguish it as Applicant's new counsel seeks to do.

[6] Instead, Applicant's former lawyer, some months later, submitted without comment, a brief one half page letter from a medical doctor, Dr. Bami, who said that he had been treating the Applicant for some thirteen years and, in his opinion:

*Mr. Singh is a competent individual and has the mental capacity to understand the concept of marriage and to wilfully make relevant decisions.*

[7] We do not know what competence Dr. Bami had for expressing this opinion, what, if any, evaluations were undertaken, and what criteria were used in arriving at this assessment.

[8] In any event the Member of the IAD carefully evaluated the two opinions and was satisfied that Dr. Berry was correct in his conclusions. I am mindful of Applicant's Counsel's argument as to whether Dr. Berry relied on the *Ontario Substitute Decisions Act* in arriving at his opinion and that, Counsel argues, is not the test for capacity to marry, which he argues is a lower standard. However Dr. Berry expressly states that his evaluation was *not* conducted pursuant to that *Act, per se*. Applicant's lawyer at the time submitted this opinion to the IAD without in any way seeking to distinguish it or distance his client from it. In effect I view it as an admission against the interest of that lawyer's own client. He must live with it.

[9] In any event, there was a second ground for refusal of a permanent residence visa, that of whether there had been demonstrated on a balance of probabilities that the marriage had not been entered into primarily for the purpose of gaining privilege under IRPA and was genuine. The

Member of the IAD provided lengthy and detailed reasons as to why, in her opinion, the Applicant had failed to discharge the burden upon him in this regard. Notwithstanding Applicant's present Counsel's endeavours to criticize the Member's findings I find that they are reasonable having regard to the evidence before her, and should not be set aside.

[10] Accordingly, on both issues, I find that there is no basis for setting aside the IAD Member's decision. Applicant's Counsel urged that I certify a question as to capacity to marry. This is not an appropriate case to do so given that there were two valid reasons to deny a permanent resident visa.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The Application is dismissed;
2. No question is certified; and
3. No Order as to costs.

“Roger T. Hughes”

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1409-12

**STYLE OF CAUSE:** MANJINDER SINGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 17, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENTBY:** HUGHES J.

**DATED:** OCTOBER 18, 2012

**APPEARANCES:**

Anthony Navaneelan FOR THE APPLICANT

Sybil Thompson FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Mamann, Sandaluk & Kingwell LLP FOR THE APPLICANT  
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada