

Federal Court



Cour fédérale

**Date: 20140306**

**Docket: IMM-12497-12**

**Citation: 2014 FC 216**

**Toronto, Ontario, March 6, 2014**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**SUSHMA PATHAK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

(Reasons delivered orally in Toronto on March 4, 2014)

[1] Sushma Pathak (the Applicant) seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision of a visa officer (the Officer) at the Canadian High Commission in New Delhi, India, dated November 5, 2012, refusing her Application for Permanent Residence as a family member of a protected person on the basis that her marriage was not genuine (the Decision). Global Case Management System (GCMS) notes form part of the Decision.

### Background

[2] The protected person is the Applicant's husband. He arrived in Canada on November 18, 2010 and made a refugee claim. His claim was accepted on November 24, 2011 based on his fear of persecution at the hands of Maoists in Nepal.

### The Marriage

[3] In September and October of 2009 while the Applicant's husband-to-be was studying in the United States, his family arranged his marriage to the Applicant. He and the Applicant spoke by phone and by yahoo chat and exchanged e-mails for about one month before they met.

[4] On December 5 the Applicant's husband-to-be returned to Kathmandu and he and the Applicant met in person. After a short conversation with their parents present they agreed to marry.

[5] The wedding was held on December 12, 2009. Five hundred guests attended and a honeymoon followed.

### The Issues and Discussion

[6] The first issue is the reasonableness of the Officer's conclusion that the arranged marriage was not genuine.

[7] The Applicant was interviewed by the Officer on October 30, 2012. The GCMS notes show that the Applicant said that her parents arranged the marriage because they knew her husband to be a good man, they knew his family and because he was of the same caste as her family.

[8] However, the Officer found that the 10-year age difference between them, the difference in their education (the husband had one university degree and was working on a second, and the Applicant had a high school education and 2 years of nursing); and the fact that he had travelled and she had not, meant that they were not compatible. In my view this conclusion was unreasonable. There is nothing about these characteristics and experiences to suggest that the marriage is not genuine.

[9] The second issue is the reasonableness of the Officer's decision to terminate the interview when the Applicant failed to respond to two questions about her husband's refugee claim.

[10] The Applicant told the Officer that her husband was having problems with Maoists in Nepal because of his political opinion. However, she did not respond to the following additional questions:

Your spouse visited you in November 2010; left then arrived in Canada the next day and claimed refugee status. Can you tell me about this?

Were you aware your spouse was going to claim refugee status in Canada when he left Nepal?

[11] The Applicant's failure to answer to the first question may have stemmed from confusion about the reference to November. Her husband had been in Nepal since September and did not visit only in November. It is also possible that the question was somewhat unclear. However there is no apparent reason for her failure to reply to the second question.

[12] After these two non-responses the Officer terminated the interview. No further topics related to the *bona fides* of the marriage were explored. For example, the Applicant told the Officer that she

had been pregnant and had miscarried the couple's baby, but the Officer failed to question her about this event.

[13] In my view, given that only two questions were unanswered, it was unreasonable for the Officer to reach a decision about the genuineness of the marriage without at least trying to conduct a complete interview which covered all the relevant issues.

[14] No question was posed for certification.

**ORDER**

**THIS COURT ORDERS that:**

1. The application for judicial review is allowed;
2. The Applicant's Application for permanent residence is to be reconsidered by officers who have not read the Applicant's file and have not discussed it with their colleagues;
3. The reconsideration is to start at the second officer level;
4. The officers who review the file in the reconsideration are not to read any GCMS entries after the entry made on August 6, 2012;
5. The Applicant may file further material on the reconsideration;
6. The affidavit of Thaneshwor Subedi affirmed on February 12, 2013 is hereby struck from the court file on consent; and
7. The Applicant's further reply dated February 28, 2013 is also struck from the court file, on consent.

"Sandra J. Simpson"

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-12497-12

**STYLE OF CAUSE:** SUSHMA PATHAK V THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 4, 2014

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

**DATED:** MARCH 6, 2014

**APPEARANCES:**

Jennifer Stone FOR THE APPLICANT

Melissa Mathieu FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Neighbourhood Legal Services FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada