



IAD File No. / N° de dossier de la SAI : VA3-02813
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Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

TRAN LUAT BUI

Appelant(s)

Respondent

**The Minister of Citizenship and Immigration
Le Ministre de la Citoyenneté et de l'Immigration**

Intimé

**Date(s) and Place
of Hearing**

April 30, 2004
Vancouver, BC

**Date(s) et Lieu de
l'audience**

Date of Decision

April 30, 2004

Date de la Décision

Panel

Kashi Mattu

Tribunal

Appellant's Counsel

Jay Solomon
Barrister & Solicitor

Conseil de l'appelant(s)

Minister's Counsel

Randal Hyland

Conseil de l'intimé

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Oral Reasons for Decision

[1] These are the reasons and decision of the Immigration Appeal Division in the appeal made by Tran Luat BUI, (the “appellant”), from the refusal of the sponsored application for a permanent resident visa for his spouse, Loan Thi VU, (the “applicant”), and her daughter, Dyen Thuy Nguyen, from Vietnam.

[2] The application was refused based on section 4 of the *Immigration and Refugee Protection Regulations* (the “*Regulations*”).¹

[3] The test to be applied in circumstances of these cases is a two-fold test; whether the marriage is genuine and whether it was entered into primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act* (“*Act*”).²

[4] A determination of the genuineness of the marriage is made at the time of the hearing but given the nature of the relationship of marriage as being a relationship between a man and wife, it is a question of fact based on the past, present, and future state of affairs of the relationship.

[5] With respect to the status or privilege that can be acquired under the *Act*, it is that the applicant can gain permanent resident status if she qualifies as a member of the family class as a spouse. The onus of proof is on the appellant to show whether the applicant is disqualified as a spouse.

[6] I have heard the testimony of the appellant and the applicant and reviewed the documentary evidence, both in the record and submitted at the hearing, and find it to be generally credible and trustworthy.

[7] The refusal letter and CAIPS notes were detailed and Minister's counsel also provided detailed submissions with respect to the concerns with respect to this marriage. However, based

¹ SOR/2002 – 227.

² S.C. 2001, c. 27.

on the evidence before me and on a balance of probabilities, I find that the appellant and applicant have satisfactorily dealt with the concerns that have been raised and in those areas where there are certain discrepancies, I find that they are not of such a nature as to undermine the credibility of the witnesses.

[8] The appellant and applicant provided evidence with respect to how the relationship was initiated and developed, including evidence with respect to the purpose of the appellant's first trip and the reason why he stayed in the location that he did stay. The evidence with respect to the development of the relationship was generally consistent. The appellant did meet the applicant's daughter and her family on the first trip and then there were some discussions with respect to potential for marriage on that trip. Regarding their evidence at the interview in relation to how much time they spent together, I find that the explanations for the apparent discrepancies were satisfactory in the circumstances.

[9] The appellant returned to Vietnam with his father, who attended the wedding with the appellant and has approved of the circumstances of the applicant, that is, she has not been previously married and does have a young child. More significantly, I found as credible is the appellant's explanations as to why, in the circumstances that he was facing, he decided to get married at the time that he did.

[10] I also find credible, in the circumstances, the explanations as to why there was not a significant number of relatives that live in Vietnam that attended the wedding. I think in the circumstances of this case there were some relatives, particularly the immediate family of the appellant that attended. Moreover, the documentary and photographic evidence with respect to that support the evidence of the witnesses.

[11] There is also additional evidence with respect to the development of the relationship after the marriage, including subsequent visits not only of the appellant but also of his siblings, who have met the applicant since the wedding.

[12] The appellant and applicant testified with respect to communication and contact since the marriage. Although there were significant concerns of the immigration officer with respect to

documentary evidence of that communication, based on the nature of the evidence that the witnesses testified to and the additional documentary evidence, I find that those concerns have been satisfactorily addressed. Given the nature of the communications in this case, such as the internet chatting and telephone calls, there could easily have been some misunderstanding with respect to the nature of proof of that contact.

[13] Also, the appellant and applicant have demonstrated significant knowledge of each other and family circumstances, particularly specific details with respect to, for example, the location of the school that the applicant's daughter may attend, circumstances with respect to the appellant's siblings, and details that were not necessarily areas that they may have prepared for from the issues that were raised at their interview.

[14] There was also consistency and evidence with respect to future plans and arrangements and for the nature of the applicant's role in the appellant's family.

[15] Therefore, based on the evidence that has been provided, and consistencies in the evidence of the development of the relationship, I find that this is a genuine marriage relationship.

[16] Moreover, I find that based on the issues that I have already discussed, this marriage was not entered into primarily for the purpose of gaining any status or privilege under the *Act*. There is significant evidence to support development of the marriage relationship and the relationship between the families.

[17] Therefore, I find that the appellant has met the onus of proof. This marriage is genuine and was not entered into primarily for gaining a status or privilege under the *Act*.

[18] Therefore, this appeal is allowed.

[Edited for clarity, spelling, grammar and syntax.]

NOTICE OF DECISION

The appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and the officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

"Kashi Mattu"**Kashi Mattu**

7 June 2004**Date** (day/month/year)

Judicial review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.