



IAD File No. / N° de dossier de la SAI : VA7-01584

Client ID no. / N° ID client : 2619-1803

2008 CanLII 85754 (IRB)

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)

Xuan Van DANG

Appelant(e)(s)

Respondent

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

Intimé(e)

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

27 June 2008
16 March 2009
Vancouver, BC

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

Date of Decision

6 April 2009

Date de la décision

Panel

Renee Miller

Tribunal

**Counsel for the
Appellant(s)**

Jay Solomon
Barrister and Solicitor

**Conseil(s) de
l'appelant(e) / des
appelant(e)(s)**

Counsel for the Minister

Kevin Hatch

Conseil du ministre

Reasons for Decision

[1] These are the reasons and decision in the appeal of Xuan Van DANG (the “appellant”), who appeals the refusal to approve the permanent resident application made by his spouse, Buoi Thi HONG (the “applicant”), to immigrate to Canada as a member of the family class.

[2] The appellant and applicant married on March 23, 2006 in Vietnam and the appellant subsequently filed an application to sponsor the applicant for immigration to Canada. The applicant was interviewed by a visa officer at the Canadian Embassy in Singapore on April 23, 2007. The application for a permanent resident visa was refused, pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the “*Regulations*”),¹ because the visa officer concluded that the marriage was not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act* (the “*Act*”).²

[3] The visa officer set out the grounds for refusal of the application in a letter.³ The visa officer was concerned about the genuineness of this marriage because:

- the couple did not function as husband and wife (the applicant had no memento’s of her husband at her house, the appellant had not visited his wife since the marriage);
- the appellant’s family in Canada did not attend the wedding; and
- the applicant had insufficient knowledge of the appellant.

[4] The appellant contends that the refusal is not valid in law, while the Minister of Citizenship and Immigration (the “Respondent”) asks me to dismiss the appeal.

[5] Both the appellant and applicant testified. The appellant filed documentary evidence in the form of Exhibit A-1, which included various documents such as phone records, receipts for money transfers and confirmation of a visit to Vietnam from December 28, 2007 through January 27, 2008.

¹ *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

² *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

³ Record, Refusal Letter, pp. 124.

ISSUE AND DECISION

[6] To succeed on appeal the appellant must show either that the marriage is genuine or that it was entered into primarily for the purpose of acquiring any status of privilege under the *Act*; that section 4 of the *Regulations* does not apply. In my view the appellant has met the burden of proof in this appeal. The appeal is allowed.

BACKGROUND

[7] By way of background the appellant is 22 years old, was born in Vietnam and immigrated to Canada in 1990. The applicant is 25 years old, was born in Vietnam, and is a citizen of that country. The couple was introduced by the applicant's mother, who was visiting Canada. They met in May 2005 and married in March 2006.

ANALYSIS

[8] In assessing the genuineness of a marriage I must consider a broad range of factors including: how the couple met; how the relationship evolved; the duration of the relationship; the amount of time spent together prior to the wedding; the nature of the engagement/wedding ceremony; the intention of the couple in marrying; the evidence of ongoing contact and communication before and after the marriage; the spouses conduct after the wedding; the depth of knowledge of each others past, present, and daily lives; the provision of financial support; the partners families' knowledge of and involvement in the relationship; and their plans and arrangements for the future.

[9] When considering these factors I take note of the fact that the appellant was not a good witness. Right from the outset of his testimony the first day the appellant had trouble answering even the simplest questions. He admitted that sometimes he has trouble remembering things. His difficulties testifying appeared unrelated to language, as he did not understand the questions even when interpreted to him. Although seemingly sincere the appellant's difficulties answering questions gave rise to questions about possible cognitive dysfunction. The appeal was adjourned to allow the appellant the opportunity to adduce evidence of his abilities. The appellant was

subsequently tested and filed a report by a psychiatrist, Dr. Soma.⁴ Dr. Soma attributes the appellant's difficulty in thinking to a motor vehicle accident he suffered in 2005. The result is no problem with articulation or stream of thought, but notes there are times when the appellant appears to have difficulty understanding, especially abstract questions and when under pressure. Dr. Soma noted what when pressured the appellant reacted with anxiety and became disjointed and unable to follow conversation, understand questions, or provide answers. The doctor noted that this reaction is situational, not biological. I accept that testifying is a situation where the appellant would feel anxious and that his difficulty providing answers is addressed by Dr. Soma's report. I accept therefore, that although there were some inconsistencies in the evidence of the appellant overall it was credible and reliable. I accept that some of these inconsistencies are explained by the appellant's difficulty testifying, as noted by Dr. Soma.

[10] When I look at the evidence presented by the couple to describe the genesis and development of this relationship I note that their evidence was primarily consistent. They described how they met, how the relationship evolved over time, the involvement of family members, duration of relationship prior to meeting and marriage. I accept that they are legally married.

[11] Similarly they were able to describe their ongoing communication with each other, a visit to Vietnam in December 2007 and their activities when together, interaction with family members and friends, and their knowledge of each other. The couple were reasonably well informed as to their past circumstances, their family circumstances, and their daily affairs. Counsel for the respondent argued that given the length of this relationship the applicant's knowledge of her husband was insufficient to demonstrate a genuine husband-wife relationship. While I acknowledge that the depth of knowledge demonstrated by the couple was not as extensive as I sometimes see, I am prepared to accept that some of the lack of depth of knowledge of the appellant was due to his stress when answering questions. In addition, when I look at the testimony of the applicant there were very few answers to questions which were incorrect or which did not corroborate the testimony of the appellant. Clearly this couple have a shared understanding and knowledge of each other. As well, spontaneously the applicant said

⁴ Exhibit A-2, p.1-4.

that she is careful not to provide the appellant with too many details all at once, otherwise he gets overwhelmed. She said that when they are alone together they have no difficulty in communicating, but she is careful when the appellant is in a group or otherwise might be overwhelmed. Given that the applicant's natural understanding of the appellant is similar to the opinion of Dr. Soma, I take that to be a reflection of her true knowledge of her husband.

[12] Counsel for the respondent also argued that the relationship is insufficiently explained, given the appellant limitations, where the applicant apparently has none. He argued that the applicant has strong pull factors to want to immigrate to Canada. Regarding the implausibility of the relationship given the appellant's anxiety reaction, I accept the evidence of the appellant and applicant on this point. They met and the relationship started before the appellant's motor vehicle accident. In addition it is clear from the appellant's evidence that he is not limited in any way in living and working independently. He is able to conduct his affairs and travel to Vietnam without problem. The applicant, for her part, acknowledged that while overwhelmed before strangers or in a crowd when the two of them are alone together there are no limitations. In my view these explanations reasonably explain this relationship and its implausibility.

[13] I acknowledge that the applicant does have strong pull factors to immigrate to Canada. She has numerous relatives in Canada who put this relationship together for the couple. While those facts are true and could indicate a primary motivation for the applicant's marriage, I am overall satisfied that the couple have provided sufficient credible and reliable evidence to demonstrate the genuineness of their relationship. They have credibly testified about the development of this relationship over time, their interaction together, and efforts to communicate, the depth of their knowledge of each other and their plans for the future. Having accepted this evidence as being demonstrative of a genuine marriage, I need not consider further whether or not there is sufficient evidence to show that the applicant entered the marriage primarily for a purpose associated with gaining any status or privilege under the *Act*.

[14] In my view the concerns of the visa officer were adequately addressed in the documentary and oral evidence before me; the appellant has met the onus upon him to establish that this relationship is genuine. After assessing all the evidence in the appeal, and for the

reasons stated above I find, on a balance of probabilities, that the marriage is genuine and was not entered into primarily for the purpose of acquiring status or privilege under *Act*.

CONCLUSION

[15] Accordingly I find that the refusal is not valid in law and the appeal is allowed.

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.

(signed)

"Renee Miller"

Renee Miller

6 April 2009

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.