



IAD File No. / N° de dossier de la SAI : VA7-03232

Client ID no. / N° ID client : 2616-1107

2009 CanLII 73872 (IRB)

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)

Ngoc Ha LE

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**

24 April 2009
Vancouver, BC

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

Date of Decision

24 April 2009 (rendered orally)
01 May 2009 (written decision)

Date de la décision

Panel

Douglas Cochran

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

Steve Bulmer

Conseil du ministre

Oral Reasons for Decision

[1] Ngoc Ha LE (the “appellant”) applied to sponsor Tien Nhu DINH (the “applicant”), as a spouse from Vietnam and was refused by the visa officer pursuant to section 4 of the *Immigration and Refugee Protection Regulations* (the “*Regulations*”).¹ The visa officer expressed concerns which arose from a review of the application as well as arising from an interview with the applicant that took place on November 6, 2007.

[2] The appellant has the onus of establishing on the balance of probabilities that this marriage is genuine or that it was not entered into primarily to acquire any status or privilege under the *Immigration and Refugee Protection Act* (the “*Act*”).² At this hearing I have before me the Record,³ further disclosure from the appellant, and the testimony of the appellant in person and the applicant by telephone.

[3] The application for sponsorship forms that were submitted in support of this application contain numerous errors. Minister's counsel understandably argues that the discrepancy between the forms and the testimony of the appellant and the applicant raise credibility issues that must be addressed.

[4] The appellant testified that she hired an agent, the woman who had made the travel arrangements for her first trip to Vietnam, to complete the application forms. She testified that she and her husband signed blank forms, and these were completed by the agent and submitted on her behalf, partially with information obtained by asking questions of them, and partly based on the agent's speculation or assumptions. Such contradictions are very important in an appeal such as this. The application forms that are completed by the appellant and the applicant are the foundation of the sponsorship application. The information contained in them is crucial to the assessment of the genuineness of the relationship by the visa officer. I will address some of the errors in these forms.

[5] The sponsored spouse questionnaire lists the applicant's father as the only family member he has in Canada. In their testimony, the appellant and the applicant indicated that the applicant

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

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

³ Record, P. 83.

has an aunt and uncle and their families in Canada. The dates listed in the same form for when the appellant met the applicant's mother, sister, brother and father are incorrect. The appellant acknowledged that it was not possible for her to have met the applicant's mother, sister and brother when alleged.

[6] A very significant date, the date of their proposal, is shown as December 24, 2006 which, in fact, was the date of the wedding. This indication is nonsensical and it is unlikely that the appellant would have provided that date for inclusion on the form, in this category.

[7] The appellant stated that she and the applicant did not cohabit on her second trip to Vietnam which was for her grandmother's funeral. Yet, the form lists her as having cohabited from June 15, 2006 to June 26, 2006. There is documentary evidence before me confirming that the appellant cut short that trip and returned to Canada on June 21, 2006. Thus, the date shown for cohabitation mirrors the dates on her original ticket, but not her actual time in Vietnam. The application forms indicate that the appellant's parents accompanied her to Vietnam for their wedding, whereas the appellant testified that they did not accompany her on that occasion.

[8] These discrepancies are numerous and significant. In most instances, I would be reluctant to accept an appellant placing the blame for the discrepancies at the feet of an agent, and indeed, the appellant and the applicant signed these forms and are responsible for their contents.

[9] Having said that, the appellant has provided an explanation for these discrepancies. I find that the explanation for the errors in the form is credible, in particular, because of how ridiculous some of the information is. In this respect, showing the date of the proposal as the date of the wedding ceremony is nonsensical and cannot be the product of an intentioned completion of these forms. A number of other discrepancies make no sense particularly given that the appellant has a fluent command of English, and if she reviewed the forms, the errors would have been glaring. On the whole of the evidence before me, I am discounting the contradiction between the forms and the testimony of the appellant and the applicant.

[10] Other than the discrepancies in the application forms, the appellant and the applicant were credible witnesses. Each withstood rigorous cross-examination and their testimony was largely consistent. Even in cross-examination, both the appellant and the applicant responded in a clear and forthright manner with the one exception of the applicant, in response to a question,

appeared to be tired after lengthy examination and cross-examination and became confused. I found his response to be genuine and it did not undermine his credibility.

[11] The consistency went beyond answers to questions that would have been anticipated and included most of the questions in cross-examination. The appellant and the applicant have demonstrated a detailed knowledge of the lives and activities of each other. There were some discrepancies, but I consider that they were minor and did not undermine, but more likely, confirmed the credibility of the witnesses.

[12] There has been a credible explanation for the genesis and the development of the relationship. The appellant and the applicant have strong family connections, are compatible in age, language and ethnic backgrounds.

[13] On the whole of the evidence before me, I find that the appellant has established on the balance of probabilities that the marriage is genuine and was not entered into primarily to acquire any status or privilege under the *Act*. The appeal is, therefore, 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.

(signed)

“Douglas Cochran”

Douglas Cochran

01 May 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.