



IAD File No. / N° de dossier de la SAI : VA8-01944

Client ID no. / N° ID client : 2875-8892

2009 CanLII 85838 (IRB)

## Reasons and Decision – Motifs et décision

### SPONSORSHIP

**Appellant(s)**

Thang Trong NGUYEN  
(Also Known As Trong Thang NGUYEN)

**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**

6 November 2009  
Vancouver, BC

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

**Date of Decision**

23 November 2009

**Date de la décision**

**Panel**

Erwin Nest

**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**

## Reasons for Decision

[1] Thang Trong NGUYEN, also known as Trong Thang NGUYEN (the “appellant”), appeals from the refusal to approve the permanent resident visa application for his spouse Thi Dung NGUYEN (the “applicant”), from Vietnam. The visa officer found the applicant is a person caught by the exclusionary provision of section 4 of the *Immigration and Refugee Protection Regulations* (the “Regulations”).<sup>1</sup>

[2] The test is two-pronged, that is, in order for a foreign national to be caught by section 4 of the *Regulations*, the preponderance of reliable evidence must demonstrate that the marriage is 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”).<sup>2</sup> In order to succeed on appeal, the onus is on the appellant to establish that one of the prongs of the test has not been met.

[3] The application was refused because after reviewing the material submitted by the applicant in support of his application and the information he provided at the interview, the visa officer concluded the marriage between the appellant and applicant is not genuine and was entered into primarily for the purpose of the applicant acquiring any status or privilege under the *Act*.

[4] In coming to a conclusion, the visa officer took the following factors into consideration:

- there was no evidence to substantiate the applicant’s claim that she met the appellant online in July 2006 and that he phoned her later;
- in July 2007 the appellant’s brother was married in Vietnam but the applicant did not attend his marriage ceremony;

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

**4. Bad Faith** – For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.

<sup>2</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

- the applicant never met the appellant's sister-in-law in person until the morning of the interview; and
- the appellant's sister-in-law did not attend the appellant's marriage to the applicant.

[5] Before arriving at a decision, the visa officer asked the applicant to address specific concerns with respect to the relationship between the couple but was not satisfied with the answers provided by the applicant.

## **BACKGROUND**

[6] The appellant is a 21-year-old Canadian citizen originally from Vietnam. The applicant is a 22-year-old citizen of Vietnam. The appellant and applicant made contact on July 15, 2006 through the web chat line Viet Fun and they first met in person in January 2007 when the appellant visited Vietnam.

[7] Their marriage was registered on July 18, 2007,<sup>3</sup> and was celebrated with the marriage ceremony on July 29, 2007, at the applicant's home.

[8] The appellant returned to Vietnam to visit the applicant from September 3, 2008 to September 21, 2008. He sent money to the applicant and stays in touch through telephone calls and e-mails.

[9] The appellant's older brother met his spouse through the web chat line Viet Fun in December 2005 and he married her in Vietnam in April 2007.

## **DECISION**

[10] Based on the evidence before me, I conclude the appellant has met the onus upon him. I find, on a balance of probabilities, the marriage is genuine. Also, I find the marriage was not entered into primarily for immigration purposes. Therefore, the appeal is allowed

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<sup>3</sup> Record, p. 41.

## ANALYSIS

[11] I have considered all the testimony adduced at the *de novo* hearing, the contents of the Record, as well as oral submissions and disclosures of counsel for the appellant and the Minister.

[12] The appellant testified in person. The applicant testified by phone from Vietnam.

[13] I found the appellant credible and mature for his age. He testified in a clear and straightforward manner. He was spontaneous and detailed in his responses to questions.

[14] In assessing the genuineness of a marriage I must consider a broad range of factors including how the couple met; their compatibility in terms of age; 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.

[15] The appellant testified that his older brother suggested the Viet Fun chat line to find new friends all over the world. I find the appellant's testimony about the nature and frequency of his initial contact with the applicant through the Viet Fun chat line credible. He adequately explained the progress in the relationship between him and the applicant that led to the marriage proposal and acceptance. On the facts of this appeal, immigration is probably a factor in the applicant wanting to marry a Canadian; however, the evidence as a whole does not support a finding that it is the primary factor.

[16] I am satisfied that the applicant's and the appellant's testimony at the time of the hearing was consistent with respect to the history of their relationship; their respective qualities that attracted them to each other; the knowledge of details of their respective daily routines, social life, and hobbies; their family composition and circumstances; residency in Canada; and periods

and details of cohabitation in Vietnam. In my opinion this suggests a development in the relationship between the appellant and the applicant which is consistent with the conclusion that the marriage is genuine.

[17] There was evidence of the nature of their common interests and why this man, one year her junior, was attracted to her. I accept the appellant's explanation that the difference in age and upbringing between the couple was not an issue for them.

[18] The marriage was a well-attended and well-publicized celebration.<sup>4</sup> Important members from each side of the family participated including the sponsor's mother from Canada. As well, the appellant visited his wife in Vietnam for about three weeks in 2008. Numerous photographs corroborate they spent time together with family members and friends. As a whole, the photographs depict scenes of spontaneous happiness and closeness.<sup>5</sup> Finally, there is evidence to support on-going contact between the appellant and the applicant in the form of e-mails, letters, money transfers, and telephone bills.<sup>6</sup> The documentary evidence is strong and corroborating in this appeal and, in part, mitigates the absence of documentary evidence of the first contact between the couple in July 2006.

[19] I find the appellant's explanation for choosing to go to Vietnam three weeks prior to his wedding, trustworthy. His early arrival resulted in a short stay with the applicant after the marriage before he travelled back to Canada.

[20] The appellant adequately explained his absence at his brother's wedding in April 2007. He was unable to attend the wedding because he used his annual vacation to travel to Vietnam in January 2007.

[21] I find the appellant's explanation for his brother's and sister's in-law's lack of attendance at his marriage to the applicant credible.

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<sup>4</sup> Exhibit A-1, pp. 116-122.

<sup>5</sup> Exhibit A-1, pp.2-11.

<sup>6</sup> Exhibits A-1, pp. 12-113.

[22] I note the appellant's parents established contact by phone with the applicant's parents at the time of the appellant's first visit in Vietnam. Based on the evidence before me, I am satisfied the appellant's parents were and remain supportive of the appellant's marriage to the applicant. After her marriage to the appellant, the applicant maintains contact with the appellant's sister-in-law by phone in Vietnam. Both witnesses also testified regarding their social contact, not only with each other but with their respective extended families. I find this type of post-marriage social contact to be significant indicia of a genuine marriage.

[23] The appellant encouraged the applicant to establish contact with his family including meeting his grandmother and his older brother in February 2007. The applicant met the appellant's father during the appellant's return visit to Vietnam in September 2008. Documentary evidence, namely photographs proffered by the appellant, corroborates the witnesses' testimony regarding social contact by the appellant with the applicant's family in Vietnam. I find the degree of ongoing social contact by the appellant and the applicant with each other's respective extended family, to be indicative of the genuineness of this marriage.

[24] I am satisfied the appellant discussed future plans with the applicant and I find the couple has developed a foundation for their future lives together in the context of a relationship with a genuine spousal purpose. There has also been discussion between the couple as to their future in Vietnam should a permanent resident status visa be denied.

[25] The Minister's counsel's oral submission consisted of a request that the Immigration Appeal Division (the "IAD") dismiss this appeal. The Minister's counsel provided no reason for his request.

[26] Accordingly, the concerns of the visa officer at the hearing regarding the genuineness of the marriage were overcome, at this hearing, by the evidence from the appellant and the testimony of the applicant. Any outstanding concerns that remain are not significant in light of the panel's impressions of the witnesses at the hearing and its overall assessment of the evidence.

[27] For the aforementioned reasons, the appellant has met his evidentiary burden of proving, on a balance of probabilities, that the marriage is genuine or not entered into primarily to gain status under *Act*. Accordingly, 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 an officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

(signed)

**"Erwin Nest"**

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**Erwin Nest**

**23 November 2009**

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**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.