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Client ID no. / N° ID client : 2721-6447

2010 CanLII 91206 (IRB)

## Reasons and Decision – Motifs et décision

### SPONSORSHIP

<b>Appellant(s)</b>	Huong Thi Kim NGUYEN	<b>Appelant(e)(s)</b>
<b>Respondent</b>	<b>The Minister of Citizenship and Immigration</b> Le ministre de la Citoyenneté et de l'Immigration	<b>Intimé(e)</b>
<b>Date(s) and Place of Hearing</b>	12 March 2010 Vancouver, BC	<b>Date(s) et lieu de l'audience</b>
<b>Date of Decision</b>	12 March 2010 (rendered orally) 22 March 2010 (written decision)	<b>Date de la décision</b>
<b>Panel</b>	Larry Campbell	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	Jay Solomon Barrister and Solicitor	<b>Conseil(s) de l'appelant(e) / des appelant(e)(s)</b>
<b>Counsel for the Minister</b>	Nadine Wu	<b>Conseil du ministre</b>

## Oral Reasons for Decision

[1] I have considered the testimony and other evidence in this case and I am prepared to render my decision orally.

[2] These are the oral reasons for the decision in the appeal of Huong Thi Kim NGUYEN (the “appellant”) from a refusal to approve the permanent resident visa application made by her spouse, Thuan Quang LUU (the “applicant”). The sponsored application for a visa was refused because the visa officer found the applicant to be inadmissible to Canada in that he did not meet the requirements of the *Immigration and Refugee Protection Act* (the “Act”).<sup>1</sup>

[3] At issue in this appeal is whether section 4 of the *Immigration and Refugee Protection Regulations* (the “Regulations”)<sup>2</sup> applies, thereby excluding the applicant from consideration as a member of the family class.

[4] The test articulated in the *Regulations* is two-pronged; namely, that a foreign national shall not be considered a spouse if the marriage is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the *Act*. To succeed on appeal, the appellant must only demonstrate that one of the two prongs does not apply to the relationship.

[5] I have come to the conclusion, taking into account the consent of the Minister, that the appellant has established that section 4 of *Regulations* does not apply. The appeal is allowed for the following reasons.

[6] By way of background, the appellant is 24 years of age. The applicant is 33 years of age and lives in Vietnam. The appellant has one child from a previous relationship. The applicant was previously married and also has one child. The visa officer interviewed the applicant in Ho Chi Minh City on November 3, 2008. Among the concerns the visa officer addressed at the interview, as shown in the interview notes and then in the letter of the refusal of November 24,

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>2</sup> *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

2008, were the following: the explanation for why the appellant and applicant were attracted to and married each other; what the visa officer considered to be vague and contradictory information about the appellant by the applicant; and reasons why the appellant would have sent money to the applicant in Vietnam, given her perceived low income level.

[7] The genuineness of a marriage can be affected by a number of different factors which can vary from appeal to appeal. They can include, but are not limited to, factors such as: compatibility, development of the relationship, communication between the appellant and applicant, knowledge of each other, visits by the appellant to see the applicant, existence of the family of the applicant in Canada, and birth of a child.

[8] The second prong of the test, whether the relationship was entered into primarily for the purpose of acquiring any status or privilege under the *Act*, is self-explanatory. The advantage sought in spousal appeals is generally entry to Canada and the granting to the applicant of permanent resident status as a member of the family class.

[9] With respect to compatibility, I find that the appellant and applicant are compatible in terms of cultural and ethnic background. They are less compatible in terms of age and education levels.

[10] With regard to the development of the relationship, the appellant and applicant provided oral evidence under affirmation and they presented as credible and believable witnesses who answered questions, on balance, in a direct and straightforward manner. I am satisfied that their testimony was credible and trustworthy and supports a finding that their marriage is a genuine marriage.

[11] The appellant and applicant were consistent in describing the genesis of the relationship, how they were introduced and when they first met, the details of the appellant's initial trip to Vietnam and the subsequent proposal, as well as the purchase of the wedding rings and the trip prior to the actual wedding ceremony. The documentary evidence and the testimony

substantiates that there was ongoing communication between the appellant and the applicant, and as well, the appellant has contact with the applicant's family in Canada.

[12] The appellant and applicant demonstrated good knowledge of each other's life situation and employment. The applicant has met the appellant's son, and I find that their knowledge is consistent with what would be expected in a genuine relationship. There were plans demonstrated for when the applicant arrives in Canada to work with the appellant's father and the applicant's brother in the auto-body shop, as well as about living arrangements and additional children. The appellant had two visits to see the applicant after the marriage. The applicant has one brother and one sister in Canada, which would constitute pull factors for his immigration to Canada. There has been no child born of this present relationship.

[13] In conclusion, I am satisfied, taking into account the consent of the Minister, that there is sufficient credible evidence before me to find that the marriage was genuine and not entered into primarily for immigration purposes. The appeal is allowed.

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

## NOTICE OF DECISION

After reviewing the information in this appeal, and the consent of both parties, the appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and the officer must continue processing the application in accordance with the consent of the parties

(signed)

**"Larry Campbell"**

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**Larry Campbell**

**22 March 2010**

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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.