



IAD File No. / N° de dossier de la SAI : VA6-00268
Client ID no. / N° ID client : 2683-2263

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)

THI MY TRAN

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**

16 April 2007
4 June 2007
Vancouver, BC

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

Date of Decision

4 June 2007 (rendered orally)
25 June 2007 (written decision)

Date de la Décision

Panel

Renee Miller

Tribunal

Appellant's Counsel

Jay Solomon
Barrister & Solicitor

Conseil de l'appelant(s)

Designated Representative

Nil

Représentant désigné

Minister's Counsel

Rick Brummer

Conseil de l'intimé

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Oral Reasons for Decision

[1] These are the reasons and decision in the appeal of Thi My TRAN (the “appellant”), who appeals the refusal to approve the permanent resident application made by her spouse Chi Hieu PHAM (the “applicant”), to immigrate to Canada as a member of the family class.

[2] The parties were married in Vietnam on September 27, 2003 and the appellant subsequently filed an application to sponsor the applicant for immigration to Canada. The applicant was interviewed by a visa officer on December 9, 2005 at the Canadian embassy in Ho Chi Minh City, Vietnam. On January 4, 2006, the visa officer denied the application on the ground that it did not meet section 4 of the *Immigration and Refugee Protection Regulations* (the “*Regulations*”),¹ which requires that the marriage be genuine and not entered into primarily for the purpose of the applicant acquiring status or privilege under the *Immigration and Refugee Protection Act* (the “*Act*”).²

[3] The visa officer was concerned about the genuineness of this marriage because the appellant’s family, in particular her mother, did not attend the wedding, because the applicant had an intimate message on his telephone from another woman who lived in another country, and because the applicant did not appear to have sufficient knowledge of the appellant and her life in Canada. There was also insufficient evidence of contact between the parties, and the applicant had family members who were residing in Canada.

[4] The appellant contends that this refusal by the visa officer was not valid while the Minister of Citizenship and Immigration asks the Panel to dismiss this appeal.

[5] This appeal was heard over two days, April 16 and June 4, 2007, and on those two days oral testimony was heard from both the appellant and the applicant. As well, voluminous documentary materials were filed by the appellant,³ which included a variety of documents such as photographs, telephone records, postcards and letters, confirmation of a visit to Vietnam by the appellant on March 6, 2006 through March 13, 2006 and evidence of money transfers.

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

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

³ Exhibit A-1.

[6] In order to succeed on her appeal, the appellant must show either that this marriage is genuine or that it was not entered into primarily for the purpose of the applicant gaining immigration to Canada. In my view, the appellant has met the burden of proof in this appeal and I allow her appeal.

[7] In assessing the genuineness of the marriage, I have considered 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 and wedding ceremonies, the intention of the parties to the marriage, the evidence of ongoing contact and communication with the parties, the amount of knowledge that they have about each other with regard to their past, present and daily lives, the provision of financial support, the involvement of families in the relationship and their plans, and for the future.

[8] I accept the evidence I have heard with regard to how the parties met, the fact that they were introduced over the phone while the appellant was visiting the applicant's sister in Vancouver, B.C. and that they continued that telephone contact occasionally afterwards. After several months the relationship between them grew to the point where they were having regular telephone contact of a substantial duration.

[9] I was concerned about the fact that the appellant testified that she was never willing to move to Vietnam to be with her husband, that she only wanted to have a marriage in Canada, and that did leave some questions with me with regard to the intention of the parties to enter into a genuine spousal relationship and whether, in fact, this relationship was primarily for the purpose of the applicant gaining immigration status to Canada. Because I had those questions after considering the evidence about the how the relationship developed, I looked at the evidence of how the parties have put their declared intention to have a genuine relationship into effect.

[10] I looked at the evidence of visitation. Since the wedding in September 2003, the appellant has only returned to visit the applicant once, for six days in March 2006, and it was her evidence that because of her mother was seriously ill in Vietnam and she went to help bring her mother back. I found that that was not a factor in the appellant's favour. That is not what I would expect to see in a genuine husband-wife relationship, especially in a circumstance where the appellant has the financial resources, a good job and stable circumstance in Canada, and the

ability to travel to help foster the development of a husband-wife relationship. However, I also considered the fact that this was a conscious decision on the part of the parties; that it was a plan on their part and there was a reason for that lack of visitation. It was not merely coincidence that they had failed to spend more time together.

[11] I also looked at the amount of knowledge that the parties possessed of each other and again, I did not find the appellant's evidence to be overwhelmingly in her favour. I found that she did not have the degree of detail which I would expect to hear with regard to her husband's job activities or his financial circumstances, especially in light of a situation where it was her evidence that she was financially supporting him. That was not a factor that was strongly in her favour. However, she did know about the arrangements with regard to his divorce and his the applicant's visitation with his children, how often he saw his children, when was the last time he had seen them, why he had changed jobs, and she did have general information which agreed with the applicant's testimony about those circumstances.

[12] In favour of her appeal was the fact that the applicant had very good knowledge and gave very accurate and prompt responses when asked about the appellant's living circumstances, her accommodation, when she had moved, why she had moved, her work situation, where she had worked, where she was working presently, her work history, her hours of work, her days of work, and her earnings. Those were all factors in the appellant's favour because the applicant appeared to be well knowledgeable about the appellant's life in Canada.

[13] As well, the evidence between the parties was consistent and there was a good degree of detail with regard to their future plans. I did consider the argument of counsel for the Minister that those future plans were improbable or impractical, which undermined a conclusion of the genuineness of the marriage. But, the practicality of a party's plans to be together is not the test for whether a marriage is genuine. Whether I consider those plans to be practical or not does not mean that they are not genuine in intention, and therefore I did not consider that argument to be persuasive.

[14] I also looked at the concerns of the visa officer set out in the letter of refusal, but I also did not consider those to be substantially persuasive. There were some legitimate concerns with regard the involvement of the parties' families in the wedding, the fact that the appellant did not

tell her family prior to getting married, and the falling-out between the appellant and the applicant's sister subsequent to the interview. But I do not consider those concerns to be fundamental or as significant to me as the nature of the knowledge of the parties, which really goes to indicate whether or not this is a genuine marriage. The involvement of the families in the relationship is one factor to consider but it is not the overwhelming factor.

[15] Thus, after considering the totality of the evidence, I found that there was sufficient evidence which was consistent and reliable to indicate that the parties have been engaged in a meaningful exchange of information which is in the nature of a genuine spousal relationship. For those reasons, I find that this relationship is genuine and that it was not entered into primarily for the purpose of the applicant acquiring status or privilege under the *Act*. I allow this appeal and find that the refusal of the visa officer was not valid in law.

[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.

"Renee Miller"
Renee Miller

25 June 2007
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.