

**Date: 20080918**

**Docket: IMM-1371-08**

**Citation: 2008 FC 1055**

**Toronto, Ontario, September 18, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**NARESH KUMAR DUA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application challenges an Immigration and Refugee Board (Immigration Appeal Division) (IAD) decision dated February 22, 2008 which, on a *de novo* hearing, effectively agrees with a prior decision of an immigration officer who found the marriage under consideration is not genuine.

[2] The pivotal feature of the decision under review is that the marriage, which is described as an arranged marriage in India, did not conform with certain traditional expectations and, as a result, is found not to be genuine.

[3] The IAD expressed its expectation of the essential elements of an arranged traditional marriage in India as follows:

- Extensive negotiation preceding the finalization of the arrangement between the two parties;
- Compatibility of the spouses in terms of age, education, marital background, earning capability, religion and social background,
- Ceremony held in presence of family members, relatives, friends and neighbours from both sides with the couple elaborately dressed, and the wedding solemnized at the place of the bride's family;
- Exchange of gifts on that same occasion

With respect to these expectations the IAD said this:

From the testimony of the appellant and the statements of the applicant in her interview, the panel realizes that the allegedly "arranged" marriage of the spouses is far from being qualified as such:

- The appellant proposed to the applicant after only half an hour of negotiations;
- The applicant is eight years younger than the appellant, more educated, was never married before and gave no reason why she accepted to marry the appellant who is divorces and has two children;
- The wedding was held far from the place of the applicant's family, giving the impression to avoid publicity;
- Only a few people were present at the wedding;
- The appellant was wearing jeans at his wedding ceremony and not the traditional dress;
- No gifts were exchanges, no celebration was held and no honeymoon took place.

(IAD decision, pp. 6-7)

[4] As I expressed during the course of the hearing of the present Application, in my opinion, the IAD's implausibility finding with respect to the elements of the marriage under consideration does not conform with the law found in Justice Muldoon's decision in *Valtchev* as follows:

6. The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the *Maldonado* principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible.

Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

7. A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22][Emphasis added]

*Valtchev v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1131

[5] The reviewable error lies in the fact that, even though the IAD set up a standard for comparison, the decision rendered contains no cogent analysis of the evidence produced by the Applicant to address the issues expressed in the standard. Without this analysis, I find that the decision under review is made in reviewable error.

**ORDER**

Accordingly the decision under review is set aside and referred back for redetermination before a differently constituted panel.

“Douglas R. Campbell”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1371-08

**STYLE OF CAUSE:** NARESH KUMAR DUA v.  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 18, 2008

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** SEPTEMBER 18, 2008

**APPEARANCES:**

Alesha Green FOR THE APPLICANT

John Provart FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Green Willard LLP  
Barristers & Solicitors  
Toronto, Ontario FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada FOR THE RESPONDENT