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Can You Have a Marriage of Convenience in Provincial Nominee Applications?

Our Columnist - Untangling The Law

Written by Reis Pagtakhan



Under immigration law, Canadian citizens or permanent residents who marry or enter into a common-law relationships with someone outside of the country must prove their relationship is genuine and was not entered primarily for the purposes of immigration.

For the most part, immigration laws prohibiting "marriage of convenience" have been in existence in Canada for a number of years. The purpose of these laws is to prevent people from immigrating to Canada who are not in real relationships with a Canadian citizen or permanent resident. What most people don't know is that the genuineness of a marriage or common-law relationship can be looked at in federal skilled worker cases when neither applicant is a Canadian or permanent resident. As a result, these relationships can also be looked at in provincial nominee program applications.

While challenging the legitimacy of a marriage or common-law relationship in a federal skilled worker or provincial nominee program application is rare, a recent case decided earlier this year outlines how this could occur.

In the case of Inderjit Kaur, Ms. Kaur submitted an application for permanent residence as a federal skilled worker. In her application, she included her spouse.

During the processing of her application, the immigration officer found that she had the minimum number of points needed to qualify as a federal skilled worker. In assessing her points, Ms. Kaur was awarded points for her husband's Master's Degree.

While Ms. Kaur was assessed with enough points to immigrate, the immigration officer had suspicions that the relationship between Ms. Kaur and her husband was not genuine. The immigration officer noted that Ms. Kaur was seven years older than her husband, her husband had been unemployed for over three years, she married her spouse one month before she applied for permanent residence, and government identification issued to her in the year after her marriage did not indicate that she was married.

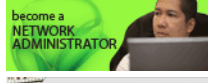
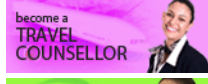
As a result, Ms. Kaur was asked to submit a number of documents to support the genuineness of her marriage. The immigration officer looked at the photos from the wedding and honeymoon and came to the conclusion that they were "limited, appeared contrived and taken at haste". The officer interviewed both Ms. Kaur and her husband, deemed that their marriage was entered into primarily for the purposes of acquiring permanent residence in Canada, and refused Ms. Kaur's application on the basis of a misrepresentation of her marital status.

Although Ms. Kaur won her case, the judge indicated that the genuineness of a marriage could be considered in this type of immigration application. As a result, in non-family class applications, such as provincial nominee program application, the genuineness of a marriage can be taken into account.

This Article is prepared for general information purposes only and is intended to provide comments for readers and friends of the Filipino Journal. The contents should not be viewed as legal advice or opinion.

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