

Federal Court



Cour fédérale

**Date: 20200618**

**Docket: IMM-5575-19**

**Citation: 2020 FC 703**

**Ottawa, Ontario, June 18, 2020**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**RAHEELA JABEEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Jabeen applies for judicial review of the refusal of her application to sponsor her husband for permanent residence. This refusal was based on a finding that Ms. Jabeen was not residing in Canada. I am dismissing her application, because the decision-maker did not apply the wrong test when analyzing the residence issue and did not fail to take into account relevant evidence. Thus, the challenged decision is reasonable.

I. Background

[2] Ms. Jabeen is a citizen of Pakistan and a permanent resident of Canada. In 2014, she married Mr. Hussain, who is a citizen of Pakistan and holds a work permit in the United States, where he lives. In May 2017, Ms. Jabeen sponsored Mr. Hussain's application for permanent residence in Canada.

[3] In July 2018, Ms. Jabeen and Mr. Hussain were interviewed by a visa officer, who subsequently denied their application. In the letter of refusal, the visa officer listed a number of reasons related to Mr. Hussain's immigration history in Canada and in the United States. More importantly for our purposes, the officer also found that Ms. Jabeen was not residing in Canada. Thus, Ms. Jabeen did not meet the requirement set out in section 130(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], namely, that she reside in Canada.

[4] Ms. Jabeen appealed to the Immigration Appeal Division [IAD] of the Immigration and Refugee Board. The IAD first made a negative credibility finding against Ms. Jabeen and Mr. Hussain. Mr. Hussain had admitted to the visa officer that he had made an unsubstantiated claim for asylum in Canada in 1997 and that he had no fear of returning to Pakistan at that time. However, before the IAD, Mr. Hussain and Ms. Jabeen asserted that this was a mistake, that the visa officer resorted to undue pressure at the interview and that there was indeed a valid ground for Mr. Hussain's claim for asylum. The IAD did not believe Ms. Jabeen's and Mr. Hussain's testimony in this regard and found that their credibility was generally lacking.

[5] The IAD then reviewed the evidence regarding Ms. Jabeen's residence. It noted that Ms. Jabeen had admitted to the visa officer that she had spent most of her time in the United States since her marriage. The IAD also reviewed the documentary evidence submitted by Ms. Jabeen, but found it insufficient to prove that she was residing in Canada. It concluded that Ms. Jabeen had not discharged her onus of proving that she was resident in Canada.

[6] Ms. Jabeen now seeks judicial review of the IAD's decision.

## II. Analysis

### A. *The "Wrong Test"*

[7] Ms. Jabeen first alleges that the IAD failed to apply the test for residency outlined in *Iao v Canada (Citizenship and Immigration)*, 2013 FC 1253 [*Iao*].

[8] In that case, the Chief Justice of this Court found it reasonable to determine residence based on the review of a number of factors beyond mere physical presence, taking into account the applicant's legitimate wish to spend time with a spouse residing abroad. The Chief Justice emphasized that "other factors may also be considered, provided that they assist in the determination of whether the sponsor has "centralized his or her mode of living in Canada"" (*Iao*, at paragraph 32).

[9] Since then, many decisions of the IAD dealing with the issue of residence have referred to *Iao* as providing useful guidance. Other decisions do not cite *Iao*, but I am unable to find that they depart from it in any significant manner or that they adopt a different approach.

[10] To the extent that Ms. Jabeen is faulting the IAD for not referring explicitly to *Iao* nor proceeding to a separate analysis of each of the *Iao* factors, she is challenging the sufficiency of the IAD's reasons. However, as long as the reviewing court is able to understand the decision-maker's reasoning process, there is no requirement to spell out the applicable test or to proceed mechanistically to an analysis of each factor. In any event, Ms. Jabeen's submissions before the IAD did not mention *Iao*. Thus, it is difficult to fault the IAD for not mentioning it.

[11] With respect to the substance of the analysis, Ms. Jabeen has not persuaded me that the IAD's decision in her case adopts an unreasonable approach to the determination of residence. The factors the IAD took into account were reasonably related to the issue. Ms. Jabeen has not shown that the IAD failed to address a relevant factor that was supported by the evidence.

[12] The IAD's decision in this case is somewhat short. But its brevity may be a reflection of the paucity of the evidence submitted by Ms. Jabeen. Instead of laying out the *Iao* test and proceeding to the analysis of each factor, the IAD looked at the main pieces of evidence brought by Ms. Jabeen and explained why they were insufficient to discharge her onus of proving her residence. Reading those reasons in conjunction with the record before the IAD, I am unable to conclude that the IAD adopted an unreasonable approach to the residence issue or failed to consider relevant factors.

B. *Failure to Take into Account Relevant Evidence*

[13] Ms. Jabeen also argues that the IAD failed to take into account the evidence that she adduced. These submissions, however, amount to a request to reassess the weight that the IAD gave to the evidence. This is not the role of this Court. Nevertheless, I will review summarily the evidence that was allegedly disregarded.

(1) Presence in Canada

[14] Ms. Jabeen provided the IAD with her travel history, based on United States entry stamps in her passport and ICES travel history documenting entry in Canada. That evidence, which is not challenged by the respondent, shows that Ms. Jabeen spent somewhat more time in Canada than in the United States during the period from late 2013 to mid-2019. However, it also shows that she spent a significant amount of time in the United States immediately after the sponsorship application was filed in May 2017.

[15] The determination of one's residence, for the purposes of section 130 of the Regulations, does not depend on a mathematical calculation based on physical presence. While physical presence is certainly a relevant factor, the IAD was entitled to give more weight to Ms. Jabeen's admission that she was living mainly in the United States. Such an admission is certainly relevant to the question whether she has centralized her mode of living in Canada, to use *Iao's* terminology. The admission was also buttressed by Ms. Jabeen's presence in the United States during the most relevant period, namely, the period extending from the application for permanent residence to the visa officer's decision.

(2) Employment

[16] Ms. Jabeen provided notices of assessment showing a modest income for the years 2016 and 2017. She also filed a 2018 letter from her employer stating that she was employed as a front desk clerk since 2016. The IAD discounted this evidence, as Ms. Jabeen could not produce T4 forms or other proof of employment and was “paid under the table.” (In her testimony, Ms. Jabeen in fact said “paid in cash,” but I cannot see a meaningful difference here.)

[17] While the IAD may have been more explicit, I find that it could reasonably conclude that the flimsy evidence Ms. Jabeen gave about her employment did not weigh in her favour.

(3) Housing

[18] Maintaining permanent housing arrangements in Canada may be a relevant factor in establishing residence. Before the IAD, Ms. Jabeen provided a letter from her landlord to the effect that she was renting a bedroom for a one year period starting on February 1, 2018. She testified that she paid the rent in cash. The IAD, however, noted the absence of any lease or proof of payment.

[19] Once again, I am not persuaded that the IAD’s decision is unreasonable in this respect. Of course, Ms. Jabeen had to stay somewhere when she was present in Canada. The IAD, however, could reasonably conclude that the little evidence put forward by Ms. Jabeen did not weigh in favour of a finding that she intended to make Canada her place of residence.

(4) Other Evidence

[20] Ms. Jabeen also provided a bank statement showing a significant balance in a Canadian account and phone and Whatsapp records purportedly showing conversations with Mr. Hussain. This evidence, however, proves little. The fact that Ms. Jabeen had, at one point in time, a significant balance in a Canadian account does not give any insight as to whether she intends to make Canada the centre of her life. The phone and Whatsapp records cover only a short period of time. Thus, the IAD was entitled to disregard this evidence.

C. *Credibility*

[21] Ms. Jabeen also challenges the IAD's negative credibility finding. I have read the interview notes of the visa officer and the transcript of the hearing before the IAD. On that record, the IAD could reasonably conclude that Ms. Jabeen and Mr. Hussain had contradicted themselves and that their credibility was affected. Moreover, the IAD considered and reasonably rejected Ms. Jabeen's allegations of impropriety and bias on the part of the visa officer.

III. Disposition

[22] As the IAD's decision is reasonable, Ms. Jabeen's application for judicial review will be dismissed.

**JUDGMENT in IMM-5575-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5575-19

**STYLE OF CAUSE:** RAHEELA JABEEN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE BETWEEN  
OTTAWA, ONTARIO AND TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 15, 2020

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** JUNE 18, 2020

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