Federal Court  Cour fédérale

Date: 20210422

Docket: IMM-7119-19

Citation: 2021 FC 351

Ottawa, Ontario, April 22, 2021

PRESENT: Madam Justice Walker

BETWEEN:

AQDAS AHMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Aqdas Ahmed seeks the Court's review of an October 30, 2019 decision (Decision) of the Immigration Appeal Division (IAD) dismissing his appeal of a removal order issued against him on December 18, 2018. The IAD concluded that the humanitarian and compassionate (H&C) grounds raised by Mr. Ahmed were not sufficient to warrant relief from his failure to comply with the Canadian residency obligations of section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] Mr. Ahmed has not challenged the fact that he was present in Canada for 0 days of the required 730 days of residency during the relevant five-year period (December 18, 2013 to December 17, 2018). He appealed the removal order to the IAD solely on H&C considerations related to his desire to pursue further studies and to remain in Canada permanently. Mr. Ahmed also relies on alleged hardship in Pakistan, his country of origin.

[3] For the reasons set out in this judgment, Mr. Ahmed's application for judicial review will be dismissed. The IAD reasonably assessed Mr. Ahmed's long absence from Canada and limited H&C factors against his ties to Pakistan, consistent with the statutory constraints on its discretionary authority and the jurisprudence. The Decision demonstrates that the IAD considered the evidence and submissions before it. The IAD's weighing of Mr. Ahmed's circumstances is a rational outcome based on the evidence.

[4] Mr. Ahmed has not established one or more significant errors in the Decision that warrant the Court's intervention in the IAD's analysis or in its ultimate conclusion that there were insufficient H&C considerations to overcome Mr. Ahmed's significant non-compliance with his Canadian residency requirements.

I. Overview

[5] Mr. Ahmed is a citizen of Pakistan. He came to Canada in 2001 with his mother and father as permanent residents. Mr. Ahmed was then eight years old. The family returned to Pakistan within two weeks of their arrival. Mr. Ahmed returned to Canada in 2003 with his mother and siblings and remained here for four weeks. He made frequent trips to the United

States in the ensuing years to visit family but did not return to Canada until December 17, 2018, at the end of a six-month stay in the United States to visit his grandmother.

[6] At his point of entry in 2018, Mr. Ahmed stated that he did not intend to reside in Canada but would return to Pakistan on December 22, 2018 to continue his studies. Later the same day, he changed his position and informed an immigration officer that he wished to re-establish himself in Canada.

[7] The December 18, 2018 removal order was issued against him in reliance on a report prepared by an immigration officer in accordance with subsection 44(1) of the IRPA and Mr. Ahmed appealed the removal order to the IAD.

[8] In the Decision, the IAD found that Mr. Ahmed's non-compliance with his section 28 residency obligations was great and that the H&C factors he identified must be equally significant to warrant the special relief contemplated in paragraph 67(1)(c) and subsection 68(1) of the IRPA. The panel weighed the non-compliance against its concern regarding Mr. Ahmed's credibility and the H&C factors relevant to Mr. Ahmed's circumstances (citing *Bufete Arce v Canada (Citizenship and Immigration)*, 2003 CanLII 54304 (CA IRB) at para 9, an IAD decision that in turn relied on the non-exhaustive list of factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL) at para 14). The IAD considered Mr. Ahmed's initial and continuing establishment in Canada and ties to Canada; his reasons for leaving and remaining outside of Canada; the absence of reasonable attempts to return to Canada at the first opportunity; and the extent of any hardship in Pakistan.

[9] At the outset of its analysis, the IAD determined that Mr. Ahmed was not credible because he provided contradictory information as to where he intended to reside when he came to Canada in December 2018. The panel did not accept his explanation that he had been involved in a car accident while en route to the border and that the accident had affected his memory.

[10] The IAD acknowledged that Mr. Ahmed's reasons for leaving and remaining outside of Canada for a long period of time were out of his control while he was a minor but concluded that, once he turned 22 in 2015, he could have investigated his options for returning to Canada and did not do so. The panel stated that Mr. Ahmed's argument that he was dependent on his parents until the age of 25 was not persuasive largely because his parents were actively encouraging him to apply to university in Canada. The IAD found that Mr. Ahmed had shown no interest in visiting Canada before or after he turned 22. Further, he had demonstrated no interest in taking up residence in Canada until his six-month visitor's visa to the United States was about to expire.

[11] Turning to establishment in Canada, the IAD stated that Mr. Ahmed had no family or assets here and little establishment other than 24 hours of volunteer work and a cursory visit to a college in Brampton. Finally, the IAD did not accept that Mr. Ahmed would experience hardship in Pakistan where his family was established and all of his studies had taken place.

[12] The IAD was satisfied that there were insufficient H&C grounds to overcome Mr. Ahmed's significant failure to comply with his Canadian residency obligations and dismissed his appeal.

II. Issue and Standard of Review

[13] The sole issue in this application is whether the IAD erred in refusing Mr. Ahmed's appeal of his removal order on H&C grounds. I agree with the parties that the IAD's Decision should be reviewed for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 (*Vavilov*); *Canada (Citizenship and Immigration) v Ndir*, 2020 FC 673 at para 27 (*Ndir*)). None of the situations identified by the Supreme Court in *Vavilov* for departing from the presumptive standard of review apply in this case.

[14] The majority in *Vavilov* set out guidance for reviewing courts in the application of the reasonableness standard, emphasizing the importance of the decision actually made, the decision maker's reasoning process, and the outcome for the person affected by the decision (*Vavilov* at paras 83, 86). The hallmark of a reasonable decision is "an internally coherent and rational chain of analysis" that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 31). Mr. Ahmed argues that the reasons given by the IAD for dismissing his appeal are significantly flawed and highlights the Supreme Court's statement in paragraph 86 of *Vavilov* that:

> [86] […] In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

III. Analysis

[15] It is useful to first provide context for the Decision and the statutory regime governing Mr. Ahmed's IAD appeal. Section 28 of the IRPA requires a permanent resident to be physically present in Canada for at least 730 days in every five-year period. The section contemplates other means by which the permanent resident may satisfy their residency obligation but they are not relevant to Mr. Ahmed's circumstances. Where the 730-day requirement is not met, an immigration officer may determine that H&C considerations relating to the permanent resident justify the retention of permanent resident status, taking into account the best interests of any child directly affected by the determination. If the officer does not make an H&C determination, the permanent resident is declared inadmissible under section 41 of the IRPA, their permanent resident status is lost, and a removal order is issued.

[16] A permanent resident may appeal a removal order to the IAD pursuant to subsection 63(3). The IAD may allow an appeal or stay a removal order on H&C grounds if it is satisfied that "sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case" (paragraph 67(1)(c) and subsection 68(1) of the IRPA). The powers of the IAD in considering the appeal of a removal order are highly discretionary but its discretion is exceptional and should not be exercised routinely or lightly (*Canada (Public Safety and Emergency Preparedness) v Abou Antoun*, 2018 FC 540 at para 19).

[17] Mr. Ahmed appealed the removal order issued against him to the IAD and now seeks review of the IAD's Decision. Mr. Ahmed's primary argument challenging the reasonableness of the Decision focusses on the IAD's analysis of the hardship he states he will suffer should he be

forced to return to Pakistan. Mr. Ahmed submits that the immediate and serious consequences of a removal order as they relate to potential hardship require the IAD to fully engage with those consequences in the Decision (*Vavilov* at para 134). He submits that the IAD did not do so.

[18] Mr. Ahmed argues that the IAD ignored significant evidence regarding the potential hardship he would face in Pakistan. He refers to the IAD's brief consideration of his evidence and submissions on hardship. The IAD stated that Mr. Ahmed has no family, friends or assets in Canada and that his family is established in Pakistan where he has undertaken all of his studies. The IAD did not address the evidence regarding a December 2014 attack by Taliban militants on the Army Public School in Peshawar which resulted in the horrific killing of 149 people, including 132 schoolchildren.

[19] Mr. Ahmed states that the IAD made no reference to his evidence of lingering post-traumatic stress disorder (PTSD) and trauma due to the Taliban attack on his childhood school, thereby failing to consider all of the relevant circumstances, contrary to the legal constraints set out in the IRPA and the jurisprudence (*Senay v Canada (Citizenship and Immigration)*, 2021 FC 200 at paras 6, 51 (*Senay*)). He insists that he lost his sense of security in Pakistan as a result of the attack. Mr. Ahmed argues that the IAD failed to observe the guidelines set out by the Supreme Court and the "culture of justification" that is fundamental to a responsive and reasonable decision (*Vavilov* at paras 14, 127).

[20] I am not persuaded by Mr. Ahmed's arguments and find no reviewable error in the IAD's hardship analysis. Mr. Ahmed left the Army Public School in 2006 and went on to university

studies. There is little, if any, rational connection in the record between the Taliban attack on the Army Public School in 2014 and any hardship Mr. Ahmed may now face in returning to Pakistan.

[21] The evidence in the record describes the 2014 Taliban attack and there is no question that it was a terrible attack that would have caused Mr. Ahmed heartache in light of the sheer number of deaths and the fact that teachers with whom he had been quite close in 2006 perished. Mr. Ahmed's counsel at the IAD hearing and his new counsel in this application stressed the importance in the record of the evidence of PTSD. However, that evidence was not specific or relevant to Mr. Ahmed.

[22] The IAD understood Mr. Ahmed's argument regarding the effects of the attack. The panel questioned Mr. Ahmed about the attack during his hearing and he responded that "it made me very uncomfortable because at that time in 2016, after that incident, I was close to Peshawar as well because I was in my university and everything just went on red alert and it[']s] like a sense of security was lost". Mr. Ahmed stated that he coped with the tragedy by talking to other students and that guidance from his father gave him strength.

[23] Mr. Ahmed's evidence does not establish that he suffers from PTSD, nor does the documentary evidence suggest that former students in his situation suffered from PTSD due to the attack. Mr. Ahmed remained in Pakistan long after he became aware of the attack. There is no evidence in the record that he himself has experienced ongoing depression or PTSD or that he sought medical treatment or counselling. Despite the expansive submissions of counsel before

the IAD, I conclude that the IAD's omission of the attack from its reasons was not a significant error that would render the Decision unreasonable in light of Mr. Ahmed's evidence (*Vavilov* at para 100).

[24] Mr. Ahmed also submits that the IAD erred in questioning his credibility due to inconsistencies in his evidence about his intention to remain in Canada when he arrived in December 2018. Mr. Ahmed argues that he corrected his initial statement later the same day when he informed an immigration officer he wished to re-establish himself in Canada.

[25] In the Decision, the IAD concluded that Mr. Ahmed misrepresented his intentions to the immigration officer upon arrival in Canada regarding his plan to return to Pakistan on December 22, 2018 to start his graduate studies. The IAD found that Mr. Ahmed only referred to his involvement in an accident on the way to the border in explanation of his memory lapse when he was asked about the misrepresentation at the hearing. The IAD did not accept Mr. Ahmed's explanation that the accident was responsible for the contradictory statements.

[26] Credibility determinations lie within "the heartland of the discretion of triers of fact" and are entitled to considerable deference on judicial review. They should not be overturned unless perverse, capricious or made without regard to the evidence (*Siad v Canada (Secretary of State)*, 1996 CanLII 4099 (FCA), [1997] 1 FC 608 (CA); *Ndir* at para 32).

[27] The IAD's assessment of Mr. Ahmed's misrepresentation when he arrived in Canada in December 2018 was consistent with the evidence and its reasoning in support of its adverse

credibility finding was intelligible and justified. Mr. Ahmed's evidence regarding whether or not he intended to remain permanently in Canada was inconsistent. He initially stated that he intended to pursue a graduate degree in either Pakistan or Canada but had not yet decided. Soon thereafter, as the immigration officer noted, Mr. Ahmed altered his statement to say that he wished to re-establish himself in Canada. The IAD questioned Mr. Ahmed about the inconsistency and drew its conclusion after listening to his explanation of the effects of a previously unmentioned car accident. There is no basis upon which the Court should require the IAD to reconsider its credibility assessment.

[28] With respect to Mr. Ahmed's efforts to return to Canada at the first opportunity, the IAD recognized that he was a minor during a great deal of his absence from Canada. Nevertheless, the IAD observed that Mr. Ahmed had made no independent investigation of the possibility of a return to Canada and revival of his permanent residence status until 2018 when his United States visa was about to expire. Not only had Mr. Ahmed never visited Canada, he had not exhibited any interest in visiting or in pursuing the possibility of taking up Canadian residence once he became an adult at either 22 or 25 years of age. In addition, although he began an application to the University of Calgary in 2017, Mr. Ahmed did not pursue the application because he was required to come to Canada to take an admissions test. The IAD's analysis and conclusion that Mr. Ahmed made no effort to return to Canada once he was able to do so are consistent with the evidence in the record and I find no reviewable error in the Decision in this regard.

[29] More generally, Mr. Ahmed submits that there is no indication in the Decision that the IAD applied the principles set out in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015

SCC 61, and the approach to H&C matters adopted by the Supreme Court in *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 (*Chirwa*). He states that the IAD's review of his appeal lacked sensitivity and compassion. Mr. Ahmed suggests that the IAD considered the relevant H&C factors in silos and provided no comprehensive weighing of the various positive and negative factors in his case (*Senay* at paras 34, 54).

[30] I am not persuaded by Mr. Ahmed's submissions. While the IAD does not cite the *Chirwa* approach in the Decision, the IAD considered the relevant, well-established H&C factors from the jurisprudence in assessing Mr. Ahmed's appeal under paragraph 67(1)(c) and subsection 68(1) of the IRPA. The panel considered each of the factors identified by Mr. Ahmed and explained its cumulative weighing of the various factors against Mr. Ahmed's failure to observe his Canadian residency requirement. The Decision is substantively different from that before me in the *Senay* matters.

[31] I do not question Mr. Ahmed's desire to return to Canada but his evidence reflects very few positive H&C factors in support of his IAD appeal and this application. His failure to satisfy any portion of his section 28 residency obligation, most notably during the period after completion of his university studies in Pakistan, is a significant negative factor. The IAD reasonably concluded that Mr. Ahmed's establishment during the then nine months since his 2018 return to Canada was very limited as compared to his existing ties and life in Pakistan. Mr. Ahmed noted the IAD's focus on his completion of only 24 hours of volunteer work while his testimony suggested he had or intended to do more but the only evidence in the record was a letter from a volunteer organization that confirmed 24 hours of volunteer service.

[32] In summary, the IAD's conclusion regarding the absence of any material establishment in Canada and its hardship analysis were intelligible and justified as against the constraints in the IRPA and the jurisprudence, Mr. Ahmed's evidence and his counsel's submissions (*Vavilov* at paras 126-128). There is no basis upon which the Court should intervene in the IAD's exercise of its discretionary authority.

[33] I note in closing that Mr. Ahmed has highlighted minor factual errors in the Decision but I agree with the Respondent that the errors are not significant and did not affect the IAD's substantive evaluation of the appeal.

IV. Conclusion

[34] The application is dismissed.

[35] With the consent of the parties, the style of cause in this application is amended to remove the Minister of Public Safety and Emergency Preparedness as a respondent, naming only the Minister of Citizenship and Immigration as the Respondent.

[36] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-7119-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The style of cause is amended to remove the Minister of Public Safety and Emergency Preparedness as a respondent.

3. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7119-19
STYLE OF CAUSE:	AQDAS AHMED v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE FROM OTTAWA, ONTARIO (THE COURT) AND TORONTO, ONTARIO (THE PARTIES)
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