

Federal Court



Cour fédérale

**Date: 20210419**

**Docket: IMM-7221-19**

**Citation: 2021 FC 331**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, April 19, 2021**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**Omar Zghair THIB**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] Omar Zghair Thib is seeking judicial review of a decision rendered on October 21, 2019, by the Immigration Appeal Division of the Immigration and Refugee Board of Canada [IAD] rejecting his appeal against a decision of the Immigration Division [ID] of the same tribunal. On April 16, 2017, the ID concluded that Mr. Thib had made misrepresentations and that he was

inadmissible because he was a person described in paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* [the Act], and it made a removal order against him.

[2] In considering whether there were sufficient humanitarian and compassionate considerations, taking into account the best interests of the child directly affected by the decision, to warrant special relief in light of all the circumstances of the case (paragraph 67(1)(c) of the Act), the IAD concluded that Mr. Thib had failed to show, on a balance of probabilities, that such considerations existed.

[3] The IAD confirmed that Mr. Thib was a person described in paragraph 40(1)(a) of the Act and confirmed the removal order against him.

[4] For the reason that follows, Mr. Thib's application for judicial review will be allowed.

## II. Background

[5] Mr. Thib is a citizen of Iraq. On August 14, 2009, he was granted permanent resident status in Canada under the investor program.

[6] On September 19, 2010, Mr. Thib married an Iraqi citizen. On January 9, 2012, his spouse gave birth to their daughter, who received permanent resident status in Canada on October 22, 2012.

[7] On May 8, 2015, Mr. Thib was examined to check whether he met the residency requirements for his application to renew his permanent resident card and for his application to become a Canadian citizen. In response to the officer's questions, Mr. Thib repeatedly denied having a travel document or passport from a country other than Iraq and stated that he had never used another name. The officer told him that he had concerns, that he would not make a decision and that he would make further inquiries, including with the Jordanian embassy and the consultant who had assisted Mr. Thib. Mr. Thib gave his consent.

[8] On October 22, 2015, in response to CIC's request, the Jordanian embassy in Canada sent a letter to Canadian authorities confirming that Mr. Thib held a Jordanian passport but did not have Jordanian citizenship. Attached to the letter was a copy of Mr. Thib's Jordanian passport, issued on July 19, 2007, in the name of Omar Zgayer D. Alrawi.

[9] On August 24, 2016, Mr. Thib was examined again. Again, he denied having a passport other than his Iraqi passport and denied having used another name. The officer then showed him a copy of a Jordanian document bearing his photograph and another name. Mr. Thib acknowledged that it was his photograph but denied having ever seen or used the passport. Still, on August 24, 2016, Citizenship and Immigration Canada [CIC] issued a report under subsection 44(1) of the Act. The officer was of the opinion that Mr. Thib was inadmissible under paragraph 40(1)(a) of the Act for misrepresentation, having failed to disclose that he had a Jordanian passport under another name; therefore, it was impossible for CIC to assess whether Mr. Thib met the statutory residency requirements.

[10] On January 11, 2017, the report was referred to the ID for an admissibility hearing under section 44(2) of the Act, to determine whether Mr. Thib was a person described in paragraph 40(1)(a) of the Act.

[11] On April 26, 2017, at the end of the hearing, the ID concluded that Mr. Thib had made a misrepresentation as defined in section 40(1)(a) of the Act, thereby preventing an officer from performing a verification. The ID noted that it was not its role to assess whether Mr. Thib had panicked, as he claimed, to assess whether his intent was to mislead Canadian authorities, or to assess the effect of his application as an investor. Lastly, the ID noted that it had no issue with Mr. Thib's names.

[12] Thus, on April 26, 2017, the ID confirmed that Mr. Thib was a person described in section 40(1)(a) and issued a removal order against him.

[13] On March 29, 2018, Mr. Thib and his wife obtained a divorce decree that provided, among other things, that Mr. Thib and his daughter reside in the family home in Pierrefonds until it was sold, and that Mr. Thib have sole custody of his daughter.

### III. IAD's decision

[14] The IAD heard Mr. Thib's case on September 10, 2019. Unfortunately, the transcript of the hearing is not available, as explained in a letter from the IAD dated January 20, 2020.

[15] Before the IAD, Mr. Thib did not deny that he had failed to disclose a material fact relating to a relevant matter, and he did not challenge the validity of his inadmissibility (Applicant's Memorandum at para 36). Rather, he sought to establish sufficient humanitarian and compassionate considerations to warrant special relief allowing him to retain his permanent resident status in Canada under paragraph 67(1)(c) of the Act.

[16] On October 21, 2019, the IAD dismissed Mr. Thib's appeal. The IAD began by stating the factors recognized in the case law for determining the existence of humanitarian and compassionate considerations in misrepresentation cases. The IAD noted that the burden is on the claimant, and that the analysis is contextual and depends on the circumstances of each case.

[17] The IAD noted that Mr. Thib admitted that he had had a Jordanian passport since 2007. He stated that he did not disclose its existence to Canadian authorities when he became a permanent resident in 2009 because he was not asked about it. He also admitted that he had used the passport after 2009, making it impossible for Canadian officials to assess his number of days of presence in Canada. Mr. Thib explained that he had feared for his situation and that of his family when he was asked the question. He also explained that, for all intents and purposes, the name on his Jordanian passport is a variation of his real name.

[18] The IAD reviewed copies of Mr. Thib's Jordanian passports and the letter from the Jordanian embassy, obtained by CIC, and raised doubts about their authenticity.

[19] The IAD noted that the documents' authenticity was not raised at the hearing, and it therefore could not conclude that they were fraudulent. The IAD chose to give them little probative value. As well, the highlighted contradictions between certain allegations made by Mr. Thib's and his documentary evidence led the IAD to draw a negative credibility inference.

[20] It should be noted at the outset that the IAD doubted the authenticity of the documentary evidence obtained by CIC but then, inexplicably and without discussion with the parties, drew a negative inference as to Mr. Thib's credibility. In addition, the IAD stated that this unsubstantiated finding would affect the assessment of the humanitarian and compassionate considerations.

[21] The IAD then assessed the relevant factors, including the seriousness of the misrepresentation, Mr. Thib's expression of remorse, his length of time and degree of establishment in Canada, family and community support, the hardship caused if he were to return to his country, and the best interests of Mr. Thib's daughter. In short, the IAD came to the conclusion that the best interests of the child were an important factor, but that this factor was not so significant as to warrant special relief, given the weight of the negative factors. The IAD considered the best interests of the child to be the only factor that was not negative or neutral.

[22] Ultimately, the IAD confirmed that Mr. Thib was a person described in paragraph 40(1)(a) of the Act and confirmed the removal order against him.

IV. Analysis and decision

[23] Mr. Thib presents two arguments, but only one can be used in disposing of this application.

[24] The parties acknowledge that (1) the IAD erred in raising doubts as to the authenticity of the documents obtained by CIC and then drawing a negative inference as to Mr. Thib's credibility; and that (2) this error tainted its assessment of the humanitarian and compassionate considerations.

[25] The respondent suggests that, given the few humanitarian and compassionate considerations raised by Mr. Thib before the IAD, this Court can conclude that the decision is reasonable despite the IAD's error, and that the outcome on redetermination by the IAD would be the same.

[26] This issue must be considered on a standard of reasonableness. However, the reviewing court's role is neither to reweigh the evidence in the record nor to interfere with the decision maker's findings of fact and substitute its own (*Canada Post Corp* at para 61; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55).

[27] Consequently, I cannot agree with the respondent's position because it would require a reconsideration of the evidence at issue, which the Court cannot do on judicial review. As I cannot assess the effect of the IAD's erroneous finding on its assessment of the humanitarian and

compassionate considerations, I must conclude that the IAD's error is fatal in the circumstances. The IAD's decision does not reveal "an internally coherent and rational chain of analysis" (*Vavilov* at para 85; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31 [*Canada Post Corp*]).

V. Conclusion

[28] Mr. Thib's application for judicial review will therefore be allowed and the matter referred back to the IAD for redetermination.



**JUDGMENT in IMM-7221-19**

**THIS COURT’S JUDGMENT** is as follows:

1. The application for judicial review is allowed;
2. The matter is referred back to the IAD for redetermination; and
3. No question is certified.

“Martine St-Louis”

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Judge

Certified true translation  
Johanna Kratz, Reviser

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

**DOCKET:** IMM-7221-19

**STYLE OF CAUSE:** OMAR ZGHAIR THIB v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC — VIA ZOOM  
VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 14, 2021

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** APRIL 19, 2021

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