Federal Court  Cour fédérale

Date: 20210512

Docket: IMM-5077-20

Citation: 2021 FC 428

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 12, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

WISSAM MELKANE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Immigration Appeal Division (IAD), dated September 25, 2020, in which the IAD confirmed that the applicant was inadmissible for failing to comply with the five-year residency obligation as a permanent resident, in accordance with the *Immigration and Refugee Protection Act*, SC 2001, c 27, s 28 [IRPA].

[2] The applicant was born in Lebanon and obtained permanent resident status on July 15, 2014. Nearly a fortnight later, the applicant left Canada to complete a work contract in Iraq. He later extended his stay abroad to settle a legal dispute and to care for his cancer-stricken mother in Lebanon.

[3] Upon his return to Canada on November 7, 2019, an officer determined that he was inadmissible for not having accumulated any days of presence in Canada, even though he would have been required to reside in the country for 730 days over the previous five years. The IAD confirmed this determination and concluded that there was no basis for exercising discretion on humanitarian and compassionate considerations.

[4] This judicial review focuses on the reasonableness of the IAD's conclusions, having regard to the law and the findings of fact. A "reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). Unless there are exceptional circumstances, this Court must not alter findings of fact, nor can it reweigh the evidence (*Vavilov*, above, at paras 125, 128).

[5] The applicant argues that the IAD devalued the evidence in analyzing the factors to be considered in exercising its discretion. The IAD also allegedly erred in relying on the officer's report, which contained a mistake regarding the applicant's identity and the period of a contract in Iraq. Finally, the applicant argues that the IAD accepted facts without foundation or

consequence and ignored evidence on the record such as his admission to an MBA program in Montréal for the academic year beginning September 2016.

[6] In exercising its discretion with respect to humanitarian and compassionate considerations under the IRPA, ss 67(1)(c), 68(1), the IAD is guided by the non-exhaustive factors set out in *Ribic v Canada (Citizenship and Immigration)*, [1985] IADD No 4, which have been endorsed by the Supreme Court of Canada (*Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at paras 40–41) The weighting of each factor and each piece of evidence is left to the discretion of the IAD (see *Yu v Canada (Citizenship and Immigration)*, 2020 FC 1028 at para 16, citing *Ambat v Canada (Citizenship and Immigration)*, 2011 FC 292 at para 32).

[7] On the face of it, the applicant had no days in the country during the period from November 7, 2014, to November 7, 2019, which is a total lack of compliance with the residency obligation. Therefore, the humanitarian and compassionate considerations relied upon had to be equally exceptional in order to proportionately offset the non-compliance with that obligation.

[8] In its analysis, the IAD first found that the reason for the applicant's voluntary departure for Iraq, namely, economic and professional considerations, was a negative factor.

[9] A neutral score was ascribed, however, to the reason for the lengthy stay in Lebanon. While the IAD was satisfied that the applicant's presence with his cancer-stricken mother in December 2017 was justified for the years 2018 and 2019, the applicant did not demonstrate that

his continued presence was required to resolve a legal dispute between 2015 and 2017. On top of this, the officer's notes on a second contract in Iraq during the period in question would have raised doubts with the IAD. The Court finds, however—in agreement with the applicant—that the evidence on the record shows that this Iraq contract was for years prior to 2015 and, therefore, that the evidence in this regard was misinterpreted.

[10] When it considered whether the applicant attempted to return to Canada at the first opportunity, the IAD found this to be a negative factor, even when appreciating the cultural and family values underlying the applicant's desire to care for his mother. There was evidence that although alternative arrangements could have been made in Lebanon to comply with the Canadian residency obligation, this was done solely to meet business needs, as is evident from his travels—however brief—in 2018 to Uruguay, along with a trip to Brazil.

[11] The IAD then considered the initial and continuing degree of establishment as a negative factor. The applicant's Canadian experience was limited to his family visits at Easter 2006 and Christmas 2008, and his short stay in 2014. Further, while the applicant's subsequent efforts to establish himself here were laudable—housing, vehicle, volunteering, company registration—the IAD determined that he had not truly integrated into Canadian society, unlike his country of nationality.

[12] The applicant's family ties in Canada, with his aunt and uncle by marriage, were—for their part—considered as a positive factor. The IAD found, however, that they would not be

adversely affected, in the absence of evidence to that effect and noting that there were no visits during the five years he spent abroad.

[13] Similarly, there was no evidence of adverse monetary consequences associated with the registration of the applicant's companies in Canada. The IAD also considered that the investments made were not unrecoverable and nothing would prevent the applicant from operating his companies from Lebanon, as these companies had five representatives in various countries.

[14] Lastly, there were no best interests of the child to consider and no unique or special circumstances that would warrant special relief in this case.

[15] The negative assessment of the various factors therefore outweighed the neutral and positive factors on the record, i.e., prolonged stay abroad and family ties. The IAD found that the applicant's failure to comply with the residency obligation was the result of a personal choice dictated by economic, employment, and family considerations rather than by exceptional circumstances.

[16] In light of the above, despite the factual error incidental to the reason for the extended stay abroad, the IAD exercised its discretion in conducting an analysis that was reasonable (*Vavilov*, above, at para 100). Furthermore, the clerical error in the officer's notes in the Certified Tribunal Record does not undermine the reasonableness of the decision (*Law Society of New*

Brunswick v Ryan, 2003 SCC 20 at para 56; see also *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 at 228).

[17] In addition to these points, the Court is effectively being asked to reweigh the evidence, an exercise that it cannot undertake on judicial review (*Vavilov*, above, at paras 83, 125). The IAD conducted a thorough analysis taking into account the relevant factors and exercised its discretion in weighing them. The IAD is presumed to have considered all the evidence before it and had sufficient reasons to support its conclusions (*Tai v Canada (Citizenship and Immigration)*, 2011 FC 248 at para 74, citing *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1).

[18] For these reasons, the Court dismisses the application for judicial review.

JUDGMENT in IMM-5077-20

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of importance to certify.

"Michel M.J. Shore"
Judge

Certified true translation
Michael Palles, Reviser

FEDERALCOURT

SOLICITORS OF RECORD

DOCKET:	IMM-5077-20
STYLE OF CAUSE:	WISSAM MELKANE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MATTER HEARD BY VIDEOCONFERENCE AT MONTRÉAL, QUEBEC
DATE OF HEARING:	MAY 10, 2021
JUDGMENT AND REASONS:	SHORE J.
DATED:	MAY 12, 2021

APPEARANCES:

Alice Santamaria	FOR THE APPLICANT
Michel Pépin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Alice Mardelet Santamaria Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT