Federal Court  Cour fédérale

Date: 20220527

Docket: IMM-575-21

Citation: 2022 FC 772

Ottawa, Ontario, May 27, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

ILGEN ACIKGOZ

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In *Wan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 65, Mr. Justice Harrington began by asking, and I paraphrase: Oh Canada, how do I love thee? Let me count the days (with apologies to Elizabeth Barrett Browning). That is what this case is about as well.

[2] Under section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], permanent residents must comply with a residency obligation with respect to every five-year period. They may fulfil this obligation, for example, by spending a certain number of days in Canada or, if certain conditions are met, by accompanying outside Canada a permanent resident who is their spouse and who is employed on a full-time basis by a Canadian business. On October 28, 2018, a Minister's delegate determined that the applicant, Ms. Ilgen Acikgoz, a 55-year-old citizen of Turkey, did not comply with her residency obligation as a permanent resident of Canada, and issued a removal order against her.

[3] Ms. Acikgoz appealed the removal order to the Immigration and Refugee Board of Canada's Immigration Appeal Division [IAD] under subsection 63(3) of the Act. In a decision dated January 8, 2021, the IAD determined that although Ms. Acikgoz had spent 470 of the required 730 days during the relevant five-year period (in this case, from October 28, 2013, to October 28, 2018) in Canada, she could not supplement her required days by claiming that she was in Turkey with her husband while he was working for a Canadian company given that her husband's purported employment in Turkey was determined to be simulated – a fake employment orchestrated to deceive immigration officials – and that Ms. Acikgoz had been aware of the simulation and had knowingly used it to renew her permanent resident status and come to Canada. The IAD also found that there were insufficient humanitarian and compassionate [H&C] considerations warranting special relief.

[4] Ms. Acikgoz departed Canada on February 7, 2021, so as to comply with her removal order and applied for judicial review of the IAD's decision. Having heard the parties, I have not

been convinced by Ms. Acikgoz that the IAD's decision was unreasonable, and for the reasons that follow, I would dismiss her application.

II. Background

[5] Ms. Acikgoz has worked in the travel and tourism industry in Turkey for over 30 years and has owned a travel agency in Turkey since 1994. She obtained her Canadian permanent residency in September 2009 through the Immigrant Investor Program, at the same time as her husband and their two daughters (aged 10 and 12 at the time); her daughters continue to live in Canada, but Mr. Acikgoz has since relinquished his permanent resident status and resides in Turkey. In 2010, the family bought an apartment in Montreal. However, they moved back to Turkey shortly thereafter so that Mr. Acikgoz could continue to work in his family's textile business and, asserts Ms. Acikgoz, because he needed more time to establish himself professionally in Canada. Ms. Acikgoz claims that in 2011, Mr. Acikgoz's family business went bankrupt and that on December 22, 2011, Mr. Acikgoz purportedly signed an employment agreement to work for a Canadian textile company, Mode Tricotto, as assistant manager for their liaison office in Istanbul. Mr. Acikgoz's salary was $2,000 per month ($24,000 per year). Ms. Acikgoz did not return to Canada until July 2013; the length of her stay on that trip is unclear.

[6] As stated, the relevant five-year period is from October 28, 2013, to October 28, 2018. From October 28, 2013, until the time Mr. Acikgoz purportedly left Mode Tricotto in December 2014, Ms. Acikgoz spent a total of 148 days in Canada (two trips to Canada lasting 97 days and 51 days respectively); the remainder of the time, she was said to be accompanying her husband

while he supposedly worked in Istanbul for the Canadian company. During that period, Ms. Acikgoz travelled to Canada in August 2014 (the 51-day trip), which coincides with her eldest daughter entering university in Montreal. In addition, Mr. Acikgoz travelled to Canada in November 2014, during which time he also renewed his permanent residence status; this was just one month before he left Mode Tricotto to supposedly restart his family business and begin work on his new venture – Mr. Acikgoz had purchased a coffee shop franchise in Istanbul in May of that year.

[7] In the nearly four years that followed (from January 2015 to October 28, 2018), Ms. Acikgoz spent another 322 days in Canada – five trips to Canada lasting 8, 19, 120, 101 and 74 days respectively. She would return from time to time, I would expect to also see her eldest daughter, who was still studying in Montreal, as well as her youngest daughter, who had entered university in British Columbia in the fall of 2016. Ms. Acikgoz asserts that she and her husband had been having marital problems since 2015 on account of the fact that she wanted to move permanently to Canada to be with her daughters but that Mr. Acikgoz was balking at the idea. The breaking point in their marriage seems to have taken place sometime in August 2016, when Ms. Acikgoz states that she decided to move to Canada without her husband, although the trip coincides with her youngest daughter entering university in Vancouver; Ms. Acikgoz mentioned during her interview to renew her permanent resident card that she and her daughter flew to Vancouver in August 2016 to settle her daughter in school. Ms. Acikgoz remained for 120 days until December 17, 2016, when she returned to Turkey; it would seem that the couple formally separated on December 21, 2016. As stated, Ms. Acikgoz also took advantage of being in Canada to renew, in November 2016, her permanent resident status [2016 permanent resident

status renewal] just prior to returning to Turkey; the immigration officer was satisfied that she had complied with the residency obligation – Ms. Acikgoz had been physically present in Canada for a certain number of days, which were supplemented by the time she was accompanying her husband while he was purportedly working for Mode Tricotto's Istanbul office up until December 2014. The immigration officer relied in particular on the evaluation that had been made regarding her husband's residency obligation in November 2014 and on Ms. Acikgoz's answers during her interview.

[8] Although she claims that she had decided to move to Canada without her husband, from whom she had separated, Ms. Acikgoz returned to Canada only twice during the nearly two years between December 17, 2016, and October 28, 2018; these two trips, which lasted 101 days and 74 days respectively, took place during the academic year to also, I would think, give Ms. Acikgoz the opportunity to visit with her daughters. Why she did not spend more time in Canada given that her daughters were here and that she had purportedly separated from her husband is not clear, although Ms. Acikgoz does assert that in 2017 and 2018, she had to return to Turkey regularly because her father was sick and she was the only one who was able to care for him. Ms. Acikgoz had not given up her travel agency business in Turkey, and she must have known that her time living in Turkey as of December 2014, when her husband had purportedly left Mode Tricotto, would no longer count towards her residency obligation.

[9] In any event, Ms. Acikgoz had returned to Canada for 101 days between March and June 2017. While she was here, in April 2017, a criminal investigation lead to an alert being added to her immigration file in the Global Case Management System [GCMS] pertaining to

charges laid against the couple's immigration consultant and to new evidence that the 2016 permanent resident status renewal was based on her husband's fake employment contract [April 2017 alert]. The GCMS notes state the following:

> Family used the services of Immigration Consultant Georges Massoud and his firm CANIMCO to simulate their residence in Canada between the time they became permanent resident and August 19, 2016. Criminal charges was laid on August 19 2016, of 126 IRPA and Fraud and Conspiracy under the Criminal Code A request is pending for the exchange of evidence from Criminal Division ASFC to IRCIC In the meantime, I am in possession of evidences that confirm that this family never lived in Canada and the father obtained a false employment contract in a Canadian company for his renewal of his permanent resident card.
>
> [Reproduced as it appears in the original]

[10] In fact, the criminal charges filed in Montreal against Mode Tricotto specifically related to Mr. Acikgoz's supposed employment contract; the summons dated September 8, 2016, relating to the simulated employment contract, which charges the company and its director, includes the following count:

> [TRANSLATION]
> Between December 22, 2011, and April 27, 2014, in Montréal, in the province of Quebec, and in Turkey, did knowingly counsel, induce, aid or abet or attempt to counsel, induce, aid or abet any person to misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of the *Immigration and Refugee Protection Act*, namely: Hakan Acikgoz's employment, in contravention of section 126 of the Act, thereby committing the indictable offence under paragraph 128 (a) of the Act;

[11] Mode Tricotto pleaded guilty before the Court of Québec on June 15, 2017, to immigration fraud, namely to the charge of simulating Mr. Acikgoz's employment for immigration purposes. Ms. Acikgoz departed on June 30, 2017, as stated, after being in Canada

since March. Coincidentally, Mr. Acikgoz was also in Canada around that time, having arrived on April 9, 2017, although his last two trips to Canada were in March 2016 and February 2015; it is not clear how long he stayed this time around. Ms. Acikgoz then returned to Canada for 74 days between February 4, 2018, and April 19, 2018. As stated earlier, Mr. Acikgoz voluntarily renounced his permanent resident status as of April 23, 2018, although he was never formally charged with any offence; it seems as though he was in Turkey at the time as he had not returned to Canada since his trip in April 2017.

[12] Ms. Acikgoz returned again on October 28, 2018; this time, however, an immigration officer prepared a report pursuant to subsection 44(1) of the Act concluding that, on a balance of probabilities, Ms. Acikgoz was a permanent resident who was inadmissible for failing to comply with the residency obligation under section 28 of the Act. The officer found that Ms. Acikgoz had been physically present in Canada for a total of 470 days in the last five-year period (October 28, 2013, to October 28, 2018), but on the basis of the April 17 alert in the GCMS, he or she rejected her claim that she had complied with the Act under subparagraph 28(2)(a)(iv) by accompanying her husband, who was employed during that period by a Canadian company abroad. That said, section 28 of the Act allows for relief from the residency obligation when a determination by an officer that "humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination." As H&C considerations, Ms. Acikgoz submitted that she had to stay in Turkey to care for her ill father and that she had to travel because she is the shareholder of a travel agency in Turkey. She claimed that she wanted to live permanently in

Canada to be closer to her daughters, who were studying respectively in Montreal and Vancouver; that she owned a property in Montreal; and that she planned to open a travel agency in Canada. The officer eventually found that Ms. Acikgoz was inadmissible and recommended that a removal order be issued against her. As noted in the GCMS, the officer relied on the April 2017 alert:

> AFTER VERIFICATION OF THE SUBJECT'S PASSAGE HISTORY AND THE STAMPS IN HER PASSPORT, SUBJECT WAS PHYSICALLY PRESENT IN CANADA. . . FOR A TOTAL OF 470 DAYS IN THE LAST 5 YEAR PERIOD. . . HUMANITARIAN AND COMPASSIONATE GROUNDS TAKEN INTO CONSIDERATION. SUBJECT DECLARED THAT HER HUSBAND WAS EMPLOYED BY A CANADIAN COMPANY ABROAD UNTIL 2015. HOWEVER, AN INFO ALERT . . . INDICATING THAT THE FAMILY NEVER LIVED IN CANADA AND THE FATHER OF THE FAMILY OBTAINED A FALSE EMPLOYMENT CONTRACT IN A CANADIAN COMPANY FOR HIS RENEWAL OF HIS PERMANENT RESIDENT CARD. THE FATHER OF THE FAMILY: ACIGOZ [*sic*] HAKAN DID A VOLUNTARY RENUNCIATION OF HIS PR STATUS IN APRIL OF 2018. SUBJECT DECLARED THAT SHE WOULD STAY IN CANADA UNTIL WINTER HOLIDAYS. SHE DECLARED THAT SHE OWNS A TRAVEL AGENCY IN TURKEY AND THAT SHE WAS PLANNING TO OPEN ONE IN CANADA.

[13] Following a brief interview with Ms. Acikgoz, the Minister's delegate accepted the officer's recommendation and issued a removal order against her. The notes of that interview can be found in the GCMS:

> Report based on facts and lawfully founded. I accept the officer's recommendation, which is to initiate a loss of permanent residency against subject. I reviewed the 44 report with the allegations. I met with mrs. [*sic*] Acikgoz. I explained the 44 report to subject concerning the failure to comply with the residency obligation. No H&C reasons for subject to maintain her permanent resident status, as per section 28(2)c) of IRPA. On the other hand, subject stated that she might be in danger if she was to return to Turkey because of the instability in the country. I asked her if there was any risk of

> personal persecution and mrs. [*sic*] Acikgoz said no, not directly towards her. Moreover, her husband just recently relinquished his permanent residency and resides in Turkey. This does not coincide or go along very well with subject's supposed fear to return to Turkey. I asked, mrs. [*sic*] Acikgoz why she would try to now permanently remain in Canada at around the same time her husband relinquished his permanent residency in Canada. Subject did not answer.

[14] Ms. Acikgoz appealed the removal order to the IAD; however, a few things took place in the meantime. Between October 2018 and February 2019, Ms. Acikgoz returned to Canada four times, for relatively short stays. Within days of returning to Montreal on February 17, 2019, she registered herself as a sole proprietorship with the stated intention of working as a travel consultant in Canada and importing simi, a traditional Turkish bread, for distribution in Canada. She returned again in May 2019, which may have coincided with her eldest daughter finishing university in Montreal and moving to Toronto.

[15] Ms. Acikgoz returned to Canada in November 2019; it is unclear how long she remained, but what is clear is that on January 8, 2020, she signed in Montreal a joint application for divorce before the Superior Court of Québec in Montreal, which Mr. Acikgoz had signed in Istanbul the previous month. The application makes no mention of any parallel divorce proceedings undertaken in Turkey, and in fact states that there are no other proceedings with respect to the marriage. Other than the apartment the couple own in Montreal – which the parties agree that Ms. Acikgoz was to take over – no other joint Canadian property is listed, and their daughters are now adults, so there are no custody issues. It remains somewhat unclear why the couple chose to make a joint filing for divorce in Montreal given that they were married in Istanbul in 1994 under Turkish law, that both parties are Turkish nationals living in Turkey, that Mr. Acikgoz had

renounced his permanent resident status in Canada, and that Ms. Acikgoz was under sanction of a removal order pending appeal. That said, the couple do assert in the application for divorce that they have lived separate and apart since December 21, 2016. In any event, I could not find in the record a copy of any final declaration of divorce issued by the Superior Court of Québec or that the uncontested divorce proceedings have been concluded, and this over two years after the application was filed.

[16] Ms. Acikgoz testified before the IAD over two days: in person on January 29, 2020, and by videoconference on October 20, 2020. On January 8, 2021, the IAD dismissed Ms. Acikgoz's appeal, finding that the removal order was valid in law and that there were insufficient H&C considerations warranting special relief. As stated, Ms. Acikgoz ceased being a permanent resident of Canada on January 13, 2021, and left Canada on February 7, 2021, so as to comply with the removal order issued against her.

III. Decision under review

A. *The IAD found that Ms. Acikgoz did not comply with her residency obligation*

[17] Before the IAD, the parties agreed that the relevant five-year period regarding Ms. Acikgoz's residency obligation was from October 28, 2013, to October 28, 2018, when Ms. Acikgoz returned to Canada, and that she had physically spent 470 days in Canada during that period. The issue, rather, was whether Ms. Acikgoz could rely on what she claimed to be her husband's employment abroad. If she could, Ms. Acikgoz would have accumulated 752 days towards her residency obligation (this figure includes the 470 days she was actually in the

country), just crossing the threshold of 730 days over the five-year period under subparagraph 28(2)(a)(iv) of the Act.

[18] Ms. Acikgoz argued that notwithstanding the guilty plea by the company, her husband's employment with Mode Tricotto was real. She provided a copy of the employment contract between her husband and Mode Tricotto signed on December 22, 2011; an employment letter by Mode Tricotto dated April 15, 2014, confirming Mr. Acikgoz's employment (the letter puts the start of his full-time employment as of January 1, 2012); tax documents; and bank account statements in which regular pays were shown to be deposited from December 2012 (a year after the supposed start of employment) to November 2014. Ms. Acikgoz testified that she had visited her husband at work multiple times, would have lunch with him from time to time, and had also met the company's director on one occasion. Ms. Acikgoz asserts that her husband's employment with Mode Tricotto was real and that it had ended in December 2014.

[19] As for the Minister's evidence, the IAD found some of it to be untrustworthy. In particular, the IAD did not accept the press release and declaration regarding the extent of the alleged criminal activity of the immigration consultant, which supposedly included employment simulations involving several other permanent residents; the IAD determined that the only evidence before it was the formal charge regarding the employment contract of Mr. Acikgoz alone. In addition, the IAD accepted Ms. Acikgoz's argument that, contrary to the assertions of the Minister, the evidence established only that the company itself pleaded guilty to the charge, and not that the director of the company, who was also charged, had also pleaded guilty; the company was sentenced to a $40,000 fine and Mode Tricotto's director was given a conditional

stay of proceedings. Ms. Acikgoz also made the point that she herself had never been implicated in the criminal investigation.

[20] Having reviewed the matter, the IAD made several findings. First, it found that Mode Tricotto's conviction weighed heavily in the balance of probabilities supporting the assertion that Mr. Acikgoz's employment with Mode Tricotto had been simulated. The IAD noted that the charges against the company were very specific, relating to the employment of Mr. Acikgoz, and that Ms. Acikgoz's suggestion, as a way to explain away the guilty plea, that the director of the company was simply looking to spare himself a criminal trial was mere speculation. The IAD found that the company pleaded guilty and was therefore convicted beyond a reasonable doubt, which was extremely unfavourable to Ms. Acikgoz. Ms. Acikgoz's assertion that it was most likely that the company had entered a guilty plea in exchange for a conditional stay of the charges against its director was found by the IAD to be speculative.

[21] In addition, the IAD found that Ms. Acikgoz's documentary evidence in support of her assertion of the legitimacy of the employment was not only incomplete, but also untrustworthy because of the fact that the documents emanated from a company that had pleaded guilty to fraud in relation to those very documents. The IAD noted that significant elements were missing from the documentation, including an entire year of bank statements and the fact that the source of the "pay" that was deposited in the account was not shown on the bank statements. What was even more worrisome to the IAD was the fact that the last "pay" shown on the bank statements was dated November 27, 2014, which meant that Mr. Acikgoz's employment ended before

December 9, 2014. However, any employment ending before that date would not have allowed Ms. Acikgoz to reach the magic number of 730 days for her residency obligation.

[22] The IAD also found questionable that Mr. Acikgoz would be content with making $24,000 per year as a full-time salary; the IAD determined that Ms. Acikgoz's claim that the salary was "good" was inconsistent with what seasoned businesspeople such as Mr. and Ms. Acikgoz would need to invest to live as permanent residents in Canada and that it was also inconsistent with his professional experience and stated duties at Mode Tricotto, which included collecting samples and being the only person dealing with the suppliers in Turkey. During the hearing, I asked Ms. Acikgoz's counsel how he could explain an annual salary of $24,000 for full-time employment when the cost of university tuition alone for the couple's two daughters, who were studying abroad in Canada, probably came close to, if not exceeded, that amount. I was advised that the family is affluent and could draw on other financial resources where needed. I find that this, of course, only strengthens the likelihood of the IAD's findings regarding the legitimacy of the salary and the employment contract.

[23] Moreover, the IAD found that Ms. Acikgoz's testimony as regards her husband's purported employment was vague at best, with few details not already contained in the documentary evidence; it also found that Ms. Acikgoz contradicted herself regarding the bankruptcy of her husband's family business and about his unwillingness to move to Canada in 2016. First, there was no evidence of the bankruptcy other than Ms. Acikgoz's assertion. The IAD found that the alleged bankruptcy in 2011 was central to Ms. Acikgoz's claim, since it was the bankruptcy that would have forced her husband to seek full-time employment with Mode

Tricotto. Relying on the absence of evidence of the bankruptcy and on Mr. Acikgoz's LinkedIn profile, which was captured in October 2015 (this profile makes no mention of the bankruptcy or of his employment with Mode Tricotto, but states simply that Mr. Acikgoz had spent the last 25 years managing his family's business), the IAD did not believe that there ever was a bankruptcy of the family business that would have then led to Mr. Acikgoz seeking employment with Mode Tricotto. The IAD determined that given the evidence of Ms. Acikgoz's business experience, the fact that Mr. Acikgoz had spent some time as her business partner, and Ms. Acikgoz's statement that she was convinced that her husband's three-year employment was real, it would have been reasonable to expect more detailed evidence of what she knew of his employment, rather than vague testimony that was "devoid of any real substance on the matter, despite her ability, at the time, to talk to her husband on both a personal and business level."

[24] Finally, the IAD raised the fact that although Ms. Acikgoz claimed that her marital problems with her husband stemmed from his refusal to move to Canada and that she had decided to move here permanently on her own in August 2016, when she was interviewed in November 2016 by an immigration officer to renew her permanent resident card, she stated that her husband was currently working for his family business but that he was "seeking a job to come [to Canada]." As determined by the IAD, this statement directly contradicts Ms. Acikgoz's assertions made in support of her appeal. In fact, as Ms. Acikgoz returned to Turkey in December 2016, her story is that the couple separated and that Mr. Acikgoz moved out of their home in Turkey; contrary to what Ms. Acikgoz stated to the immigration officer, the IAD found that it did not sound, from what Ms. Acikgoz was now claiming in relation to her appeal, like Mr. Acikgoz was in any way looking to come to find employment in Canada. The IAD also

rejected as unfounded Ms. Acikgoz's arguments that had Mr. Acikgoz in fact been "a fraudster," he would not have renounced his permanent residency in 2018 and would not have travelled back to Canada in April 2017, which was around the same time as the April 2017 alert was placed in Ms. Acikgoz's immigration file and a couple of months prior to Mode Tricotto pleading guilty to immigration fraud.

[25] After considering Ms. Acikgoz's profile as a seasoned investor and businesswoman, the IAD found that it was more probable than not that Ms. Acikgoz knew that her husband had simulated his employment, and given the credibility concerns with respect to her own testimony, it determined that she had knowingly used her husband's simulated employment to renew her Canadian permanent resident status. She therefore did not demonstrate, on the balance of probabilities, that she met the requirements of the Act and its corresponding regulations.

B. *The IAD found that there were insufficient H&C considerations to overcome the non-compliance*

[26] The IAD weighed the different H&C factors and found elements which weighed in Ms. Acikgoz's favour, such her father's deteriorating health in Turkey, her establishment in Canada after the removal order, and the presence of her two daughters in Canada. However, the IAD found that these elements were not sufficient to overcome her significant non-compliance with the residency obligation. The IAD considered that in the beginning, the reason for her departure from Canada was a family choice; they returned to Turkey on account of her husband's family business, and she still had her travel agency business in Turkey as well. As for her return to Turkey in 2017 and 2018, although Ms. Acikgoz explained that she had to care for her ill father in Turkey, the IAD considered that she had also returned because of her business and that

she was not continuously in Turkey, as she continued to travel regularly for her travel agency. Therefore, the IAD found that her absence from Canada was generally due to the choice made by her family and was not attributable to a valid H&C consideration. In its establishment analysis, the IAD considered the misrepresentation of her husband's employment and found that it was an unfavourable factor for Ms. Acikgoz. Moreover, the IAD found that Ms. Acikgoz had not demonstrated adverse country conditions, hardship or dislocation amounting to H&C considerations for her or for her daughters.

IV. Issues

[27] Before me, Ms. Acikgoz raises three issues:

a) Did the IAD breach procedural fairness by not identifying areas of concern in order to give Ms. Acikgoz the opportunity to address them?

b) Did the IAD err in determining that Ms. Acikgoz did not comply with her residency obligation by knowingly participating in her husband's alleged fraudulent activity?

c) Did the IAD err in its analysis of the H&C considerations by determining that there were insufficient H&C considerations to overcome her alleged non-compliance?

V. Standard of review

[28] The parties agree that the standard of review for the merits of the IAD's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

at paras 16-17 [*Vavilov*]; *Yu v Canada (Citizenship and Immigration)*, 2020 FC 1028 at para 8 [*Yu*]). The role conferred to the IAD commands this Court to adopt a posture of restraint on judicial review (*Vavilov* at paras 24, 75). This Court should intervene only if the decision under review does not "[bear] the hallmarks of reasonableness – justification, transparency and intelligibility" and if the decision is not justified "in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). Regarding the procedural fairness issue, no particular standard of review applies, and the central question is whether the procedure was fair having regard to all of the circumstances, and more specifically, whether the applicant "knew the case to meet and had a full and fair chance to respond" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54, 56).

VI. Analysis

A. *The IAD did not breach procedural fairness principles*

[29] The IAD found that Ms. Acikgoz's testimony regarding her husband's employment was "vague and general." Ms. Acikgoz submits that, during the hearing, she answered all questions to the best of her ability, and that if the panel had further questions, it should have raised them. Ms. Acikgoz relies on *Sidhu v Canada (Citizenship and Immigration)*, 2012 FC 515 at para 80 [*Sidhu*], for the proposition that when the IAD has concerns regarding the validity of highly material documentary evidence submitted by an applicant, those concerns should be raised with the applicant. I fail to see how this decision assists Ms. Acikgoz. This is not a situation in which the IAD had concerns with documents that were not addressed by the applicant. Procedural fairness requires that an applicant be given an opportunity to respond to the decision-maker's concerns; this duty will be fulfilled when the decision-maker "adopts an appropriate line of

questioning or makes reasonable inquiries" (*Sidhu* at para 76, citing *Liao v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1926 at paras 16-17). During the hearing, the panel questioned Ms. Acikgoz about her husband's employment; in fact, the very context of the proceedings themselves relates to the purported simulation of the employment and the legitimacy of those very documents. I have not been directed to any portion of the audio recording of the hearing that establishes that Ms. Acikgoz had not been given ample opportunity to provide details of her husband's supposed employment with Mode Tricotto so as to convince the IAD of its legitimacy, on a balance of probabilities. Ms. Acikgoz argues that although the IAD found her testimony vague and general, it did not provide any indication as to what level of detail it was looking for in the testimony to support a finding that her husband's employment was real.

[30] I cannot agree with Ms. Acikgoz as it was not for the IAD to make her case for her through its questioning (*Vo v Canada (Citizenship and Immigration)*, 2014 FC 816 at paras 12-16). The onus to establish that she complied with the residency obligation or that her case presented sufficient H&C considerations to justify the retention of her permanent resident status lay with Ms. Acikgoz.

B. *The IAD did not err in finding that Ms. Acikgoz did not comply with her residency obligation*

[31] Ms. Acikgoz argues that the IAD did not follow a reasonable chain of analysis to conclude that her husband's employment was simulated. As stated earlier, at the outset of the hearing, I asked Ms. Acikgoz's counsel to clarify his position. It was made clear that Ms. Acikgoz was not taking the position that her husband's employment may have been simulated but that she had been kept in the dark, with no knowledge of the fraud. Rather,

Ms. Acikgoz's position is that her husband's employment with Mode Tricotto was not simulated and was indeed real, that she had therefore met her residency obligations by 22 days, and that the IAD had simply erred in its findings. I also asked Ms. Acikgoz's counsel whether it was necessary that the IAD first find that Ms. Acikgoz knew of the possible simulation in order for the IAD to then find that Ms. Acikgoz had not complied with her residency obligation. The question was answered in the negative, i.e., that it was not necessary for the IAD to first find that Ms. Acikgoz was aware of the purported simulation in order to then find that she did not comply with her residency obligation; in other words, it was enough on its own that the employment was found to be simulated for Ms. Acikgoz not to comply with that obligation (subsection 61(5) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227). However, Ms. Acikgoz adds that the issue of her knowledge, or lack thereof, of any purported simulation may be relevant in the H&C analysis.

[32] First, Ms. Acikgoz argues that the IAD gave far too much weight to Mode Tricotto's guilty plea; she states that the plea does not incriminate her or her husband, nor does it establish that the offence was proven beyond a reasonable doubt. In addition, and as argued before the IAD, Ms. Acikgoz asserts that it was most likely that the company had entered a guilty plea in exchange for a conditional stay of the charges against its director. I agree with Ms. Acikgoz that a guilty plea is different from a conviction because a guilty plea relieves the Crown of its burden to prove guilt beyond a reasonable doubt (*R v Wong*, 2018 SCC 25 at para 2). Therefore, the IAD erred in concluding that the company's guilt was proven beyond a reasonable doubt. However, I find that this issue is not determinative in the present case. A guilty plea still constitutes a formal admission of guilt to an offence upon which an administrative decision-maker can rely (*Gracia v*

Canada (Citizenship and Immigration), 2021 FC 158 at para 28, citing *R v Faulkner*, 2018 ONCA 174 at para 85). Moreover, the guilty plea pertained specifically to the misrepresentation of Mr. Acikgoz's employment. I see nothing unreasonable in the IAD giving little weight to employment documents emanating from a company that had pleaded guilty to fraud in relation to those very documents. In the end, the IAD considered the documents in light of the guilty plea, along with Ms. Acikgoz's testimony, and found that, on a balance of probabilities, Mr. Acikgoz had never worked for Mode Tricotto. I also agree with Ms. Acikgoz that Mode Tricotto's guilty plea does not incriminate her or her husband; however, the IAD never indicated that it did. There is no finding of guilt by association as argued by Ms. Acikgoz – the IAD simply gave weight to the guilty plea when assessing the genuineness of Mr. Acikgoz's employment contract in relation thereto. I see nothing unreasonable with that finding. Also, I agree with the IAD that Ms. Acikgoz's suggestion, as a way to undermine the guilty plea, that the company's director had ulterior motives was mere speculation. Ms. Acikgoz did not bring forward any evidence to support such an assertion, although the burden to establish that she had met her residency obligation, on the balance of probabilities, was on her.

[33] Second, Ms. Acikgoz takes issue with the IAD's assessment of her husband's LinkedIn account because she argues that this type of account is used to present a positive professional image online and that, therefore, her husband would not have indicated on LinkedIn that his family business went bankrupt or have disclosed that he worked for Mode Tricotto, a competitor to his family business. She adds that her husband's LinkedIn account has nothing to do with her, and that the IAD's claim that it would not have been possible for her husband to work for Mode Tricotto and own a coffee franchise at the same time was unreasonable.

[34] I find that the IAD did not err by considering Mr. Acikgoz's LinkedIn account. Ms. Acikgoz relied on her husband's employment with Mode Tricotto to support her claim that she had complied with the residency obligation. The IAD considered Mr. Acikgoz's LinkedIn account in the context of assessing whether the alleged bankruptcy was a reasonable explanation as to why he had started to work for Mode Tricotto. Therefore, her husband's LinkedIn account relates to her claim. The IAD noted that the existence of alleged bankruptcy was contradicted by Mr. Acikgoz's LinkedIn profile (captured in October 2015, when he was still a permanent resident of Canada), in which he indicated that he had been managing his family business for the past 25 years and that the work period for that business was from January 1991 to May 2014; he did not indicate in his profile that he had ever worked for Tricotto. The IAD then addressed the argument made by Ms. Acikgoz regarding the probative value of the LinkedIn account – which is the same as the argument she is making before this Court – to the effect that her husband was simply trying to impress the readers of his social media page and thus was not completely forthright about his employment history and the fate of his family's company. The IAD found the following:

> [64] Ms. Acikgoz's lawyer wrote in his submissions that: "Moreover, the image that LinkedIn users wish to portray to the world cannot be considered as an accurate reflection of their employment history. This could easily be the case of the Appellant's husband whose company went bankrupt and started working for his competitor, it is reasonable to conclude that maybe he did not want the world to know that he fell from the sky and he is now an employee working for the competitor" [footnote omitted] .
>
> [65] Mr. Acikgoz did not testify, neither orally nor in writing. Therefore, this argument is speculative. This supposition is also far from convincing because it essentially boils down to Mr. Acikgoz deliberately misrepresenting his employment history to the world.

[35] The IAD simply took Mr. Acikgoz's history of employment on his social media page at face value. I must agree with the IAD that, as was the case with the company's guilty plea, Ms. Acikgoz is simply ascribing her spin to the situation and speculating as to why the social media page says what it says. I cannot agree that somehow, the IAD read in Mr. Acikgoz's social media posts something that was not there, and thus I see nothing unreasonable with the IAD taking the statement on Mr. Acikgoz's social media page at face value.

[36] Ms. Acikgoz claims that, contrary to the IAD's findings, it was not unreasonable for her husband to purchase a franchise in May 2014 and to then play an increasingly active role in this franchise before deciding to leave Mode Tricotto seven months later; thus, she argues that her testimony that her husband stopped working for Mode Tricotto to invest in a coffee shop franchise was correct. I agree with Ms. Acikgoz that the IAD's reasoning on this issue is lacking; however, I do not see this issue as being determinative of whether, on the balance of probabilities, her husband's employment with Mode Tricotto was simulated. As the Supreme Court of Canada determined in *Vavilov*, "[a]ny alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision", and the reviewing court should not "overturn an administrative decision simply because its reasoning exhibits a minor misstep" (*Vavilov* at para 100).

[37] The IAD has the advantage of hearing live testimony, and this Court should not interfere unless a credibility finding is based on irrelevant considerations or ignores evidence (*Gill v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1158 at para 39). Ms. Acikgoz further argues that the IAD did not consider the version of the facts described in her affidavit.

However, the paragraph that she cites in her reply memorandum seems to refer to the affidavit that she signed on February 25, 2021, and submitted before this Court. Therefore, this affidavit was not before the IAD.

[38] Ms. Acikgoz repeated her argument made before the IAD that her husband's supposed involvement in immigration fraud is inconsistent with his having returned to Canada on April 9, 2017. I do not agree. It is unclear whether the April 2017 alert placed in Ms. Acikgoz's immigration file was also placed in his file, or whether Mr. Acikgoz actually knew of the charges against Mode Tricotto prior to arriving in Canada in April 2017. It is also unclear how long he stayed in Canada prior to Mode Tricotto pleading guilty to immigration fraud on June 15, 2017.

[39] Finally, I need not consider the issue of whether Ms. Acikgoz was somehow misled by her husband as regards his employment with Mode Tricotto; first, Ms. Acikgoz had not claimed that she was deceived by her husband, and before me, she specifically argued that she was not. In any event, Ms. Acikgoz has conceded that her subjective knowledge was immaterial in the determination of whether she had complied with her residency obligation once it had been determined that her husband's employment was simulated. Therefore, although the IAD did indicate in its decision that Ms. Acikgoz knew of the simulation, that finding was unnecessary for the IAD to determine that she had not met her residency obligation.

C. *The IAD did not err by considering Mr. Acikgoz's simulated employment in the H&C considerations analysis*

[40] Paragraph 28(2)(c) of the Act provides that sufficient H&C considerations can overcome any breach of the residency obligation. The onus to demonstrate sufficient H&C considerations

lies with the applicant seeking an exemption from the residency obligation (*Behl v Canada (Citizenship and Immigration)*, 2018 FC 1255 at para 20; *El Assadi v Canada (Citizenship and Immigration)*, 2014 FC 58 at para 52). As recently summarized by Madam Justice Rochester in *Farooqi v Canada (Citizenship and Immigration)*, 2022 FC 560 at paragraph 10, this Court has identified particularly relevant, but not exhaustive, factors to consider when assessing H&C considerations in the context of a residency appeal (*Ambat v Canada (Citizenship and Immigration)*, 2011 FC 292 at para 27; *Gill v Canada (Citizenship and Immigration)*, 2018 FC 649 at para 13; *Yu* at paras 10-12):

1. the extent of the non-compliance with the residency obligation;
2. the reasons for the departure and stay abroad;
3. the degree of establishment in Canada, initially and at the time of hearing;
4. family ties to Canada;
5. whether attempts to return to Canada were made at the first opportunity;
6. hardship and dislocation to family members in Canada if the applicant is removed from or refused admission to Canada;
7. hardship to the applicant if removed from or refused admission to Canada; and
8. whether there are other unique or special circumstances that merit special relief.

[41] The IAD determined that there were insufficient H&C considerations to overcome Ms. Acikgoz's non-compliance with her residency obligation. As regards the individual factors to consider, the issues are as follows:

- Extent of the non-compliance

[42] Ms. Acikgoz argues that the IAD concluded that the extent of her non-compliance was not favourable to her only because the IAD had already determined that she had violated her residency obligation by knowingly participating in her husband's employment simulation, which was not true. I disagree. Having already determined that her husband's employment was simulated, the IAD simply stated that because of the significant shortfall in compliance (420 days as compared with the 730 days required), Ms. Acikgoz "needs to compensate her significant non-compliance by a proportional amount of H&C considerations." I see nothing unreasonable with that assessment.

- Reasons for the departure from Canada, and for having stayed abroad

[43] Ms. Acikgoz argues that she did actually meet her residency obligation and, therefore, that she "had the right under the law to return home for whatever reason she deemed necessary" and that the IAD failed to engage in any analysis as to the number of days that she had actually spent caring for her father compared to the number of days that she had been away from Canada for her travel agency business. I disagree with Ms. Acikgoz. First of all, the IAD's assessment of this factor does not depend upon its prior determination – whether that determination was right or wrong – that Ms. Acikgoz knew of the simulation of her husband's employment. The IAD found that the fundamental reason why she left Canada for Turkey in 2010 after landing in Canada was a family choice. The IAD considered the fact that the applicant would have preferred moving to Canada but that there was the issue of her husband's family business, and it also considered the fact that Ms. Acikgoz continued to have her travel business in Istanbul. The

bottom line is that Turkey was where her daughters were raised and that that is where they chose to remain; the IAD found that this is not an H&C consideration, and I must agree.

[44] The IAD considered that Ms. Acikgoz says that she chose to establish herself in Canada in August 2016, and that her daughters were studying here. It also considered the fact that Ms. Acikgoz's 85-year-old father had been sick since 2012 and that his health had deteriorated in 2017 and 2018. The IAD found this to be a favourable factor in relation to Ms. Acikgoz's H&C considerations; however, the father's health alone could not explain why she had only been in Canada for 101 days in 2017 and 74 days in 2018. The reality was that Ms. Acikgoz continued to have her business in Turkey and that her passport was replete with stamps for 2017 and 2018 indicating considerable travel abroad, travel which had continued since January 2020 notwithstanding that her father was still alone in Turkey. Ms. Acikgoz argues that the IAD failed to analyze exactly how many days were needed in Turkey to actually take care of her father. I disagree. I find that the IAD properly considered the matter and found that although Ms. Acikgoz did return to Turkey at times throughout 2017 and 2018, the length of her stay outside of Canada during that period was only partly due to her father's illness, and was mostly due to the choice made by her family; thus, it could not be considered for H&C purposes. There is nothing unreasonable with such a finding.

- Attempts to return to Canada at the earliest opportunity

[45] Ms. Acikgoz argues that she believed that her husband was working for a Canadian company in Turkey and that she was complying with the residency obligation, and that therefore, it is normal that she did not return to Canada. She adds that the IAD could not reasonably

conclude that she did not return to Canada at the earliest opportunity, as she returned to Canada in August 2016, two years prior to the issuance of the removal order in October 2018. I must disagree with Ms. Acikgoz as I am not convinced that she made any serious attempt to return to Canada. As I set out earlier, even considering the issue of her father's health, as I suggested to counsel during the hearing, I rather doubt that spending 101 and 74 days in Canada over the two years that followed Ms. Acikgoz's assertion that she had permanently moved to Canada constitutes, in the context of this case, serious attempts at returning to Canada; I must agree with the IAD that this is not a favourable factor for Ms. Acikgoz.

- Initial and continuing degree of establishment in Canada

[46] The IAD found that Ms. Acikgoz's attempt at creating establishment – in particular by registering as a sole proprietor and looking to develop business in Canada – after the problems with her husband's employment surfaced and the removal order was issued against her was, for the most part, too little, too late, and in any event, outside the five-year period under consideration. Ms. Acikgoz argues that the IAD had to consider this factor as if there was no simulation and that it did not consider the fact that her husband's working for a Canadian company in Turkey prevented her from properly establishing herself in Canada. I disagree with Ms. Acikgoz's arguments. Under paragraph 28(2)(c) of the Act, the assessment of H&C factors follows the IAD's finding of a non-compliance with the residency obligation. The IAD could not disregard its own findings under paragraph 28(2)(a) – i.e., that Ms. Acikgoz did not meet the requirements of the Act and its corresponding regulations because the permanent resident she was accompanying did not comply with the residency obligation. I see nothing unreasonable with the finding of the IAD that this is not a favourable factor for Ms. Acikgoz.

- Family ties in Canada

[47] There is no issue here; the IAD found that the fact that her two daughters live in Canada was a favourable factor for Ms. Acikgoz in the H&C analysis.

- Hardship and dislocation that would be caused to Ms. Acikgoz and her family in Canada

[48] The IAD found that Ms. Acikgoz had not demonstrated that any hardship would arise if she could not remain in Canada. The issue was not pressed before me; thus, I consider that I need not address this factor. However, on the whole, given the fact that her business is truly very recent and that there is no evidence that it has developed; the fact that Ms. Acikgoz's only asset in Canada is her apartment in Montreal, which she has, in the past, rented out; and the fact that her daughters travel regularly to Turkey, I do not see where there could be any serious hardship with the decision of the IAD if she were to lose her permanent resident status.

[49] The factor of the best interests of the daughters is not relevant given their ages, and Ms. Acikgoz has not provided any evidence of other unique or special circumstances that merit special relief. In the end, the IAD determined that the positive factors which weighed in Ms. Acikgoz's favour "do not carry enough weight to compensate for her significant non-compliance." I find nothing unreasonable with such a determination.

[50] Finally, Ms. Acikgoz argues that the IAD's findings as regards her knowledge of the simulation were unjustified, yet permeated the entire IAD decision, and that the IAD unreasonably emphasized the misrepresentation regarding her husband's employment with Mode

Tricotto when weighing the H&C factors. I agree that the IAD went on during its decision to consider the element of misrepresentation; however, it did so only after stating that the assessment alone of the H&C considerations was enough to decide the appeal. Consequently, any issue that may or may not have arisen in respect of the IAD's assessment of Ms. Acikgoz's misrepresentation and knowledge of the simulation during its analysis of H&C factors was not determinative of the appeal.

VII. Conclusion

[51] On the whole, I have not been convinced that the decision of the IAD was unreasonable. Therefore, I would dismiss the application for judicial review.

JUDGMENT in IMM-575-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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