

Federal Court



Cour fédérale

Date: 20230731

Docket: IMM-5856-22

Citation: 2023 FC 1044

Ottawa, Ontario, July 31, 2023

PRESENT: Mr. Justice O'Reilly

BETWEEN:

BHAONA MOHAMMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2007, Ms Bhaona Mohammed arrived in Canada from Fiji as an international student. She completed a program as a Health Care Aid and then obtained a work permit as a nursing assistant. In 2009, after her permit expired, she returned to Fiji for a few years. She became a permanent resident of Canada in 2014 through her husband's sponsorship. Six months later, the marriage dissolved.

[2] In 2016, Ms Mohammed began seeing a former boyfriend who lived in the United States. The couple married later that year in the US. Ms Mohammed resigned from her job in Canada and did not return to Canada until 2020. In the meantime, her husband sponsored her for permanent residence in the US.

[3] By 2020, her Canadian permanent residence had expired and her application for residence in the US was denied. When she tried to return to Canada, a Canada Border Services Agency officer found reasonable grounds to believe that Ms Mohammed was inadmissible because she had failed to comply with the requirement that she reside in Canada for at least two years out of five.

[4] Ms Mohammed appealed the agent's decision to the Immigration Appeal Division. She asked the IAD to overturn the inadmissibility finding on humanitarian and compassionate (H&C) grounds. The IAD dismissed her appeal. Ms Mohammed sought judicial review of the IAD's decision and succeeded. Justice Shirzad Ahmed found that the IAD's decision was unreasonable because it failed to take account of a number of factors in Ms Mohammed's favour, most particularly her service as a front-line worker during the COVID-19 pandemic. He ordered the IAD to redetermine Ms Mohammed's appeal (*Mohammed v Canada (Citizenship and Immigration)*, 2022 FC 1).

[5] On redetermination, the IAD, once again, dismissed Ms Mohammed's appeal. It found that she had chosen to prioritize her US residency application at the expense of her Canadian

status. In addition, it found that other factors – establishment in Canada, family ties, hardship, and the best interests of a child – did not justify granting Ms Mohammed special relief.

[6] Ms Mohammed maintains that the IAD's second decision was unreasonable because it essentially committed the same errors as it made in the first. In effect, she says, the IAD ignored the findings of Justice Ahmed on her first judicial review. She asks me to quash the IAD's decision and order another redetermination of her appeal.

[7] I agree with Ms Mohammed that the IAD's decision was unreasonable. It failed to take proper account of factors supporting her request for relief on H&C grounds, including her role during the pandemic. I will, therefore, grant this application for judicial review.

[8] The sole issue is whether the IAD's decision was unreasonable.

II. The IAD's Decision

[9] The IAD confirmed that Ms Mohammed had failed to meet the requirements for permanent residence status in Canada. The question was whether the IAD should grant her special relief on H&C grounds under the *Immigration and Refugee Protection Act* (SC 2001, c 27, s 67(1)(c); see Annex).

[10] The IAD found that the circumstances of Ms Mohammed's departure from Canada and her failure to return in a timely way weighed significantly against her. Ms Mohammed had originally planned to visit her boyfriend for a brief visit in 2016. However, his parents objected

to their staying in the same apartment, so they married quickly. At that point, she planned to stay in the US with her husband, who sponsored her application for permanent residence status there. US immigration authorities told her she could stay in the US while her application was under review. In 2018, a US lawyer found that the authorities had given Ms Mohammed incorrect information and attempted to regularize her status in the US. He advised her not to travel outside the country. In 2020, the lawyer's efforts failed, and Ms Mohammed returned to Canada.

[11] The IAD found that Ms Mohammed's circumstances did not excuse her from abiding by her Canadian permanent residence requirements. She could have returned to Canada sooner, at least intermittently, to ensure she preserved her status here. In addition, according to US authorities, Ms Mohammed could have applied for US permanent residence from Canada. Rather than acting on that information, she chose to follow her lawyer's advice to stay in the US. She also deferred to her husband's desire to stay close to his aging parents in the US. According to the IAD, Ms Mohammed did not adequately explain her choice. It characterized her position as "willful blindness", and inconsistent with a genuine desire to return to Canada.

[12] On the question of her establishment in Canada, the IAD noted that Ms Mohammed had found employment quickly when she arrived in Canada and, since 2020, has re-established herself, working two jobs. During the COVID-19 pandemic, Ms Mohammed worked as front-line worker in a long-term care facility, demonstrating "perseverance and professionalism in her service to Canadians." The IAD claimed to give Ms Mohammed's service "considerable weight" in her favour. However, it went on to downplay this factor, observing that those at the front lines during the pandemic were doing no more than what many Canadians do to improve Canadian

society. The IAD opined that all Canadians are owed a “moral debt” for their work as teachers or janitors or oil-and-gas workers, not just front-line caregivers.

[13] The IAD found that family ties to Canada did not support Ms Mohammed’s request. Her family members in Canada all live together, but Ms Mohammed lives separately. While she was living in the US, Ms Mohammed had obviously made a choice to live far from her family. Ms Mohammed pointed out that her mother has a number of serious medical conditions, but the IAD noted that these began several years ago. Again, Ms Mohammed chose to remain in the US rather than return to Canada to assist her mother. At present, there are other family members in Canada who can help Ms Mohammed’s mother. On the question of hardship, the IAD accepted that Ms Mohammed would experience some hardship if her appeal were dismissed. She cannot now return to the US. Her husband could make another sponsorship application, but it would be unlikely to succeed in less than five years. In the meantime, Ms Mohammed would have to return to Fiji. Although she has family in Fiji and could likely find employment, Ms Mohammed would be separated from her family in Canada; however, this was true when she lived in the US. Furthermore, the IAD noted although the Applicant’s husband could move to Fiji, it is unlikely he would relocate there as he would prefer to remain close to his aging parents in the US.

[14] Finally, the IAD considered the best interests of Ms Mohammed’s 8-year-old niece, who lives with her. It found that there was a strong bond between them, but little evidence that the child’s needs could not be met by her parents and other family members.

[15] In conclusion, the IAD found there were insufficient H&C factors supporting Ms Mohammed's request for special relief, and dismissed her appeal.

III. Was the IAD's Decision Unreasonable?

[16] The Minister maintains that the IAD's decision was not unreasonable because the evidence did not support the granting of special relief. In particular, the Minister points to the IAD's finding that, by choosing to stay more than four years in the US, Ms Mohammed was simply the author of her own misfortune. Further, says the Minister, consistent with Justice Ahmed's decision on her previous judicial review, the IAD took full account of Ms Mohammed's service on the front lines during the pandemic.

[17] I disagree with the Minister's submissions. I find that the IAD unfairly discounted some of the evidence supporting Ms Mohammed's appeal, especially the evidence describing her efforts during the COVID-19 pandemic. The IAD's treatment of this issue alone is enough to render it unreasonable.

[18] Justice Ahmed held that Ms Mohammed's role during the COVID-19 pandemic should be considered an additional positive element on the issue of her establishment in Canada. He found that the pandemic placed a "heavy toll" on female immigrant workers, including Ms Mohammed, who worked at a long-term care facility that experienced an outbreak of COVID-19 in 2021. Ms Mohammed put her life at risk at the service of Canadians, not knowing if she would be allowed to stay in Canada. Justice Ahmed rightly noted that persons in Ms Mohammed's circumstances are owed a moral debt by Canadians. In its first decision, the IAD considered Ms

Mohammed's service as a "moderately positive" factor. Justice Ahmed found that the IAD had undervalued it; it merited more than a "passing note". In its second decision, the IAD appeared to recognize the "moral debt" that Ms Mohammed was due, but went on to find that her contribution to Canada was no greater than that which other Canadians provide on a routine basis.

[19] In my view, the IAD failed to take proper account of the factor that Justice Ahmed determined was essential to a reasonable assessment of Ms Mohammed's appeal. Justice Ahmed concluded that the "moral debt owed to immigrants who worked on the frontlines to help protect vulnerable people in Canada during the first waves of the COVID-19 pandemic cannot be overstated" (para 43). He described the context of Ms Mohammed's H&C application as "unique and important" (para 45). By contrast, the IAD treated her contribution as common and ordinary. That was not a reasonable application of Justice Ahmed's decision.

[20] Accordingly, I find that the IAD's decision was unreasonable as it failed to include a transparent, justifiable, and intelligible assessment of an important factor, one which this Court had already identified as critical to a proper consideration of Ms Mohammed's appeal.

IV. Conclusion and Disposition

[21] The IAD discounted an important factor in Ms Mohammed's favour, one which this Court had already identified as being of particular significance. As a consequence, the IAD rendered a decision that was unreasonable. I must, therefore, grant this application for judicial

review and order another panel of the IAD to reconsider Ms Mohammed's appeal. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-5856-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is remitted to another panel of the IAD for reconsideration.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5856-22
STYLE OF CAUSE: Bhaona Mohammed v MCI
PLACE OF HEARING: CALGARY, AB
DATE OF HEARING: JUNE 7, 2023
JUDGMENT AND REASONS: O'REILLY J
DATED: JULY 31, 2023

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ANNEX

Immigration and Refugee
Protection Act (S.C. 2001, c.
27)

***Loi sur l'immigration et la
protection des réfugiés
(L.C. 2001, ch. 27)***

Appeal allowed

Fondement de l'appel

67 (1) To allow an appeal,
the Immigration Appeal
Division must be satisfied
that, at the time that the
appeal is disposed of,

67 (1) Il est fait droit à
l'appel sur preuve qu'au
moment où il en est disposé :

[...]

[...]

(c) other than in the case of
an appeal by the Minister,
taking into account the best
interests of a child directly
affected by the decision,
sufficient humanitarian and
compassionate
considerations warrant
special relief in light of all
the circumstances of the
case.

c) sauf dans le cas de l'appel
du ministre, il y a —

compte tenu de l'intérêt
supérieur de l'enfant
directement touché — des
motifs d'ordre humanitaire
justifiant, vu les autres
circonstances de l'affaire, la
prise de mesures spéciales.