Federal Court Cour fédérale

Date: 20230817

Docket: IMM-2690-22

Citation: 2023 FC 1115

Ottawa, Ontario, August 17, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ABDI AHMED HARED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Abdi Ahmed Hared [Applicant] seeks judicial review of the Immigration Appeal Division's [IAD] March 8, 2022 decision [Decision] dismissing the Applicant's appeal pursuant to paragraph 67(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The IAD concluded that there was insufficient humanitarian and compassionate [H&C] considerations to warrant special relief.

[2] The application for judicial review is dismissed.

II. Background

[3] The Applicant is a 54-year-old citizen of Djibouti. In 2001, the Applicant married his first wife in a secret religious ceremony. In 2005, the Applicant married his second wife, a Canadian citizen. The Applicant has six children with his first wife, all of whom were born between 2002 and 2012.

[4] In January 2012, the Applicant's second wife successfully sponsored the Applicant for permanent residence in Canada. He did not declare his first wife or children upon his arrival in Canada.

[5] In 2013, the Applicant and his second wife separated. In 2015, the Applicant and his first wife publically married in Djibouti. In 2016, the Applicant and his second wife divorced.

[6] In April 2017, the Applicant applied to sponsor his first wife and children to Canada. This application initiated the Applicant's referral to the Immigration Division [ID] for an admissibility hearing. The referral report outlines concerns that the Applicant failed to declare his children at the time of landing in 2012.

[7] The Applicant received two procedural fairness letters [PFL] dated June 26, 2017 and August 21, 2017 related to his first marriage and children. The Applicant responded to the PFLs on September 20, 2017.

[8] The ID determined that the Applicant was inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of *IRPA* and issued an exclusion order against the Applicant. The Applicant appealed to the IAD.

III. The Decision

[9] On March 8, 2022, the IAD dismissed the Applicant's appeal. The IAD found insufficient H&C considerations to warrant special relief pursuant to paragraph 67(1)(c) of *IRPA*.

[10] The IAD attributed significant weight to the seriousness of the Applicant's misrepresentation, finding this factor to be of no assistance in granting discretionary relief. The IAD noted that the Applicant would be aware of his marital history and children and provided no reasonable explanation for failing to declare them upon his arrival in Canada, contrary to his positive duties of disclosure and candour. In failing to do so, immigration officials did not have accurate information to assess his permanent resident application.

[11] The IAD also found that the Applicant demonstrated little remorse for his misrepresentation. There was no evidence that the Applicant attempted to rectify his misrepresentation following his arrival in Canada. Rather, the Applicant's remorse began after he was caught and was related to the potential consequences of his misrepresentation. The IAD found this factor of no assistance in granting discretionary relief.

[12] The IAD similarly found that the Applicant's establishment in Canada was of no assistance in granting discretionary relief. The IAD acknowledged the Applicant's employment

when a workplace injury occurred in 2017, as well as housing, vehicle, friendships, and community connections. However, the IAD found that but for the misrepresentation, the Applicant would not have been in Canada and able to establish himself (*Canada (Citizenship and Immigration) v Liu*, 2016 FC 460 at para 29 [*Liu*]). Applying *Liu* to the present matter, the IAD significantly reduced the positive aspects of the Applicant's establishment.

[13] As for the fourth factor, the IAD found that the support from and impact of removal on the Applicant's family in Canada was a neutral factor, as the Applicant did not identify any family in Canada.

[14] As for the fifth factor, the IAD found that the Applicant would suffer some hardship in Djibouti and that this was of some assistance in granting special relief. The IAD noted that the Applicant was born and raised in Djibouti, is familiar with the language and culture, and has family in the country. The IAD acknowledged the Applicant's testimony that he and his wife faced discrimination due to their inter-clan marriage, but that the evidence demonstrated their ability to overcome this discrimination. The IAD also acknowledged the Applicant's testimony and documentary evidence surrounding his workplace injury and found it equivocal. The IAD noted several outstanding questions concerning the health of the Applicant's hand, his potential future treatment requirements, and his ability to return to work. The evidence raised a possibility that the Applicant may not receive the level of care required to support the rehabilitation of his hand in Djibouti.

[15] Lastly, the IAD found that the best interests of the children [BIOC] was of no assistance in granting special relief. The IAD noted that the Applicant and his children, aged 9 to 19 at the time of the hearing, share close relations despite living apart for several years. Further, while there was little documentary evidence of the Applicant's employment prospects in Djibouti, the IAD noted that the Applicant provided for his family prior to his departure to Canada and that there was little evidence that his extended family's assistance was no longer available. The IAD concluded that there was little evidence that the children's needs were not being met in Djibouti.

IV. Issues and Standard of Review

[16] The sole issue is whether the Decision is reasonable. The sub-issues raised in the parties' submissions are best characterized as:

1. Did the IAD reasonably assess the seriousness of the Applicant's misrepresentation?
2. Did the IAD reasonably assess the Applicant's remorsefulness?
3. Did the IAD reasonably assess the Applicant's establishment in Canada?
4. Did the Officer reasonably assess the best interests of the children?

[17] The standard of review for the merits of the Decision is reasonableness. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] arise in this matter (at paras 16-17). A reasonableness review requires the Court to examine the outcome of the Decision and its underlying rational to assess "whether the decision, as a whole, bears the hallmarks of reasonableness—intelligibility, transparency, and justification—and whether it is justified in relation to the relevant factual and legal constraints

that bear on the decision" (*Vavilov* at paras 87, 99). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). The party challenging the decision bears the burden of showing that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

[18] The Decision is reasonable. The IAD did not commit any reviewable errors.

A. *Did the IAD reasonably assess the seriousness of the Applicant's misrepresentation?*

(1) Applicant's Position

[19] The Applicant did not declare his first wife and children out of protection, as he was not publicly acknowledged as the children's father. The Applicant also explained before the ID that upon his arrival in Canada, he did not understand the immigration officer because he did not speak English. While admittedly serious, the only clear consequence of the Applicant's misrepresentation was the officer's lack of access to the children's medical admissibility.

(2) Respondent's Position

[20] The onus is on the individual facing removal to establish "exceptional" reasons why they should be allowed to stay in Canada as per the non-exhaustive list factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4, [1985] IADD No 4 and

endorsed in *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at paras 40, 90. The Applicant failed to meet this high threshold.

[21] The IAD reasonably attributed significant weight to the Applicant's misrepresentation. The Applicant takes issue with small inconsequential details of the Decision. After acknowledging he had children at the time of his application and following his arrival in Canada, the Applicant received two PFLs in 2017, the contents of which set out his misrepresentation for failing to declare his children. The Applicant responded to the PLFs admitting to this omission. Consequently, whether the Applicant was aware that he was officially registered as the children's father does not change the fact that he was aware of their existence before coming to Canada. As the IAD reasonably noted, the Applicant's decision to omit this information ran contrary to his duty of candor and disclosure pursuant to subsection 16(1) of *IRPA*. Contrary to the Applicant's assertions, this deliberate misrepresentation resulted in the Applicant obtaining permanent resident status.

(3) Conclusion

[22] The IAD reasonably assessed the seriousness of the Applicant's misrepresentation.

[23] Pursuant to subsection 16(1) of *IRPA*, foreign nationals seeking to enter Canada have a duty of candour and disclosure (*Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 at paras 38-40). This duty extends to the existence of children (*Bickin v Canada (Citizenship and Immigration)*, [2000] FCJ No 1495 at para 9, 209 FTR 14).

[24] The Applicant's submissions ask this Court to reweigh or reassess the evidence, which is not the function of judicial review. These submissions were before both the ID and the IAD, but the Applicant also provided alternative explanations for his misrepresentation. For instance, the Applicant acknowledged in his response to the PFLs as well as his testimony that he was aware of the children's existence prior to his arrival in Canada and that he intentionally omitted them from his application.

[25] Contrary to the Applicant's submissions, the consequences of the misrepresentation was not limited to the immigration officer's lack of access to the children's medical admissibility. Rather, as recognized by both the ID and IAD, the misrepresentation "closed an important avenue of inquiry" as to the Applicant's own permanent resident application. Indeed, the Applicant conceded just that before the IAD.

[26] For these reasons, I am satisfied that the IAD's Decision is reasonable in this regard (*Vavilov* at para 91).

B. *Did the IAD reasonably assess the remorsefulness of the Applicant?*

(1) Applicant's Position

[27] As with the first issue, the IAD failed to consider the Applicant's personal circumstances. Further, the Applicant explained that he did not believe he was withholding information when he did not declare his children. Accordingly, it was unreasonable for the IAD to expect the Applicant to correct an unknown mistake.

(2) Respondent's Position

[28] The IAD's conclusion is reasonable. The Applicant made no attempt to rectify his misrepresentation, which was only discovered when he applied to sponsor his first wife and children in 2017. Following this discovery, the Applicant continued to believe that this misrepresentation was justified by the fact that his name did not appear as the father on official papers in Djibouti. However, these semantics are irrelevant.

(3) Conclusion

[29] The IAD reasonably assessed the Applicant's remorsefulness.

[30] The Applicant's contention that he did not believe he was withholding information is without merit given that he conceded his intention to do just that in his response to the PFLs. As noted by the IAD, the Applicant only began showing remorse after he received the PFLs in 2017.

C. *Did the IAD reasonably assess the Applicant's establishment in Canada?*

(1) Applicant's Position

[31] Again, the IAD should have considered the Applicant's personal circumstances (*Liu* at para 29). For instance, unlike the present matter, *Liu* involved a fraudulent marriage (at para 1).

(2) Respondent's Position

[32] The IAD assessed the Applicant's establishment, as evidenced from his employment, home and car. However, it was open to the IAD to note that his establishment directly arose from his misrepresentation. Accordingly, the IAD reasonably concluded that the Applicant's establishment in Canada was insufficient to overcome his misrepresentation.

(3) Conclusion

[33] The IAD reasonably assessed the Applicant's establishment in Canada.

[34] The IAD considered the particular facts before it, including the Applicant's employment until his workplace injury, home, car, friendships, and community connections in finding that the Applicant has had some success in establishing himself in Canada. However, it was open to the IAD to find that this establishment was reduced by his misrepresentation. As this Court explained in *Liu*:

> [29] …In my view, [misrepresentation] is a relevant factor when considering a person's degree of establishment. To do otherwise is to place the immigration cheat on an equal footing with the person who has complied with the law. Whether the impact of the fraud is to reduce the establishment to zero or to something more is a question for the discretion of the decision-maker based on the particular facts before him or her. But it must be considered.
>
> [Emphasis added.]

[35] In light of the jurisprudence, the IAD reasonably considered and weighed the Applicant's misrepresentation. The IAD's discretion is afforded deference by this Court.

D. *Did the IAD reasonably assess the best interests of the children?*

(1) Applicant's Position

[36] The IAD erred in failing to consider the Applicant's injuries, as evidenced from his medical documents, in drawing conclusions surrounding his employment prospects in Djibouti. This is especially so given the IAD's prior conclusions that the Applicant would not have access to the same level of health care required for his hand to heal.

[37] Further, the IAD's conclusion that there was a lack of evidence that the children's needs are not being met in Djibouti fails to consider that this stems from the financial support provided by the Applicant from Canada, as evidenced from the various monetary transfers to his wife. These funds would no longer exist if the Applicant were to leave Canada, thereby resulting in the children's financial hardship.

(2) Respondent's Position

[38] The IAD reasonably analyzed the BIOC and found the Applicant's evidence insufficient. Namely, there was a lack of documentary evidence concerning the Applicant's employment prospects in Djibouti. The Applicant failed to demonstrate why he would earn less and not be able to continue to support his children financially from Djibouti. In any event, the IAD noted that his children were also receiving financial assistance from his extended family and that there was little evidence to show that this assistance was no longer available.

(3) Conclusion

[39] The IAD reasonably assessed the BIOC factor.

[40] Subsection 67(1) of *IRPA* directs the IAD when assessing appeals on H&C grounds to consider "the best interests of the child directly impacted." Given this statutory direction, the BIOC is a "singularly significant focus and perspective" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 40).

[41] The onus of establishing that an H&C exemption is warranted lies with the Applicant. Where an Applicant fails to provide evidence in support of their claim, the IAD may conclude that the claim is baseless (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 5). Moreover, while the IAD need not refer to every piece of evidence or testimony in support of the Applicant's position, the Court may intervene and infer that the IAD overlooked evidence pointing to the opposite conclusion and squarely contradicting its findings of fact (*Canada (Citizenship and Immigration) v Tefera*, 2017 FC 204 at para 31; *Vavilov* at para 125).

[42] In the present matter, when considering the hardship and BIOC, the IAD reasonably concluded that the Applicant advanced little documentary evidence concerning his employment prospects or potential wages in Djibouti. Further, the IAD noted that the evidence surrounding his hand injury was mixed. The Applicant has therefore not established that the IAD erred in its analysis in this regard.

[43] The IAD also reasonably considered the Applicant's children's needs. The Applicant testified before the IAD that prior to his departure from Djibouti, he sold clothes on the side of the road and could not provide for the children, resulting in his reliance on his extended family for support. The Applicant also testified that his extended family would no longer extend their support following the birth of their fifth child. The IAD concluded that there was little evidence that his extended family's support was no longer available. The Applicant has not advanced any evidence contradicting the IAD's conclusion. The IAD's consideration and analysis is afforded deference.

VI. Conclusion

[44] The application for judicial review is dismissed.

[45] The parties do not propose a question for certification and I agree that none arise.

JUDGMENT in IMM-2690-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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