Federal Court  Cour fédérale

Date: 20250424

Docket: IMM-9556-24

Citation: 2025 FC 739

Toronto, Ontario, April 24, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

MAHMOUD SAED ABDALLAH GHAITH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mahmoud Saed Abdallah Ghaith, seeks judicial review of the decision of the Immigration Appeal Division [IAD] which found that he did not meet his residency obligation to qualify for permanent residence in Canada.

I. Background

[2] The Applicant is a citizen of Jordan, and he became a permanent resident of Canada in December 2008. Since July 2011, he has been employed by Value Consultants Associates (VCA), a Canadian business that is partly owned by his father. VCA operates both in Canada and the Middle East, where the Applicant is based. From 2011 to 2016, the Applicant worked for VCA in Saudi Arabia. In 2016, he relocated to the United Arab Emirates, where he continued to work for the same company. The Applicant's ex-wife lives in the UAE with his Canadian-born son; his parents and brother live in Canada.

[3] In 2014, the Applicant renewed his Permanent Resident Card (PR Card) while he was living in Saudi Arabia. At that time, a Visa Officer found him to be eligible despite his lengthy absence from Canada. The Officer concluded that the Applicant met his residency obligation "by virtue of his employment with a Canadian company." In 2018, the Applicant applied to sponsor his then-wife to Canada. His application was refused.

[4] In 2019, the Applicant again applied to renew his PR Card, but the process was delayed owing to the disruptions associated with the COVID-19 pandemic. In March 2024, he was informed that his PR Card had been issued and he was directed to attend at an office in Canada to pick it up. He applied for a PR Travel Document so that he could return to Canada to pick up his PR Card, but his application was refused because the Officer determined that he had failed to comply with his residency obligation.

[5] The Applicant appealed this refusal to the IAD. He did not dispute that he had only been in Canada for 7 days during the relevant five-year period but argued that he had met his residency obligation because he was employed by a Canadian company and assigned to work outside of Canada on a full-time basis. He said that his situation therefore fell within subparagraph 28(2)(a)(iii) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], which provides that a permanent resident meets their residency obligations if they are "outside Canada employed on a full-time basis by a Canadian business…".

[6] The IAD dismissed the Applicant's appeal, finding that he was not on a temporary assignment outside of Canada and therefore did not meet the residency obligation as set out in IRPA. The IAD also found that the Applicant's request for humanitarian and compassionate (H&C) relief was not compelling, given the extent of his non-compliance with his residency obligations and his lack of establishment in Canada. While the Applicant has family ties to Canada, he is also actively involved in the life of his son who lives outside of Canada. The IAD found that the evidence did not establish a compelling need for the son to move to Canada. Based on its analysis of the Applicant's case, the IAD dismissed his appeal.

II. Issues and Standard of Review

[7] The Applicant claims that the decision is unreasonable because the IAD erred by requiring that his "assignment" to work outside of Canada be of a temporary nature, since those words are not found in subparagraph 28(2)(a)(iii) of IRPA or subsection 61(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. The Applicant also submits that the IAD failed to properly consider his H&C request. These issues are to be

analyzed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*].

[8] In summary, under the *Vavilov* framework, a reviewing court is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints (*Vavilov* at para 85). The onus is on the Applicants to demonstrate that "any shortcomings or flaws … are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker (*Vavilov* at para 125).

III. Analysis

[9] Permanent residents must demonstrate that they have been present in Canada for 730 days during the preceding five-year period in order to meet the residency requirement set out in s. 28(1) of IRPA. Subparagraph 28(2)(a)(iii) provides that "a permanent resident complies with the residency obligation… if… they are… (iii) outside Canada employed on a full-time basis by a Canadian business…"

[10] Subsection 61(3) of the IRPR elaborates on this requirement:

Employment outside Canada (3) For the purposes of subparagraphs	**Travail hors du Canada** (3) Pour l'application des sous-alinéas

28(2)(a)(iii) and (iv) of the Act, the **expression *employed on a full-time basis by a Canadian business or in the public service of Canada or of a province*** means, in relation to a permanent resident, that the permanent resident is an employee of, or under contract to provide services to, a Canadian business or the public service of Canada or of a province, and is assigned on a full-time basis as a term of the employment or contract to

(a) a position outside Canada;

(b) an affiliated enterprise outside Canada; or

(c) a client of the Canadian business or the public service outside Canada.

28(2)a)(iii) et (iv) de la Loi respectivement, les expressions ***travaille, hors du Canada, à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale*** **et** ***travaille à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale***, à l'égard d'un résident permanent, signifient qu'il est l'employé ou le fournisseur de services à contrat d'une entreprise canadienne ou de l'administration publique, fédérale ou provinciale, et est affecté à temps plein, au titre de son emploi ou du contrat de fourniture :

a) soit à un poste à l'extérieur du Canada;

b) soit à une entreprise affiliée se trouvant à l'extérieur du Canada;

c) soit à un client de l'entreprise canadienne ou de l'administration publique se trouvant à l'extérieur du Canada.

[11] The Applicant argues that the IAD misinterpreted the statutory provisions and therefore erred in law. He says that by adding the requirement that a work assignment for a Canadian company be temporary, with a fixed-term end date, the IAD added a gloss to the language in the statute that is neither necessary nor appropriate. The Applicant submits that the case-law of this Court that had found that an assignment under subparagraph 28(2)(a)(iii) of *IRPA* and subsection 61(3) of the *IRPR* must be of a temporary nature is not correct and that the law needs to evolve to reflect global business practices. These arguments were advanced on judicial review, but they were not part of the Applicant's case before the IAD.

[12] In this case, the Applicant explained that he worked overseas for a period of time to try to keep his father's Canadian company alive. He tried to come back to Canada as soon as the company's major Canadian development project (referred to as the Gainsborough project) was approved. However, his return was delayed due to the travel disruptions associated with the COVID-19 pandemic and then he was prevented from returning because of the refusal of his application for a PR Travel Document. During this entire period, he was on assignment working for a Canadian business, trying to sustain its operations through work in both the Middle East and Canada.

[13] Economic development is one of the goals of IRPA, and the Applicant argues that his efforts to sustain and grow a Canadian company should not be punished by denying him permanent residence. He argues that the requirement that an assignment to work for a Canadian company outside of the country must be of a temporary or fixed-term nature runs counter to this goal, especially in today's global business environment. On this point, I pause to note that the

Respondent counters by arguing that a goal of the IRPA is to ensure effective integration of newcomers into Canadian society, and the residency obligation is a part of that. The fact that the law recognizes that sometimes people will be sent outside of the country to work does not diminish the overall importance of their being physically in Canada for a period of time to demonstrate that they want to maintain their status as permanent residents.

[14] The Applicant submits that the Court should re-think the approach to the interpretation of the concept of "assignment" in subsection 61(3) of the IRPR to eliminate the requirement that it be of a temporary or short-term duration. He urges the Court to allow the law to develop, noting that one of the policy goals of Canada's immigration scheme is to contribute to economic development and his work overseas did just that. He was on an assignment overseas, but still working to advance a project in Canada which ran into lengthy delays. As soon as the project was ready to proceed, he attempted to return to Canada. The Applicant argues that it is wrong in law to require that an assignment be of a temporary nature, and therefore the IAD's decision is unreasonable.

[15] I disagree. The IAD was bound to interpret the IRPA and IRPR in accordance with the binding case-law; that is a legal constraint on its scope for decision-making (*Vavilov* at para 111). That is precisely what the IAD did in this case.

[16] There is no question that VCA is a Canadian company, and that the Applicant was employed on a full-time basis. The only question before the IAD was whether the Applicant was "assigned" to work outside of Canada. The IAD followed the relevant jurisprudence on this

point, which was recently summarized by Justice Ahmed in *Da v Canada (Citizenship and Immigration)*, 2024 FC 1952 [*Da*]:

> [17] The Court has interpreted "assigned" to refer to a discrete period during which a permanent resident is temporarily based abroad, with "evidence pointing to a firm commitment on the part of the employer to reintegrate the employee within a specified timeframe to a position in Canada" upon their return (*Baraily v Canada (Citizenship and Immigration)*, 2014 FC 460 at para 12 ("*Baraily*"); *Canada (Citizenship and Immigration) v Jiang*, 2011 FC 349 at para 52; *Bi v Canada (Citizenship and Immigration)*, 2012 FC 293 at para 15 ("*Bi*"); *Canada (Citizenship and Immigration) v Luo*, 2020 FC 543 at paras 24-26). The jurisprudence is clear that permanent residents cannot accumulate days of qualifying residency "simply by being hired on a full-time basis outside of Canada by a Canadian business. Instead…the permanent resident must be assigned temporarily, maintain a connection with his or her employer, and…continue working for his or her employer in Canada following the assignment" (*Bi* at para 15).

[17] The IAD was compelled to follow the interpretation of the term "assignment" in subsection 61(3) of the IRPR described above, or to explain why it was departing from it. In this case, I can find no error in the IAD's approach, since it simply applied the binding jurisprudence to the facts of the Applicant's case. The evidence showed that the Applicant's ties to Canada were tenuous. There was no set date for his "assignment" overseas to end and thus no certainty about when he would return to Canada. Instead, his evidence and his father's letters confirmed that he might return to Canada if and when any projects required his presence here. He returned to Canada on one previous occasion to work on another project, but immediately left once it was completed.

[18] In this respect, the Applicant's situation was somewhat similar to the facts in *Da*, where the applicant was working on a full-time basis in China and would take up a position in Canada

only “if” she decided to return (*Da* at para 18). This fell short of the sort of firm commitment to reintegrate the applicant within a specified timeframe to a position in Canada. The same is true in the Applicant’s case – he was working overseas for a Canadian company, and there was no firm expectation that he would return to Canada to work on a permanent basis. Instead, he expected to return if and when a project demanded his presence here. The Applicant’s employment contract and work history did not indicate a firm intention to return to Canada on an indeterminate basis.

[19] The Applicant’s argument about the error in the interpretation of the concept of “assignment” adopted in the prior case-law was never presented to the IAD. It is not for the Court to consider it as a fresh issue for the first time on judicial review. Doing that would fly in the face of the specific teachings of *Vavilov* and *Mason*. Interpreting the residency obligation set out in IRPA and IRPR is a task that Parliament assigned to Officers and, on appeal, to the IAD.

[20] As discussed previously, the IAD was either bound to follow the binding jurisprudence of this Court on the meaning of the concept of “assignment” in subsection 61(3) *IRPR*, or it had to explain why it was departing from it. The Applicant did not ask the IAD to depart from the case-law and it therefore cannot be faulted for simply applying it. The situation would be different if the Court had the benefit of the considered view of the IAD on the argument presented here about the need to re-examine the jurisprudence on the concept of assignment.

[21] Based on this analysis, I can find no error in the IAD’s analysis. It applied the interpretation of the relevant statutory provision set out in the consistent case-law of this Court to the facts of the Applicant’s case and explained its analysis in clear terms. That was reasonable.

[22] I am also not persuaded by the Applicant's challenge to the IAD's analysis of his H&C request. The IAD reasonably noted that the Applicant was only present in Canada for 7 days out of the 730 days he was required to be in Canada during the previous 5 years. The Applicant's H&C request therefore had to overcome a high bar. The IAD examined the various elements of the Applicant's request, including his argument that he had no reason to think his residency obligation was in question after he was granted a PR Card in 2014 and he applied for another one in 2019. The IAD found it was not bound by the prior decisions and had to examine the question based on the evidence before it.

[23] The Applicant argues that the IAD failed to grasp the essence of his claim on this point. He says that he was not arguing that the IAD was legally bound by the previous decisions. Instead, the Applicant submits that it was unreasonable for the IAD to fail to grapple with the reality of his particular situation. He believed that he was meeting his residency obligation based on the fact that Officers issued him PR Cards in the past. The Applicant argues that the IAD was required to consider the overall unfairness of the dilemma he was facing when he applied for the PR Travel Document: he thought he complied with the law, and so did not change course and return to live in Canada. He was working from overseas trying to push forward a project in Canada that got caught up in lengthy approval processes. Once that project was approved, he immediately tried to return to Canada, only to be told that he had not complied with his residency obligation. The Applicant's request for H&C relief was based, in part, on his claim that this refusal was profoundly unfair to him. He submits that the IAD failed to grapple with this, and therefore its decision is unreasonable.

[24] I disagree. On this question, the Applicant is advancing a nuanced and sophisticated argument before this Court which stands in contrast to the cursory and general submissions presented to the IAD. Before the IAD, the Applicant's then-counsel (not the counsel who represents him before this Court) argued that the Applicant had a legitimate expectation that his PR Card renewal and PR Travel Document would be approved given that he used the same documentation from his 2014 application and his prior request for a PR Travel Document. The IAD reasonably rejected this claim noting that it had more recent documentation and that it had to assess whether the Applicant met his residency obligation with reference to the more recent five-year period.

[25] This was a reasonable finding. Under section 28(1) of IRPA, compliance with the residency obligation is assessed for every five-year period.

[26] The IAD also analyzed the Applicant's other grounds for H&C relief. It found that the Applicant had not demonstrated that he attempted to return to Canada at the earliest opportunity, that his family ties were not compelling given that his parents were not in need of particular assistance, and that his Canadian citizen son would continue to live in the UAE. The IAD's analysis is clear and is responsive to the Applicant's submissions. The decision also reflects the evidence in the record on the essential points. I am not persuaded that the IAD's analysis of the H&C claim was unreasonable.

[27] For the reasons set out above, the application for judicial review is dismissed.

[28] At the hearing, counsel for the Applicant suggested that the Court consider whether to certify the question of whether the previous case-law on the interpretation of the term assignment in subsection 61(3) of the *IRPR* is in error because it has added a gloss on the language in the provision. I am not persuaded that this is an appropriate question for certification.

[29] First and foremost, the IAD was never given the opportunity to address the question, and therefore its decision did not discuss it. My decision in this case does not rest on any finding about the proper interpretation of the provision, because that is not my role on judicial review. It would therefore be inappropriate to certify a question, asking the Federal Court of Appeal to pronounce upon the point as a completely new issue.

[30] In addition, there was no advance notice of the proposal that a question be certified and thus the Respondent did not have the opportunity to seek instructions or to formulate a position. For these reasons, I find that there is no question of general importance for certification.

[31] In closing, one final comment on a theme that ran through the Applicant's submissions before the Court. He argued that the overall tone of the IAD's decision suggested that he had done something wrong and that he should be punished for it. He said that he acted in good faith and genuinely thought he was complying with the law. The Applicant objects to the IAD's characterization of him as a lawbreaker.

[32] I cannot agree with the Applicant's description of the decision. The IAD did not question that the Applicant worked to advance the interests of his Canadian employer, and it recognized

his success in doing so. I am not persuaded that the IAD accused the Applicant of anything. It simply found that his situation did not meet the test under the law. It must be recalled that the question before the IAD was whether the Applicant had met his residency obligation for permanent residence in Canada. Its decision deals only with that question, and it made no broader pronouncement about the Applicant. While it is understandable that he is dissatisfied with the outcome, I am persuaded that the IAD followed the law and that its decision is reasonable.

JUDGMENT in IMM-9556-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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