

Federal Court



Cour fédérale

Date: 20251103

Docket: IMM-2177-25

Citation: 2025 FC 1769

Ottawa, Ontario, November 3, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

YASIR BAIG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Following the Applicant's conviction for dangerous driving causing death, a removal order was issued against him for serious criminality under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant conceded the legal validity of the removal order but sought special relief before the Immigration Appeal Division [IAD] on

humanitarian and compassionate [H&C] grounds so that he could maintain his permanent resident status and remain in Canada.

[2] The IAD concluded that there were insufficient H&C considerations justifying the granting of special relief. On judicial review, the Applicant challenges the IAD's decision on numerous grounds.

[3] In my view, the IAD fell into error in two ways. First, in finding that the Applicant had shown minimal potential for rehabilitation and failed to demonstrate that he was likely to reoffend, the IAD did not engage with the Ontario Parole Board [OPB]'s determination that he posed a very low risk to public safety. Notably, the OPB considered that the Level of Service Inventory – Ontario Revision [LSI-OR], a tool designed to assess an offender's risk of recidivism, rated the Applicant as a very low risk to reoffend.

[4] Second, in assessing the best interests of the children [BIOC], the IAD did not consider the Applicant's evidence that his wife and children would return to Pakistan with him if he was removed from Canada, nor the resulting hardship on the children due to the language barriers and the lack of educational accommodations.

[5] I am allowing this application. While the IAD may have come to the same determination after considering the above-noted evidence, it is not for this Court to speculate as to the outcome. The matter is therefore remitted to the IAD for redetermination.

II. Background

[6] The Applicant is a citizen of Pakistan and became a permanent resident in 2008 through a spousal sponsorship. He and his wife have three children, all Canadian citizens, twin boys who were born in 2009 and a younger son born in 2019.

[7] On January 27, 2018, while driving on the Queen Elizabeth Way in Toronto, the Applicant caused a tragic accident resulting in the death of one person and severe injuries to various other individuals. The Applicant fled the scene of the accident but surrendered to the police on February 7, 2018.

[8] The Applicant was charged with the following offences under the *Criminal Code*, RSC, 1985, c C-46: (i) one count of Dangerous Operation Causing Death, contrary to former subsection 249(4); (ii) one count of Dangerous Operation Causing Bodily Harm, contrary to former subsection 249(3); (iii) one count of Failure to Stop at Scene of Accident Involving Death, under former section 252(1.3)(a); and (iv) one count of Failure to Stop at Scene of Accident Involving Bodily Harm, under former section 252(1.2): Arrest Report, Certified Tribunal Record [CTR] at 66.

[9] At the preliminary inquiry, the two charges of failing to stop at the scene were dismissed. In October 2022, the Applicant pled guilty to dangerous driving causing death, and the dangerous driving causing bodily harm charge was withdrawn. He was sentenced to six months less a day in jail and a 32-month driving prohibition in June 2023.

[10] The Applicant was eligible for parole on August 11, 2023. He appeared before the OPB on August 1, 2023, to determine his suitability for parole. The OPB found that the Applicant's risk was "manageable in the community" and that he was "a very low risk of re-offending": Ontario Parole Board Decision and Order dated August 4, 2023 [OPB Decision] at para 46, CTR at 280. The OPB noted that the LSI-OR rated the Applicant "a very low risk to re-offend": OPB Decision at paras 32, 46, CTR at 278, 280. Ultimately, the OPB was satisfied that the Applicant met the criteria for release and granted him parole as of August 21, 2023, until December 10, 2023, with conditions.

[11] As a result of his criminal conviction, the Applicant was referred for an inadmissibility hearing before the Immigration Division [ID]. The ID concluded that the Applicant was inadmissible under paragraph 36(1)(a) of the *IRPA* for serious criminality. A removal order was issued against the Applicant on May 17, 2024.

[12] The Applicant appealed the ID's removal order to the IAD pursuant to subsection 63(3) of the *IRPA*. He requested that the IAD allow the appeal in accordance with paragraph 67(1)(c) of the *IRPA* or, alternatively, that his removal be stayed pursuant to subsection 68(2). In support of his request for special relief on H&C grounds, the Applicant cited his remorse, his establishment in Canada, the lack of appropriate medical care in Pakistan, his children's best interests, and the hardship he and his family would suffer if he were removed. Both the Applicant and his wife testified before the IAD.

[13] By decision dated January 13, 2025, the IAD found that there were insufficient H&C considerations to allow the appeal or to stay the Applicant's removal from Canada. The IAD determined that the Applicant had failed to demonstrate that he was likely to reoffend. Further, while the IAD determined that the BIOC was a positive consideration, it also determined that the Applicant's continued threat to public safety outweighed those best interests:

[6] There are insufficient H&C considerations to justify the granting of special relief. The relevant offence is serious for the purposes of the panel's assessment and, therefore, the threshold for relief is high. The Appellant has shown minimal potential for rehabilitation and thus failed to demonstrate that he is unlikely to reoffend. These considerations weigh significantly against special relief. The Appellant has not demonstrated that his removal from Canada would cause him, or his wife hardship that supports special relief. The Appellant has some establishment in Canada, but it is not sufficient to warrant special relief when weighed against the negative elements in this case. The Appellant's minor children's interests would be best served by the Appellant remaining in Canada, which is a positive consideration. However, the continued threat the Appellant poses to the safety of the Canadian public given his minimal possibility for rehabilitation outweighs the best interests of the Appellant in this case.

Immigration Appeal Division – Reasons and Decision dated January 13, 2025 [IAD Decision] at para 6, CTR at 3–4.

III. Issues and Standard of Review

[14] There is no dispute that the standard of reasonableness applies to the merits of an IAD decision under paragraph 67(1)(c) and subsection 68(1) of the *IRPA*: *Shen v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 732 at para 66; *Molla v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1320 at para 22 [*Molla*]; *Ahmed v Canada (Citizenship and Immigration)*, 2021 FC 351 at para 13.

[15] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59–61. Furthermore, the reviewing court “must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable”: *Vavilov* at para 100.

IV. Analysis

A. *The legal framework*

[16] The IAD has jurisdiction to grant special relief on H&C grounds, in accordance with paragraph 67(1)(c) and subsection 68(1) of the *IRPA*:

Appeal allowed

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

(a) the decision appealed is wrong in law or fact or mixed law and fact;

(b) a principle of natural justice has not been observed; or

(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child

Fondement de l’appel

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

a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;

b) il y a eu manquement à un principe de justice naturelle;

c) sauf dans le cas de l’appel du ministre, il y a — compte tenu de l’intérêt supérieur de l’enfant

directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

[...]

Removal order stayed

68 (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

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

[...]

Sursis

68 (1) Il est sursis à la mesure de renvoi sur preuve qu'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.

[17] The IAD's exercise of equitable discretion is guided by the non-exhaustive factors set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL) (referred to as the *Ribic* factors): *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 7 [*Khosa*]; *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at paras 40, 41, 90 [*Chieu*].

[18] The *Ribic* factors include: (i) the seriousness of the offence giving rise to the removal order; (ii) the possibility of rehabilitation and the risk of reoffending; (iii) length of time spent in Canada; (iv) the extent to which the Appellant is established in Canada, (v) family support in Canada; (vi) the impact of removal upon the family; (vii) community support; (viii) the best interests of any children; and (ix) any hardship if the Appellant were to be removed from Canada: *Khosa* at para 7; *Chieu* at para 40. As the IAD noted, the weight to be assigned to the *Ribic* factors depends on the circumstances of each case: *Khosa* at para 65; IAD Decision at para 8, CTR at 4.

B. *The IAD's decision is unreasonable*

[19] The Applicant asserts that the IAD made the following errors: (i) unreasonably assessed the seriousness of the offence and the potential for rehabilitation by failing to consider relevant factors presented in the Applicant's submissions and evidence; (ii) unreasonably evaluated the hardship to the Applicant due to the lack of appropriate medical care in Pakistan; and (iii) unreasonably assessed the dislocation to the Applicant's family and the best interests of the Applicant's children by neglecting to consider the interplay between these two factors.

[20] I agree that the IAD erred in two respects. First, in finding that the Applicant failed to demonstrate that he was likely to reoffend, the IAD did not address the Applicant's LSI-OR rating nor the OPB's determination that the Applicant posed a very low risk of reoffending. Second, the IAD failed to engage with the Applicant's evidence that, if he was removed from Canada, his family would move to Pakistan with him. In doing so, the IAD failed to assess the BIOC in light of that reality. This lack of responsiveness on both grounds renders the decision unreasonable: *Vavilov* at paras 127–128.

(1) The IAD's consideration of the Applicant's risk of reoffending is unreasonable

[21] There is no question that the Applicant's offence is serious and that the consequences of the collision are tragic. As noted above, this is one of the *Ribic* factors to be considered by the IAD in an appeal of a removal order for serious criminality.

[22] Another important factor is the possibility of rehabilitation and the risk of reoffending. As recognized by the Supreme Court of Canada, the IAD has “considerable expertise in determining appeals under the *IRPA*”: *Khosa* at para 58. This includes assessing an individual’s prospects for rehabilitation: *Khosa* at para 66. Here, the IAD concluded that “[t]he totality of the evidence shows that the [Applicant] has a minimal possibility to become rehabilitated”: IAD Decision at para 31, CTR at 9.

[23] Significantly, at no point in the IAD’s analysis of this *Ribic* factor — the possibility of rehabilitation and the risk of reoffending — does it refer to the OPB’s determination that the Applicant’s “risk will be manageable in the community” and that he posed “a very low risk of reoffending”. In addition to the Applicant’s testimony before the OPB, the OPB relied on the Applicant’s classification by the LSI-OR as “very low risk to reoffend for general recidivism”: OPB Decision at paras 32, 46, CTR at 278, 280.

[24] In oral submissions before the IAD, Applicant’s then counsel acknowledged that the OPB’s decision was not binding on the IAD. However, he argued that the OPB’s assessment of the Applicant’s risk of reoffending is “persuasive” and should be taken into consideration: Transcript of the IAD proceeding [IAD Transcript], Applicant’s Record [AR] at 676. I agree.

[25] The IAD is required to reach its own conclusion based on its appreciation of the evidence: *Khosa* at para 66. I do not accept the Respondent’s argument that the IAD did, in fact, consider the OPB’s findings. While the IAD referred to the OPB decision, this was in respect of the Applicant’s completion of a one-day workshop on safe driving: IAD Decision at para 24, CTR at

8. The IAD made no mention of the OPB's specific finding that the Applicant was a low risk of reoffending, nor of his LSI-OR rating.

[26] Furthermore, the Respondent's reliance on *Zhang v Canada (Citizenship and Immigration)*, 2020 FC 927 [*Zhang*] is misplaced. In that case, the IAD directly engaged with the expert psychological report tendered during sentencing, which supported the applicant's possibility for rehabilitation. The IAD ultimately found the report to be unreliable for several reasons, including its sole reliance on the applicant's self-reported information. Importantly, the IAD provided a clear rationale for rejecting the psychologist's conclusions: *Zhang* at paras 108, 115. In contrast, in this case, the IAD failed to even acknowledge the OPB's findings about the Applicant's very low risk to reoffend, including the results of the LSI-OR risk assessment.

[27] A decision-maker is not required to mention every piece of evidence or argument bearing on an issue, but the more significant the unmentioned evidence and submissions are, the more willing the reviewing court is to infer that an officer unreasonably failed to account it: *Vavilov* at paras 125–127.

[28] The OPB's determination on rehabilitation and the risk of reoffending, including the LSI-OR classification, was critical evidence with which the IAD should have expressly contended. It was highly relevant to the IAD's analysis and should not have been overlooked. I find that the IAD's failure to engage with this key evidence vitiates the decision.

(2) The IAD's assessment of the BIOC is unreasonable

[29] The BIOC is another *Ribic* factor for consideration. Indeed, paragraph 67(1)(c) and subsection 68(1) of the *IRPA* require the IAD to consider the BIOC “in light of all the circumstances of the case” [emphasis added]. The IAD failed to do so in this case.

[30] The IAD restricted its BIOC analysis to considering the impact and hardship of the Applicant's removal on his children if they were to remain in Canada with his wife: IAD Decision at paras 52–56, CTR at 15. However, both the Applicant and his wife testified that if he were to return to Pakistan, the family would go with him: IAD Transcript, AR at 594, 640, 643. This is because the Applicant's wife would be unable to raise their three boys on her own, based on the twin boys' special needs: IAD Transcript, AR at 646–647.

[31] The Applicant's wife testified about the significant hardship their children would experience if they had to live in Pakistan, due to both language barriers and educational needs. None of the children speak either Urdu or Punjabi. Further, the twin boys (who were 15 at the time of the IAD hearing) require education accommodations, including special laptops that assist them with reading. Additionally, the Applicant's wife testified that she feared her sons would be judged in Pakistan for their learning disabilities: IAD Transcript, AR at 643–645.

[32] The IAD member interjected during the Applicant's wife's testimony, stating that, while moving might be the parents' choice, their children were not subject to the removal order. The member further referred to the “hypothetical” nature of the children moving to Pakistan: IAD

Transcript, AR at 645–646. In response, the Applicant’s wife made clear that if her husband was removed to Pakistan, the family would “definitely” move too, because it would be difficult for her to raise the three boys without their father: IAD Transcript, AR at 646–647.

[33] In oral submissions before the IAD, Applicant’s then counsel reviewed the evidence of the hardship the children would face in moving to Pakistan, including the objective evidence that children with learning disabilities do not receive adequate support in Pakistan: IAD Transcript, AR at 677–678.

[34] In their decision, the IAD acknowledged the evidence about the hardship or challenges that the Applicant’s children would experience if they moved to Pakistan but determined that the BIOC assessment should instead focus on the impact of the Applicant’s removal on his children remaining in Canada:

[51] The Appellant’s counsel spent a considerable amount of time asking questions about what hardship or challenges the Appellant’s three minor children would face if they had to move to Pakistan with their father. I reminded the Appellant’s counsel that the children are not subject to a removal order, and it would be more appropriate to question the Appellant on how the Appellant’s removal may affect the best interests of his Canadian citizen children. I will focus my assessment of the best interests of the children, including any hardship they may suffer, as related to their father’s potential removal from Canada.

IAD Decision at para 51, CTR at 14.

[35] The IAD’s failure to consider and assess the Applicant’s evidence in this regard is another error that renders the decision unreasonable. In considering whether to grant H&C relief, a decision-maker must assess an individual’s particular circumstances: *Kennedie v Canada*

(*Citizenship and Immigration*), 2024 FC 1262 at para 17; *Zhou v Canada (Citizenship and Immigration)*, 2024 FC 24 at paras 16–17. As the Supreme Court emphasized, decision-makers must be “alert, alive and sensitive” to the BIOC, examining those interests “‘with a great deal of attention’ in light of all the evidence”: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 38–39.

[36] Furthermore, a BIOC analysis requires an assessment of the benefit to the child of the non-removal of the parent from Canada, in conjunction with an assessment of the hardship the child would face if their parent was removed or if the child was to accompany the removed parent: *Canada (Minister of Citizenship and Immigration) v Hawthorne*, 2002 FCA 475 at para 4; *Liu v Canada (Citizenship and Immigration)*, 2019 FC 184 at para 40; *Garraway v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 286 at para 19; *Joseph v Canada (Citizenship and Immigration)*, 2013 FC 993 at para 19; *Miller v Canada (Citizenship and Immigration)*, 2012 FC 1173 at para 24.

[37] The Respondent argues that the IAD reasonably focused on the prospect of family separation because the scenario of the children accompanying the Applicant to Pakistan was “hypothetical”: Respondent’s Further Memorandum of Argument at para 42. I disagree. As set out in paragraphs 30–32 above, this is not a hypothetical scenario. Rather, the evidence is that the Applicant’s children would accompany him to Pakistan, should he be removed. In the circumstances, the IAD should have contended with this evidence and assessed the hardship of the children moving to Pakistan. Indeed, the IAD has taken this approach in other cases: *Molla* at paras 19, 37.

[38] I recognize that the IAD did conclude that the BIOC was a “positive consideration” in the Applicant’s appeal: IAD Decision at paras 6, 56, 62, CTR at 4, 15, 17. This said, had the IAD engaged with the Applicant’s evidence about the hardship of the children moving to Pakistan, it may have ultimately reached a different conclusion. This is particularly relevant here given the IAD’s finding that the BIOC (as assessed) did not “outweigh” the continued risk to public safety posed by the Applicant (as assessed): IAD Decision at para 6, CTR at 3–4. As I have determined that the IAD’s assessment on both grounds is unreasonable, on redetermination, the weighing of these considerations may differ.

[39] For these reasons, the IAD’s assessment of the BIOC is unreasonable and the decision must be set aside.

V. Conclusion

[40] Based on the foregoing, there were material flaws in the IAD’s reasoning process in assessing two of the *Ribic* factors that warrant setting aside the decision. The application is granted, and the matter is remitted to the IAD for redetermination.

[41] The parties did not propose any questions for certification, and I agree that none arise.

JUDGMENT in IMM-2177-25

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted.
2. The Immigration Appeal Division’s decision dated January 13, 2025, is set aside and the matter is remitted for redetermination.
3. There is no certified question.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: YASIR BAIG v THE MINISTER OF CITIZENSHIP
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