Federal Court  Cour fédérale

Date: 20260323

Docket: IMM-7926-24

Citation: 2026 FC 370

Ottawa, Ontario, March 23, 2026

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

OLEG RUSAKOV

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED REASONS FOR JUDGMENT

[1] By a Judgment issued on January 20, 2026, the within application for judicial review was dismissed, with Reasons to follow. These are the Reasons.

[2] Mr. Oleg Rusakov (the “Applicant”) sought judicial review of a decision of the Immigration and Refugee Board, Immigration Appeal Division (the “IAD”), dismissing his appeal from the denial of a sponsorship application made in respect of his spouse, Mr. Slava Ivanov (the “Spouse”). The decision of the IAD was made on April 12, 2024.

[3] The following facts are drawn from the Certified Tribunal Record (the “CTR”) and the affidavit filed by the Applicant in support of this proceeding. This affidavit was sworn on May 28, 2024, and refers to a number of exhibits that are attached.

[4] The CTR, for some reason, does not contain extensive materials or the Global Case Management System (“GCMS”) notes relating to prior applications relative to the Applicant and the Spouse.

[5] Before the IAD, the Applicant was the “appellant” and Mr. Ivanov was the “applicant.”

[6] The Applicant is a Canadian citizen. The Spouse applied for a Temporary Visitor’s visa on March 8, 2020, and was refused on the grounds that he had made a misrepresentation in that visa application when he failed to disclose an earlier refusal of a visa to enter the United States. On July 30, 2020, the officer made a finding of misrepresentation pursuant to paragraph 40(1)(a) of the I*mmigration and Refugee Protection Act*, S.C. 2001, c 27 (the “Act”).

[7] The Applicant appealed to the IAD.

[8] The IAD referred to the decisions in *Sedki v. Canada (Citizenship and Immigration),* [2022], 2 F.C.R .725 and *Gill v. Canada (Citizenship and Immigration),* 72 Imm L.R. (4th) 203. It concluded upon the basis of these authorities that where a foreign national who has been found inadmissible pursuant to section 40 applies for permanent residence, the IAD lacks jurisdiction to hear an appeal unless the permanent residence application was accompanied by an application for consideration of Humanitarian and Compassionate ("H and C") factors, pursuant to subsection 25 (1) of the Act.

[9] The IAD noted that in *Gill, supra* the determinative issue was the bar in subsection 40(3) against seeking permanent residence for 5 years after a finding of misrepresentation had been made. The IAD, in its decision of February 25, 2022, found that since there was no H and C application, it lacked jurisdiction to hear the Applicant's appeal and dismissed the appeal.

[10] The Spouse submitted another application for permanent residence, this time asking for the exercise of discretion on H and C grounds.

[11] This application was refused on November 9, 2023, on the basis that the exercise of discretion on H and C grounds was not justified:

> Having considered your application and request for approval on humanitarian and compassionate grounds, I am not satisfied that it would be justified by humanitarian or compassionate considerations to grant relief to you and exempt you from any applicable criteria or obligation of the Act. I am not satisfied that sufficient grounds exist to grant relief in your case.

[12] The Applicant appealed to the IAD by a notice of appeal dated November 14, 2023.

[13] The issue of jurisdiction was raised early by the IAD. The CTR contains a number of letters and emails between Counsel for the Applicant and the hearings officer of the Canada Border Services Agency (the "CBSA") on the issue.

[14] Both Counsel for the Applicant and the representative of the CBSA advanced the position that, pursuant to the decisions in *Sedki, supra* and *Makkar v. Canada (Citizenship and Immigration)*, 93 Imm. L.R. (4th) 309, the IAD had jurisdiction to hear the appeal since the permanent residence application was accompanied by an H and C application.

[15] The IAD invited submissions on the issue, up to January 12, ~~2023~~ 2024.

[16] In a decision dated April 12, 2024, the IAD dismissed the appeal on the grounds that it lacked jurisdiction to hear it.

[17] By submissions dated April 17, 2024, the Applicant sought reconsideration of the decision of the IAD.

[18] By a decision dated June 3, 2024, the IAD dismissed the request for reconsideration on the grounds that the Applicant had failed to show a breach of natural justice relative to the decision of April 12, 2024.

[19] The Applicant filed his application for judicial review in this proceeding on April 30, 2024.

[20] The Applicant now argues that the IAD erred in failing to follow and apply applicable jurisprudence, that is the decisions in *Sedki, supra* and *Makkar, supra*. He submits that the decision is unreasonable and should be set aside.

[21] The Minister of Citizenship and Immigration (the "Respondent") argues that the IAD reasonably addressed the issue of its jurisdiction and reasonably distinguished the jurisprudence.

[22] Following the hearing of the application for judicial review on July 22,2025, the parties were given the opportunity to address the recent decision of the Supreme Court of Canada in *Pepa v. Canada (Citizenship and Immigration),* 504 D.L.R (4th).

[23] Further submissions were filed by the Applicant on November 7, 2025, and by the Respondent on November 17, 2025.

[24] The Applicant submits that the decision in *Pepa, supra* supports his reliance on the decisions in *Sedki, supra* and *Makkar, supra*.

[25] The Applicant argues that the IAD made two fundamental errors in finding that it lacked jurisdiction to hear his appeal. He submits that contrary to the teaching in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653, the decision of the IAD lacks a rational reasoning process, and second, it lacks justification having regard to the legal and factual constraints at play.

[26] The Applicant contends that there are not two “lines of decisions” in the Federal Court but two “lines of fact” and that where an application for permanent residence is made by a member of the family class, that is accompanied by an H and C application, the IAD has the jurisdiction to hear an appeal from refusal of the application.

[27] The Respondent submits that the decision in *Pepa, supra* supports the decision of the IAD in this case, even though a different provision of the Act is involved.

[28] In *Pepa, supra*, the Supreme Court of Canada considered subsection 63(2) of the Act and the present case involves subsection 63(1). The Respondent argues that in its decision, the IAD did not commit the errors identified in *Pepa, supra* in interpreting its jurisdiction.

[29] The Respondent submits that the IAD reasonably considered the two lines of jurisprudence and reasonably distinguished between them. It rationally explained why it preferred the reasoning in *Gill, supra* and *Adeosun v. Canada (Minister of Citizenship and Immigration)*, [2021] F.C.J. No. 1779, over that in the *Sedki, supra* and *Makkar, supra*.

[30] The Respondent argues that the IAD clearly and reasonably interpreted subsection 40(3), relative to subsection 63(1), in concluding that it did not have jurisdiction to hear the Appellant’s appeal.

[31] Following the decision in *Vavilov, supra*, the decision of the IAD is reviewable on the standard of reasonableness.

[32] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov, supra*, at paragraph 99.

[33] The IAD directly addressed the decisions in *Sedki, supra* and *Makkar, supra*. It acknowledged that questions were certified by the Court in *Sedki, supra* and an appeal was undertaken. However, the Federal Court of Appeal dismissed the appeal as moot; see *Canada (Citizenship and Immigration) v. Sedki*, 2022 FCA 179.

[34] The issue arising on this application is the jurisdiction of the IAD to entertain the Applicant's appeal. This issue involves the interpretation of subsection 63(1) of the Act which provides as follows:

Right to appeal — visa refusal of family class	**Droit d'appel : visa**
63 (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	**63 (1)** Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

[35] The IAD determined that it lacked jurisdiction to hear the appeal due to a misrepresentation finding that had been made pursuant to subsection 40(3) of the Act in respect of the Applicant's spouse. Subsection 40(3) provides as follows:

Inadmissible	**Interdiction de territoire**
(3) A foreign national who is inadmissible under this section may not apply for permanent resident status during the period referred to in paragraph (2)(a).	**(3)** L'étranger interdit de territoire au titre du présent article ne peut, pendant la période visée à l'alinéa (2)a), présenter de demande pour obtenir le statut de résident permanent.

[36] In its recent decision in *Pepa, supra*, the Supreme Court of Canada provided guidance upon the preferred approach to statutory interpretation by an administrative decision maker, under the reasonableness standard of review that was addressed by that Court in *Vavilov, supra*.

[37] First, the exercise of statutory interpretation is to be informed by the modern principles of statutory interpretation. At paragraph 87 of its reasons in *Pepa, supra*, the Supreme Court referred to the decision in *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27.

[38] In that decision, the Supreme Court of Canada said the following at paragraphs 21 and 22:

> 21 Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, Statutory Interpretation (1997); Ruth Sullivan, Driedger on the Construction of Statutes (3rd ed. 1994) (hereinafter "Construction of Statutes"); Pierre-André Côté, The Interpretation of Legislation in Canada (2nd ed. 1991)), Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their

> grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Recent cases which have cited the above passage with approval include: R. v. Hydro-Québec, 1997 CanLII 318 (SCC) , [1997] 3 S.C.R. 213 **; Royal Bank of Canada v. Sparrow Electric Corp., 1997 CanLII 377 (SCC), [1997] 1 S.C.R. 411; Verdun v. Toronto-Dominion Bank, 1996 CanLII 186 (SCC), [1996] 3 S.C.R. 550; Friesen v. Canada, 1995 CanLII 62 (SCC), [1995] 3 S.C.R. 103.
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> 22 I also rely upon s. 10 of the Interpretation Act, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

[39] In *Pepa, supra*, the Supreme Court recognized that the IAD, as an administrative decision maker, held "the interpretive upper hand", relying on and referring to its decision in *Canada Post Corp. v. Canadian Union of Postal Workers*, [2019] 4 S.C.R. 900 at paragraph 40.

[40] The IAD addressed the issue of its jurisdiction because it was faced with two conflicting lines of jurisprudence on that issue, as outlined above.

[41] In accordance with the instructions from *Pepa, supra*, a decision that was issued after the decision now under review, the IAD distinguished between the two conflicting lines of authority. It reasonably identified paragraphs 112 and 113 in *Sedki, supra* as *obiter*. It reasonably distinguished the decision in *Makkar, supra* on the basis that the Court in that case had not considered the decision in *Adeosun, supra*, a decision that was delivered three days after the decision in *Sedki, supra*.

[42] At paragraph 24 of its reasons, the IAD said the following:

> As noted above, although decided after *Adeosun*, the Court in *Makkar* made no reference to that decision. In *Adeosun*, the Honourable Mr. Justice Little discussed the IAD's appeal jurisdiction under section 63(1) of the IRPA in light of sections 40(3) and 64(3) of the IRPA as follows:
>
> [56] The parties made submissions about the impact of subsections 15(1), 40(3) and subsection 64(3) of the IRPA on the appeal jurisdiction of the IAD in IRPA subsection 63(1). It is not this Court's role to determine whether the IAD was correct in its interpretation or to provide the correct interpretation. The task is to determine whether the IAD's decision was reasonable, applying the standards established in Canada Post and the other appellate cases that bind this Court.
>
> [57] The IAD found that the officer was not authorized to examine the application for permanent residence under subsection 15(1) because the application was not made in accordance with subsection 40(3). In effect, the IAD held that there was no right to appeal from the refusal of an application for permanent residence that was barred by statute from being made in the first place, and that to recognize such appeal jurisdiction would subvert the intentions of Parliament in enacting subsection 40(3).
>
> [58] In my view, it was open to the IAD to interpret sections 15, 40 and 63 as it did. The IAD's reasons demonstrate that it was alive to and analyzed its jurisdiction in subsection 63(1) with the language in that provision, the language and broader context of other provisions in the IRPA, and Parliament's purpose in enacting subsection 40(3). Its approach and interpretation of how the provisions work together was not unreasonable. I note that the IAD came to the same conclusion as Simpson J. did in Gill a few weeks later.

[43] The IAD clearly explained why it preferred the reasoning in *Adeosun, supra* over that in *Sedki, supra* and *Makkar, supra*.

[44] The treatment of these authorities complies with the direction given by the Supreme Court in *Pepa, supra* at paragraphs 66 and 68.

[45] The IAD also clearly, and reasonably, said why it preferred the reasoning in *Gill, supra,* over the reasoning in *Sedki, supra* and *Makkar, supra*. It said that the reasoning in *Gill, supra* is consistent with Parliament's intention to impose a five-year bar against an application for permanent residence, following the finding of a material misrepresentation.

[46] In my opinion, the manner in which the IAD dealt with these decisions is "reasonable", as discussed in *Vavilov, supra* and *Pepa, supra*.

[47] In interpreting the scope of its jurisdiction to hear an appeal pursuant to subsection 63(1) of the Act, that is on behalf of a member of the family class, the IAD considered the legislative history of subsection 40(3). It referred to the introduction of this provision in 2014, pursuant to the *Faster Removal of Foreign Criminals Act*, S.C. 2013, c. 16, in order to impose a longer period of inadmissibility in respect of misrepresentation. In 2002, upon the implementation of the Act, the period of inadmissibility was two years.

[48] The IAD also referred to the Regulatory Impact Analysis Statement (the "RIAS") that accompanied the changes made to the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations") in 2014. Recourse to a RIAS is a recognized tool of statutory interpretation; see *Rizzo, supra* at paragraph 31.

[49] The IAD applied a "contextual" approach to its interpretation of subsection 63(1). The basis of the appeal before it was the refusal of an H and C application by an officer, made on behalf of the Spouse.

[50] The IAD acknowledged the H and C discretion that it enjoys pursuant to paragraph 67(1)(c) of the Act which provides as follows:

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 :
the decision appealed is wrong in law or fact or mixed law and fact;	a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;
a principle of natural justice has not been observed; or	b) il y a eu manquement à un principe de justice naturelle;
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.

[51] The IAD distinguished between "this" H and C jurisdiction and that vested in the Respondent pursuant to subsection 25(1) of the Act which provides as follows:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35, 35.1 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35, 35.1 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any	25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35, 35.1 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations

applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

[52] In my opinion, the distinction is well-founded.

[53] The IAD is a statutory board, able to operate only within the limits of the jurisdiction granted to it.

[54] The Minister, on the other hand, enjoys full discretion in the administration of the Act, pursuant to subsection 25.

[55] In my opinion, the IAD reasonably drew a distinction between its H and C jurisdiction and that enjoyed by the Minister.

[56] The IAD reasonably noted that it does not enjoy review powers in respect of any H and C decision made by the Minister. That option is available only before the Federal Court, pursuant to section 72 of the Act.

[57] The IAD, in considering its jurisdiction to entertain the Applicant's appeal, showed an awareness of parliamentary ~~submission~~ intention when it found that the bar in subsection 40(3) cannot be side-stepped by the presentation of an H and C application.

[58] In enacting subsection 40(3) in 2014, Parliament increased the consequences of a material misrepresentation. It was within its power to do so.

[59] The IAD acknowledged the intention of Parliament.

[60] In the result, I am satisfied that the decision of the IAD meets the applicable standard of review, that is “reasonableness”. The decision shows none of the errors addressed by the decision of the Supreme Court in *Pepa, supra*.

[61] Accordingly, the application for judicial review was dismissed.

“E. Heneghan”
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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