Federal Court  Cour fédérale

Date: 20160922

Docket: IMM-439-16

Citation: 2016 FC 1082

Ottawa, Ontario, September 22, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

AIDA ACOSTA SEMANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant Mrs. Aida Acosta Semana is a citizen of the Philippines. In March 2004, she entered Canada as a live-in caregiver, without disclosing her marital status. When she renewed her work permit in 2006 and when she applied for permanent resident status a little later, she did not divulge the existence of her husband either. In August 2008, Mrs. Semana

applied to sponsor her husband to Canada, at which time she informed the Canadian immigration authorities about her marital status.

[2] Mrs. Semana was then found inadmissible for misrepresentation for "directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of [the] Act", pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. A report on inadmissibility for misrepresentation was prepared in March 2011 and further to an admissibility interview conducted in November 2011, the Minister immediately issued a removal order against Mrs. Semana.

[3] Mrs. Semana appealed to the Immigration Appeal Division [the IAD] of the Immigration and Refugee Board of Canada against the order for her removal. Mrs. Semana never challenged the legal validity of the removal order itself, but she argued that humanitarian and compassionate [H&C] considerations warranted a discretionary relief in her favour under paragraph 67(1)(c) of IRPA. Further to a long series of proceedings, the IAD dismissed Mrs. Semana's appeal in a decision issued in November 2015. The IAD concluded that, taking into account the best interests of the children [BIOC] affected by the decision, there were insufficient H&C considerations to grant discretionary relief in her case.

[4] Mrs. Semana now seeks judicial review of the IAD decision and contends that the tribunal's conclusions are unreasonable for three reasons. First, the IAD erred in its assessment of the BIOC factor; second, the IAD erred in its assessment of Mrs. Semana's establishment in

Canada; third, the IAD ignored evidence and made unreasonable findings with respect to the effect of Mrs. Semana's removal from Canada. Mrs. Semana asks this Court to quash the IAD decision and to order another panel of the IAD to reconsider her claim for discretionary relief.

[5] For the reasons that follow, I must dismiss Mrs. Semana's application for judicial review. Having considered the tribunal's findings, the evidence before the IAD and the applicable law, I find no basis for overturning the IAD decision, whether on the treatment of the BIOC element, on Mrs. Semana's establishment in Canada or on the impact of Mrs. Semana's removal. The decision thoroughly reviewed the evidence on each of those fronts and the IAD's conclusions fall well within the range of possible, acceptable outcomes based on the facts and the law.

II. Background

A. *The IAD decision*

[6] In its decision, the IAD first stated the different factors to be considered in exercising its discretion in appeal of removal orders involving misrepresentation. These factors were identified as: 1) the seriousness of the misrepresentation; 2) the remorsefulness of the appellant; 3) the length of time spent in Canada and the degree of establishment; 4) the impact the removal would cause on the family; and 5) the degree of hardship that would be caused to the appellant by removal (*Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 [*Wang*] at para 11).

[7] On the seriousness of the misrepresentation, the IAD found that Mrs. Semana lied numerous times to the Canadian immigration authorities: when she first applied for a work permit to enter in Canada, when she renewed her work permit, when she applied for permanent residence and at the confirmation of her landing. She had also previously misrepresented her marital status to the Hong Kong immigration authorities when she worked in that country as a caregiver. The IAD noted that Mrs. Semana does not have any language barrier as she understands, speaks and writes English, and that she is highly educated. As a result, the IAD found that her "repeated misrepresentation of her marital status to immigration authorities" was "deliberate, advertent and material, in total disregard to Canadian immigration laws or her obligation to be truthful and honest throughout this process". Her misrepresentation was found to be "at or near the top of the range in terms of seriousness of misrepresentation".

[8] Turning to remorse, the IAD found that even though Mrs. Semana said she was sorry for her lies, she continued to blame others, such as her immigration consultant, even if the evidence pointed otherwise. The IAD considered her failure to accept the responsibility for her misrepresentation to be an aggravating factor, as it is not indicative of remorse.

[9] On the length of time Mrs. Semana spent in Canada and on her establishment in the country, the IAD acknowledged that Mrs. Semana had some degree of establishment and that this was a positive factor. However, the IAD noted that all the years she spent in Canada were under illegal circumstances and that time spent in Canada without legal status should not be rewarded when analyzing H&C considerations.

[10] With respect to the impact of the removal on her family, the IAD observed that Mrs. Semana has no children of her own, and that her siblings live in the Philippines. Even though Mrs. Semana submitted that she financially supports her siblings, no family member was called to testify on the adverse effect likely to result from Mrs. Semana's removal. The IAD further noted that Mrs. Semana also has a cousin with two children who live in Canada, and that the two children have "special needs". The IAD discussed the BIOC in their respect and mentioned that Mrs. Semana babysits these developmentally-challenged children of her cousin for a few hours once every two weeks. The IAD found that there was no compelling evidence that Mrs. Semana had "special training or qualifications" to deal with special needs children. In addition, the IAD expressed the view that Mrs. Semana's cousin could obtain the assistance provided by Mrs. Semana through a paid professional help. Overall, the IAD concluded that Mrs. Semana had not demonstrated that family members would be affected negatively by her removal.

[11] As to the hardship caused by her removal, the IAD concluded that there would be no reason why Mrs. Semana would not be able to work overseas and to continue to help her siblings who stay in Philippines, as she has done since 2000 not only from Canada but also from Hong Kong. Even though the IAD recognized a certain level of hardship for readjusting and re-establishing herself, this was not considered enough to rise to the level where special discretionary relief should be granted.

[12] After assessing all these factors, the IAD weighed them. The tribunal reiterated that "the misrepresentation in this case is at or near the most serious end of the spectrum and [that] the humanitarian and compassionate grounds required to warrant special relief ought to be correspondingly high". The IAD acknowledged as positive factors supporting Mrs. Semana's case the degree of her establishment and the fact that she would suffer some hardship (though not significant) if she is removed. Conversely, on the negative front, the IAD found that no family members would appear to be negatively impacted by Mrs. Semana's removal. The IAD further acknowledged Mrs. Semana's help with her cousin's children, but noted that, as indicated recently by the Federal Court, "while the best interests of the child factor must be given substantial weight, it is not determinative in the context of an H&C decision" (*Wang v Canada (Citizenship and Immigration)*, 2014 FC 304 at para 28).

[13] The IAD found that, overall, there were insufficient H&C considerations (including BIOC) to counterbalance "the seriousness of the misrepresentation, the total disregard for Canadian immigration laws, the lack of candour and remorse on the part of [Mrs. Semana], and the need for credibility in the enforcement of the Act". It thus dismissed Mrs. Semana's appeal.

B. ***H&C considerations***

[14] Mrs. Semana's application for special relief due to H&C considerations under paragraph 67(1)(c) of IRPA must also be put in the proper context.

[15] It has been consistently held that an H&C exemption is an exceptional and discretionary remedy (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 [*Legault*] at para 15; *Adams v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1193 [*Adams*] at para 30). This relief sits outside the normal immigration classes or refugee protection streams by which foreign nationals can come to Canada permanently, and it acts as a sort of safety valve available for exceptional cases. Such an exemption is not an "alternative immigration stream or an appeal mechanism" for failed asylum or permanent residence claimants (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 [*Kanthasamy FCA*] at para 40).

[16] Furthermore, it is well established that the onus of establishing that an H&C exemption is warranted lies with the applicant (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 [*Kisana*] at para 45; *Adams* at para 29). Lack of evidence or omission to adduce relevant information in support of an H&C application is at the peril of the applicant (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 [*Owusu*] at paras 5 and 8; *Nicayenzi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 595 at para 16).

[17] While these precedents were developed in the context of the H&C exemption set out in section 25 of IRPA, the principles they have established equally apply to H&C considerations raised on appeals under paragraph 67(1)(c) of IRPA as both provisions use similar language, namely the existence of sufficient "[H&C] considerations", "taking into account the best interests of a child directly affected".

C. *Standard of review*

[18] Findings on the sufficiency of H&C grounds involve the exercise of discretion and the application of a specialized legislation to particular facts, for which the applicable standard of review is reasonableness. In *Khosa*, the Supreme Court indeed specifically determined that the standard of review of the IAD's decisions based on H&C considerations and the exercise of its equitable discretion under paragraph 67(1)(c) of IRPA is reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 57-59).

[19] When reviewing a decision on the standard of reasonableness, the analysis is concerned with the existence of justification, transparency and intelligibility within the decision-making process, and the decision-maker's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47). In conducting a reasonableness review of factual findings, it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanthasamy FCA* at para 99). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at para 17).

III. Analysis

A. *The IAD did make a proper analysis of the BIOC factor*

[20] Mrs. Semana first argues that the IAD did not properly assess the BIOC factor, as it neglected to follow the three-step process for considering the children's best interests, as set out by this Court in *Williams v Canada (Citizenship and Immigration)*, 2012 FC 166 [*Williams*]. In that decision, the Court stated that in assessing the BIOC, "an Officer must establish first what is in the child's best interest, second the degree to which the child's interests are compromised by one potential decision over another, and then finally, in light of the foregoing assessment determine the weight that this factor should play in the ultimate balancing of positive and negative factors assessed in the application" (*Williams* at para 63). Mrs. Semana claims that the IAD needed to first explicitly establish what are the best interests of her cousin's children and second, to determine the degree to which these interests are compromised by her removal.

[21] Mrs. Semana further submits that the IAD did not articulate how the interests of her cousin's children would be affected by Mrs. Semana's removal. Instead of assessing the children's best interests, the IAD analyzed the level of care that was adequate for them, finding that a new caregiver would be as capable as Mrs. Semana. Mrs. Semana pleads that this is not the correct test and that the children's basic needs are not the same as the children's best interests. Further, she contends that this conclusion is based on the premise that Mrs. Semana's cousin (the mother's children) would be able to pay a private help with specialized training, which is speculative. Mrs. Semana states that, by reducing the relationship between Mrs. Semana and the children to a "service", the IAD was insensitive to her cousin's children.

[22] I do not agree with Mrs. Semana's submissions.

(1) The BIOC test

[23] There was simply no obligation for the IAD to follow the approach developed in *Williams*, and the IAD decision cannot be unreasonable because it did not do so. The *Williams* decision has often been rejected as creating a formal test for BIOC assessments, and it has been found inconsistent with the jurisprudence from the Supreme Court and the Federal Court of Appeal (*Sanchez v Canada (Citizenship and Immigration)*, 2015 FC 1295 at para 16; *Onowu v Canada (Citizenship and Immigration)*, 2015 FC 64 [*Onowu*] at para 44). At best, the *Williams* case can provide useful guidelines which can be followed by decision-makers, but the IAD was certainly not required to apply the precise analytical method elaborated in that precedent (*Webb v Canada (Citizenship and Immigration)*, 2012 FC 1060 [*Webb*] at para 13).

[24] The BIOC test to be followed by the IAD has been developed and enunciated by the Supreme Court in several cases, culminating in its recent decision in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy SCC*]. This test requires the IAD to be "alert, alive and sensitive" to the best interests of the children. Where a child's interests are minimized "in a manner inconsistent with Canada's humanitarian and compassionate tradition and the Minister's guidelines, the decision will be unreasonable" (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at para 75). Under that test, "[t]hose interests must be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence" (*Kanthasamy SCC* at para 39; *Legault* at paras 12 and 31; *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 [*Hawthorne*] at para 32).

Furthermore, the analysis needs to take into account the "child's level of development", as it is necessary to be "responsive to each child's particular age, capacity, needs and maturity" (*Kanthasamy SCC* at para 35).

[25] However, no specific formula or rigid test is prescribed or required for a BIOC analysis, or to demonstrate that the IAD or an immigration officer has been "alert, alive and sensitive" to the BIOC, as required by *Baker* and its progeny (*Onowu* at paras 44-46; *Webb* at para 13). There is no "magic formula to be used by immigration officers in the exercise of their discretion" (*Hawthorne* at para 7). In other words, form should not be elevated over substance (*Taylor v Canada (Minister of Citizenship and Immigration)*, 2016 FC 21 at para 12*Webb* at para 11).

[26] I pause to underline that, in *Kanthasamy*, the Supreme Court did refer to certain passages of *Williams*, but refrained from adopting the three-step approach laid out in that decision (*Kanthasamy SCC* at paras 39 and 59). The Supreme Court did not even cite the specific paragraph of *Williams* (i.e., para 63) setting out the three-pronged method advocated in that decision.

[27] Ultimately, the correct legal test is whether the IAD was "alert, alive and sensitive" to the best interests of the child in conducting a BIOC analysis (*Baker* at para 75; *Hawthorne* at para 10; *Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165 at para 8). In order to demonstrate that the IAD is alert, alive, and sensitive to the BIOC, it is of course necessary for its analysis to address the "unique and personal consequences" that removal from Canada would have for the children affected by the decision (*Tisson v Canada (Minister of*

Citizenship and Immigration), 2015 FC 944 at para 19; *Ali v Canada (Minister of Citizenship and Immigration)*, 2014 FC 469 at para 16).

[28] The law is also settled that a decision-maker conducting an H&C analysis must properly identify and define the BIOC factor and then balance it against the countervailing factors that might mitigate the adverse consequences of removal (*Legault* at para 12; *Kisana* at para 24; *Hawthorne* at para 5). The BIOC factor does not necessarily trump other factors for consideration in an H&C application. However, in order to fall within the range of reasonableness, the decision-maker must consider the children's best interests as "an important factor, give them substantial weight and be alert, alive and sensitive to them" (*Baker* at para 75). Stated differently, the presence of children does not call for a certain result (*Legault* at para 12; *Kisana* at para 72). The BIOC is but one factor to be weighed along with the others in assessing the merits of H&C exemptions.

[29] I am satisfied that in this case, the IAD decision amply demonstrates that the IAD conducted the proper analysis and that the IAD was alert, alive and sensitive to the best interests of the children of Mrs. Semana's cousin. The IAD looked specifically at the situation of the two children and did not fail to engage in the analysis. The IAD was aware of the situation and referred to the children's condition at various places in its decision (at paragraphs 37, 42, 43 and 46). It did identify and refer to the special needs of the children based on what had been provided in terms of evidence.

[30] The IAD applied the correct legal test, and I am convinced that its BIOC assessment falls within the range of reasonable outcomes. True, the IAD could perhaps have elaborated further on the needs of the children affected. But I find that the limited importance given to this BIOC factor by the IAD reasonably echoed both the limited involvement of Mrs. Semana in providing care to the two children directly affected by her removal as well as the paucity of evidence provided by Mrs. Semana on this front. In my view, the nature of Mrs. Semana's involvement with her cousin's children and the sparse evidence offered on the BIOC elements were two key features of this case.

(2) Mrs. Semana's involvement with the children

[31] As the Supreme Court stated in *Kanthasamy*, "[t]he 'best interests' principle is 'highly contextual' because of the 'multitude of factors that may impinge on the child's best interest'" (*Kanthasamy SCC* at para 35). The decision-maker does not assess the best interests of a child in a vacuum (*Hawthorne* at para 5). One side of that coin relates to the needs of the child; the other side is the nature of the relationship with the applicant relying on the BIOC factor.

[32] Here, the main contextual and most striking element of Mrs. Semana's BIOC claim was her distant involvement with her cousin's two children, and this was indeed the first point addressed by the IAD at the beginning of its discussion of the BIOC factor: Mrs. Semana babysits the two developmentally-challenged children of her cousin *for a few hours once every two weeks*. This is certainly unusual and somehow atypical compared to the main stream of cases involving a BIOC factor, where the applicant most often is either the child directly affected or

one of the primary caregivers for the child, with a daily or at least close and continuous relationship with the child.

[33] Mrs. Semana was not a primary caregiver for the two children of her cousin, let alone *the* primary caregiver. Far from it. What singled out Mrs. Semana's association with her cousin's two children was rather the lack of proximity of her relationship and her narrow involvement with them.

[34] I acknowledge that, in the context of an H&C application, the relationship between the applicant and the children affected need not be one of parent and child. Stated otherwise, a blood or biological relationship is not a requirement. The BIOC factor has to be considered with respect to any child that can be "directly affected" by a decision. It is more the nature of the relationship and of the involvement, and the fact that an applicant provides an on-going, significant presence in the life of a child, that is paramount and relevant to the BIOC analysis (*Kwon v Canada (Citizenship and Immigration)*, 2012 FC 50 at para 14). A person who is not the biological parent, but acts as the primary caregiver of the child, can thus present convincing arguments under a BIOC analysis (*Enriquez v Canada (Citizenship and Immigration)*, 2007 FC 1002 at para 8). What counts and needs to be taken into consideration is the level of dependency between the child and the applicant claiming reliance on a BIOC factor in support of its H&C considerations.

[35] Conversely, the BIOC factor is not meant to be used to rescue a claim raising H&C considerations in cases where the proximity and the nature of a claimant's involvement in the life

of a child is at best distant, remote and marginal. I am not disputing the fact that Mrs. Semana's help was greatly appreciated by her cousin given the specific needs of the two children involved. But, it was certainly not unreasonable for the IAD, in a situation where the involvement of Mrs. Semana with the children "directly affected" boiled down to babysitting in her free time for a few hours every two weeks, not to afford great weight to the BIOC factor put forward by Mrs. Semana.

[36] The IAD was not satisfied that this was enough to show, on a balance of probabilities, that the BIOC required the presence of Mrs. Semana in Canada. I am persuaded that such a factual conclusion fits within the boundaries of reasonableness in the circumstances.

(3) The limited evidence provided on the BIOC factor

[37] Furthermore, the intensity and scope of a BIOC analysis by the IAD or an immigration officer will depend on the length and strength of the applicant's submissions and on the evidence adduced. In any given case, the interests of the children directly affected are examined "in light of all the evidence" (*Kanthasamy SCC* at para 39; *D'Aguiar-Juman v Canada (Minister of Citizenship and Immigration)*, 2016 FC 6 at para 9). An applicant has the burden of adducing proof of any claim on which the H&C application relies, and "if an applicant provides no evidence to support the claim, the officer may conclude that it is baseless" (*Owusu* at para 5). If the evidence is "too oblique, cursory and obscure", an officer does not have "to inquire further about the best interests of the children" (*Owusu* at para 9; *Kisana* at para 45).

[38] Contrary to the decisions cited by Mrs. Semana in support of her position (such as *Noka v Canada (Minister of Citizenship and Immigration)*, IMM-2770-12, December 17, 2012), there was a paucity of evidence provided by Mrs. Semana on the needs of her cousin's two children. While Mrs. Semana argues that the IAD failed to consider a number of elements, I note that limited evidence was provided to support her statements on the BIOC factor. As rightly pointed out by counsel for the Minister, the IAD decision was driven by the absence of objective and relevant evidence in support of the claims advanced by Mrs. Semana to justify an H&C relief.

[39] Indeed, whereas evidence indicated that her cousin's children needed consistency in their routine due to their special needs, Mrs. Semana was only involved with them once every other week. Similarly, Mrs. Semana did not provide evidence to the effect that she had training or qualifications to help children with special needs, even though it is recognized that she has a Personal Support Worker certification. Nor was there evidence that the time she spent every two weeks could not be filled by anyone else; in fact, there was even a suggestion by the mother that Mrs. Semana could be replaced by someone else.

[40] Evidence was also missing as to how the children are presently doing or the type of special needs they have, except for the mother's own testimony. There was no medical evidence, such as doctor or social worker reports, regarding the potential impact of Mrs. Semana's removal on the children. Similarly, while Mrs. Semana says that the IAD should have analyzed how the children might react to a new caregiver, she did not submit any evidence on this point. I would add that there was no mention of Mrs. Semana's relationship with her cousin's children as a mitigating H&C factor in the March 2011 report under subsection 44(1) of IRPA, nor in her initial representations on this report. In sum, the tribunal record did not contain the necessary

proof to show that the best interest of the children was to keep their relationship with Mrs. Semana. The onus was on Mrs. Semana, and she failed to present cogent evidence to demonstrate what was in the best interests of her cousin's two children. I am not persuaded that, in such circumstances, it was not open and reasonable for the IAD to give little weight to the BIOC factor raised by Mrs. Semana.

[41] The IAD reasons may not be as detailed and as flawless as Mrs. Semana would have hoped or liked them to be. But this is not a ground to justify the intervention of the Court. I emphasize that, despite the limited evidence on the BIOC factor, the IAD did not totally discard it in its analysis, and still took Mrs. Semana's bi-weekly babysitting into consideration in weighing the H&C factors. However, it concluded that it did not justify an exemption on H&C grounds in the specific circumstances of this case.

[42] There is no reviewable error in the IAD decision as I am satisfied that the decision and the record demonstrate that the IAD was alert, alive and sensitive to the best interests of the children of Mrs. Semana's cousin. The IAD's assessment had a reasonable basis and was within the range of possible, acceptable outcomes defensible on the facts and the law. I accept that the IAD could have been more expansive on this point, but its decision nonetheless remains sufficiently transparent, intelligible and appropriately justified. Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland Nurses* at paras 16-17). It is the case here.

B. ***The IAD properly assessed Mrs. Semana's establishment in Canada***

[43] As a second point, Mrs. Semana argues that the IAD also erred in the assessment of Mrs. Semana's establishment since arriving in Canada. Mrs. Semana claims that the IAD incorrectly concluded that the number of years she spent in Canada was under illegal circumstances and that she cannot be rewarded for this. Contrary to the situation in *De Melo Silva v Canada (Citizenship and Immigration)*, 2013 FC 941 [*De Melo Silva*] relied on by the IAD, says Mrs. Semana, this is not a case where the applicant remained without status in Canada for years. Mrs. Semana instead landed as a permanent resident, and therefore had a status.

[44] Mrs. Semana pleads that the "whole purpose of [humanitarian and compassionate considerations] is to deal with people who are without status for one reason or another" (*Benyk v Canada (Citizenship and Immigration)*, 2009 FC 950 at para 14). She adds that the IAD was unduly preoccupied with the question of whether Mrs. Semana was in Canada for reasons beyond her control and thus "failed to consider the grounds for an H&C exemption that were submitted to [it]" (*Strachn v Canada (Citizenship and Immigration)*, 2012 FC 984 [*Strachn*] at para 24).

[45] I disagree.

[46] I first observe that the IAD did expressly deal with Mrs. Semana's claims of establishment and was even satisfied that Mrs. Semana had some degree of establishment in Canada. Contrary to the assertions of Mrs. Semana, the evidence of her establishment in Canada

was not ignored and was clearly considered by the IAD. Not only did the IAD recognize that Mrs. Semana "has some degree of establishment in Canada", but it explicitly retained this as a positive factor in its assessment. The IAD even referred to it twice in its decision. The IAD was not blind to Mrs. Semana's establishment, explicitly acknowledged her evidence on this front and gave it some weight. However, this was weakened and clouded by her repeated misrepresentations and prolonged disregard for Canadian immigration laws.

[47] Mrs. Semana's argument on this second issue boils down to a disagreement pertaining to the weight assigned by the IAD to the evidence. It is not the role of this Court to re-examine the weight given by a decision-maker to the different factors it has to consider.

[48] Moreover, there is nothing unreasonable in the IAD's conclusion that establishment under illegal circumstances should not be rewarded. First, I agree with the Minister that Mrs. Semana's claim that she was not in Canada without status and had a permanent resident status for years is totally without merit. The proposition that she would be somewhat less guilty because she was successful in obtaining permanent residence using fraud is preposterous. Mrs. Semana managed to stay in Canada in circumstances totally within her control, as she remained in Canada through repeated lies and fraud. Second, it is trite law that persons ought not to benefit from their circumvention of immigration laws and their wanton duplicity in their immigration applications. This Court has often stated that "applicants cannot and should not be 'rewarded' for accumulating time in Canada, when in fact, they have no legal right to do so" (*Tartchinska v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 373 (FC) at para 22).

[49] As there is clear jurisprudence to that effect, the IAD simply followed an existing line of cases, and its decision was therefore well within the range of possible, acceptable outcomes. It cannot be faulted for having discarded Mrs. Semana's establishment in those circumstances. IRPA and the Canadian immigration regime are founded on the principle that whoever comes to Canada with the intention of settling must be of good faith, come with clean hands and comply to the letter with the requirements both in form and substance (*Legault* at para 19). There is clearly a public interest consideration at stake and the Canadian immigration authorities are at liberty to take that element into consideration in their decisions.

[50] The cases relied on by Mrs. Semana can easily be distinguished. Mrs. Semana was evidently not in a situation where her establishment was exemplary and exceptional (*Shafqat v Canada (Citizenship and Immigration)*, 2009 FC 1186). Nor was she in Canada for reasons beyond her control (*Strachn* at para 24; *Singh v Canada (Minister of Citizenship and Immigration)*, 2009 FC 11 at para 56). In fact, it is quite the opposite. Mrs. Semana was in Canada through her own lies and fraud. She had accumulated time in the country for almost 12 years because of circumstances well within her control and in fact totally created by her own devices. At all times, Mrs. Semana was here under illegal circumstances. She never stayed in Canada at a time where she was not under some form of misrepresentation, and there was never a moment where she was in this country under anything but a false pretense.

[51] In my view, the IAD rightly concluded that the years Mrs. Semana spent in Canada were under illegal circumstances and that she cannot be rewarded for this, using the *De Melo Silva* case (at para 8).

[52] Once again, under the reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, the decision will be reasonable. The simple fact that a flurry of cases supports the IAD approach on this second issue is sufficient to establish that the decision is reasonable.

C. *The IAD did not err in its assessment of the evidence regarding the effect of Mrs. Semana's removal*

[53] Finally, Mrs. Semana complains about the IAD's assessment of the evidence regarding the effect of her removal. Though this point was not addressed by counsel in their oral pleadings and the Court was informed at the hearing that Mrs. Semana has now been removed from Canada, I will briefly address it.

[54] Mrs. Semana argues that the IAD made unreasonable findings, in particular when stating that Mrs. Semana has not shown that family members would be adversely impacted by her removal, and when qualifying as irrelevant the fact that her employers appreciate her work. Mrs. Semana contends that evidence showed that Mrs. Semana sent money to help her family in the Philippines, and that the IAD did not need any further testimony as clear evidence supported that remittances were sent to Mrs. Semana's family. Mrs. Semana further pleads that the IAD wrongly concluded that there did not appear to be "any family member in Canada who would be negatively impacted by her removal". She claims that, as a result of this succession of inaccurate statements, the IAD decision is unreasonable.

[55] Again, I am not persuaded by Mrs. Semana's arguments.

[56] All of Mrs. Semana's immediate family live in the Philippines. Even if Mrs. Semana previously sent remittances in the Philippines, it was not unreasonable for the IAD to note the absence of recent evidence from her immediate family regarding the impact her removal would have. As the last remittance form dated from September 2013, it was open to the IAD to find that there was no evidence to the effect that her family would be affected by her removal. As for Mrs. Semana's employers, they are not family so it is unclear why Mrs. Semana would claim that they should be considered in the IAD's analysis.

[57] Similarly, I find nothing unreasonable in the IAD's statement that there was "no reason why she cannot continue to work overseas, as she previously did in Hong Kong, and continue to support herself and her family in the Philippines".

[58] Considerable deference is owed to the IAD's weighing of humanitarian and compassionate factors (*Wang v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 705 at para 29). Here, Mrs. Semana essentially disagrees with the weighing of these factors. However, as the IAD found that the best interests of the children, the number of years she spent in Canada and impact of her removal did not outweigh the seriousness of her misrepresentation and her lack of remorse, it is not to this Court to reassess the humanitarian and compassionate factors reviewed by the IAD.

[59] The reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). A judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54), and the Court should approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Ragupathy v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151 at para 15). Reviewing courts should also take care not to overly dissect or parse the reasons given by a decision-maker, and instead give respectful attention to such reasons.

[60] Under such approach, I do not find that the IAD erred in concluding that the evidence on the adverse effect of Mrs. Semana's removal was insufficient.

IV. Conclusion

[61] The IAD's dismissal of Mrs. Semana's appeal on H&C grounds represented a reasonable outcome based on the law and the evidence. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. I have no hesitation to conclude that this is the case here. Therefore, I must dismiss Mrs. Semana's application for judicial review.

[62] Neither party has proposed a question of general importance to certify. I agree there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs;

2. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Ms. Jennifer Luu	FOR THE APPLICANT
Mr. David Knapp	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk & Kingwell LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT