Federal Court  Cour fédérale

Date: 20170208

Docket: IMM-2855-16

Citation: 2017 FC 153

Ottawa, Ontario, February 8, 2017

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

MAROUN KARIM KAZZI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Maroun Karim Kazzi, is a citizen of Lebanon. He is disputing a decision issued in June 2016 by the Immigration Division [ID] of the Immigration and Refugee Board of Canada [the Decision], concluding that he was inadmissible to Canada on grounds of

misrepresentation, as provided in paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] In his application for judicial review, Mr. Kazzi is asking this Court to rescind the Decision and to order another panel of the ID to re-examine his file. Mr. Kazzi claims that the ID made three errors in deciding that he was inadmissible for misrepresentation. First, he submits that the ID erroneously considered that the amnesty granted to him in 1991 did not exempt him from having to disclose an earlier arrest and detention in Lebanon to the Canadian immigration authorities. Second, he pleads that the ID misinterpreted the relevant provision of the IRPA in concluding that, in the circumstances, his misrepresentation could induce an error in the administration of the legislation. Third, Mr. Kazzi contends that the Canadian authorities acted unfairly towards him in the treatment of his file.

[3] Mr. Kazzi's application raises the following issues: 1) does an amnesty granted in 1991 mean that Mr. Kazzi did not have to disclose his previous arrest and detention to the Canadian immigration authorities?; 2) did the ID commit any error in assessing the impact of Mr. Kazzi's misrepresentation on the application of paragraph 40(1)(a) of the IRPA?; 3) have the Canadian authorities acted unfairly towards Mr. Kazzi?.

[4] For the following reasons, Mr. Kazzi's application for judicial review must be dismissed. Having examined the evidence available to the ID and the applicable legislation, I see nothing that allows me to set aside the Decision and I cannot identify any error in the ID's analysis and reasons. The ID considered the evidence, its conclusions are justifiable based on the facts and the

law, and they clearly fall within the range of possible, acceptable outcomes in the circumstances. Furthermore, Mr. Kazzi's application for judicial review does not raise any issues of procedural fairness. There are therefore no grounds to justify this Court's intervention.

II. Background

A. *The factual context*

[5] Mr. Kazzi is a Lebanese national. He arrived in Canada in December 1999, and claimed refugee status. His initial claim was denied by the Refugee Protection Division [RPD] in July 2000. In April 2001, this Court quashed the decision as the parties agreed to return the matter to a different panel. In November 2001, Mr. Kazzi's claim was again denied by the RPD, as it found that Mr. Kazzi was not credible with respect to his alleged activities within the Lebanese Forces. Mr. Kazzi's application for leave and judicial review of the negative RPD decision was denied in April 2002.

[6] Mr. Kazzi then filed a Pre-Removal Risk Assessment [PRRA], which was denied by the Canadian immigration authorities in October 2002. The application for leave and judicial review of that decision was also denied in May 2003. In 2002 and 2003, Mr. Kazzi filed applications for permanent residence based on humanitarian and compassionate [H&C] considerations. They remain pending.

[7] In July 2009, the Canadian immigration authorities received information from Interpol indicating that Mr. Kazzi had been arrested and detained for 2 to 3 weeks in Lebanon in February

1989, after having allegedly taken part in an armed attack against Lebanese army soldiers. However, in August 1991, an amnesty of all political crimes was voted in Lebanon, and all charges against Mr. Kazzi were officially dropped further to a decision of the Military Tribunal of Beyrouth in 2002. Therefore, Mr. Kazzi has never been found guilty of any offence.

[8] When Mr. Kazzi arrived at the port of entry in Canada in 1999, he answered "No" to the question "Avez-vous été incarcéré dans ce pays?" ([TRANSLATION] "Have you ever been incarcerated in that country?"). In 2002 and 2003, when he applied for permanent residence from within Canada for H&C considerations, he also answered "No" to the question "Déjà été détenu(e) ou incarcéré(e)?" ([TRANSLATION] "Previously detained or incarcerated?"). In 2008, he again answered in the negative when he was asked if he has been accused or found guilty of a crime or any other infraction in his country. During an interview with the Canada Border Services Agency [CBSA] in November 2011, Mr. Kazzi was asked questions about his 1989 arrest, and he then indicated that he had not been arrested as he could have left at any time and that he could not recall whether his fingerprints had been taken.

[9] A CBSA officer sent letters to Mr. Kazzi in April 2011 and August 2012, explaining to him that because he was a member of the Lebanese Forces, she had the intention to issue a report of inadmissibility on security grounds. Mr. Kazzi then asked for full disclosure of all the documents and elements that would make the CBSA think that the Lebanese Forces engaged in terrorism. In a September 2012 letter, the CBSA explained to Mr. Kazzi that he could make submissions and present materials in this regard, but that no documents would be issued to him before the admissibility hearing.

[10] An inadmissibility report pursuant to subsection 44(1) of the IRPA was issued in September 2015 with respect to Mr. Kazzi, not on security grounds but on the basis of misrepresentation under paragraph 40(1)(a). After the admissibility hearing, the ID made a removal order against Mr. Kazzi in June 2016.

B. *The Decision*

[11] The ID started its Decision by reiterating that the onus was on the Minister to prove, on a balance of probabilities, that Mr. Kazzi was inadmissible for misrepresentation pursuant to paragraph 40(1)(a) of the IRPA. If the ID was to find Mr. Kazzi inadmissible, it was required to issue a removal order against him, as provided for by paragraph 45(d) of the IRPA.

[12] The ID then outlined the position of both parties. The ID first summarized the position of the Minister, who claimed that the misrepresentation was proven as it was only in 2015 that Mr. Kazzi recognized his arrest and detention in Lebanon in 1989. At that time, Mr. Kazzi's fingerprints had been taken. The Minister stated that, in three different documents submitted to the Canadian authorities in 1999, 2002 and 2003 respectively, as well as during an interview in 2011, Mr. Kazzi repeatedly denied having been incarcerated in Lebanon. The ID observed that Mr. Kazzi had multiple opportunities to reveal that he had been arrested and incarcerated, but did not. Mr. Kazzi, on the other hand, claimed that even though he never mentioned his arrest and incarceration, it had no impact on the application of the law. As his refugee claims and PRRA application were ultimately rejected, his failure to mention the arrest had no impact on the administration of the IRPA and therefore, he could not be found inadmissible for

misrepresentation. Mr. Kazzi also submitted that amnesty, acquittal and pardon all have the same meaning and that, since he was granted amnesty, it was as if nothing actually happened.

[13] Following the summary of the positions of each party, the ID turned to its analysis of whether Mr. Kazzi was inadmissible for misrepresentation. First, the ID determined whether there was a misrepresentation. As Mr. Kazzi had no convincing explanations for not being accurate and as he had benefited from numerous opportunities to divulge that he had been incarcerated, the ID found that he indeed misrepresented information. Second, the ID assessed whether Mr. Kazzi's misrepresentation covered material facts relating to a relevant matter, and found that it did. The ID determined that knowing if people who want to establish themselves in Canada were previously incarcerated is an important and legitimate concern for the Canadian immigration authorities.

[14] Third, the ID analysed whether Mr. Kazzi's misrepresentation induced or could have induced an error in the administration of the IRPA. The ID relied on the *Inocentes v Canada (Citizenship and Immigration)*, 2015 FC 1187 [*Inocentes*] case, which states that "the issue of the risk of an error in the administration of the [IRPA] must be determined at the time of the misrepresentation, not afterwards" (*Inocentes* at para 16 [emphasis in original]). It would be irrational, according to the ID, that Parliament would have wanted to give the possibility to demonstrate, once the misrepresentation is found, that there has been no error in the administration of the IRPA and thereby avoid an inadmissibility finding. As a result, the ID determined that the risk to induce an error in the administration of the IRPA must be analysed at the moment of the misrepresentation.

[15] Mr. Kazzi claimed that since his misrepresentation was known for a long time by the authorities, there could not have been any error. The ID rejected this assertion, indicating that Mr. Kazzi bore the obligation to be truthful and that, if accepted, his argument would lead to a reversal of the burden from Mr. Kazzi to the Minister. Moreover, the ID disagreed with Mr. Kazzi's contention that, since an amnesty was voted, it was as if his arrest and detention never happened. Even though acquittal and amnesty might be considered as synonyms in certain contexts, the ID ruled that it did not make the two concepts interchangeable. According to the ID, Mr. Kazzi's misrepresentation of the fact that he was arrested and detained clearly had as a possible consequence an error in the administration of the IRPA.

[16] As a result, the ID found Mr. Kazzi inadmissible for misrepresentation under paragraph 40(1)(a) of the IRPA.

C. *The standard of review*

[17] It is well-recognized that misrepresentations involved questions of mixed facts and law and that the standard of review applicable in such cases is reasonableness (*Brar v Canada (Citizenship and Immigration)*, 2016 FC 542 [*Brar*] at para 8; *Kaur v Canada (Citizenship and Immigration)*, 2015 FC 1088 [*Kaur*] at para 32; *Sayedi v Canada (Citizenship and Immigration)*, 2012 FC 420 [*Sayedi*] at para 13). Here, the first two issues raised by Mr. Kazzi, namely whether the amnesty granted in 1991 meant that Mr. Kazzi did not have to disclose his arrest and whether the misrepresentation was correctly assessed under the IRPA, are both to be analyzed under the reasonableness standard. There is no doubt that the IRPA is one of the enabling statutes that the ID and the CBSA are mandated to enforce and apply, and the interpretation and application of

paragraph 40(1)(a) of the IRPA is thus clearly a case of the ID interpreting a statute closely connected to its functions and within its core area of expertise.

[18] Since *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*], the Supreme Court of Canada has stated many times that "when an administrative tribunal interprets or applies its home statute, there is a presumption that the standard of review applicable to its decision is reasonableness" (*Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8 at para 32, citing *Alberta Teachers* at paras 39 and 41; *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 [*B010*] at para 25; *Wilson v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 47 at para 17; *Tervita Corp v Canada (Commissioner of Competition)*, 2015 SCC 3 at para 35).

[19] This presumption is not unchallengeable. It can be overruled and the standard of correctness can be applied, in the presence of one of the four factors first set out by the Supreme Court in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 43-64 and recently reiterated in *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 [*Edmonton*] at paras 22-24 and *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at paras 46-48. Such is the case when a contextual analysis reveals a clear intent of Parliament not to protect the administrative tribunal's authority with respect to certain issues; when several courts have concurrent and non-exclusive jurisdiction on a point of law; when an issue raised is a general question of law that is of central importance to the legal system as a whole and outside the area of expertise of the specialized administrative tribunal; or when a constitutional question

is at play. It is clear that none of these scenarios exist here and that the presumption established by *Alberta Teachers* is therefore not rebutted in this case.

[20] This reasonableness standard requires deference to the decision-maker as it is "grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*Edmonton* at para 33). 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 if the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47). 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, nor can it reweigh the evidence (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 16-17; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*] at paras 59 and 61).

[21] As for the last issue relating to procedural fairness and whether the Canadian immigration authorities acted fairly towards Mr. Kazzi in determining that he was inadmissible, the applicable standard of review is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Khosa* at para 43; *Kaur* at para 33). This requires the Court to determine whether the process followed achieved the level of fairness required by the circumstances of the matter (*Suresh v Canada*

(Minister of Citizenship and Immigration), 2002 SCC 1 at para 115). Therefore, the question raised by the duty to act fairly is not so much whether the decision was "correct", but rather whether the process followed by the decision-maker was fair (*Aleaf v Canada (Citizenship and Immigration*), 2015 FC 445 at para 21; *Makoundi v Canada (Attorney General)*, 2014 FC 1177 at para 35). I note that, in recent years, the Federal Court of Appeal has developed a hybrid standard on issues of procedural fairness and stated that "the standard of review is correctness with some deference to the [administrative tribunal's] choice of procedure" (*Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245 at para 70; *Re: Sound v Fitness Industry Council of Canada*, 2014 FCA 48 at paras 34-42).

III. Analysis

A. *Does the amnesty granted in 1991 mean that Mr. Kazzi did not have to disclose his previous arrest and detention?*

[22] Mr. Kazzi first argues that an amnesty erases retroactively any alleged offences. As a result, the amnesty granted in August 1991 implies that Mr. Kazzi never committed any criminal or penal act. Considering that he benefited from an amnesty and that it is as if nothing ever happened, Mr. Kazzi claims that there cannot have been any misrepresentation in failing to divulge that he was arrested in 1989. Mr. Kazzi pleads that, since the ID refused to give any weight to the amnesty granted to him and declined to consider it as an acquittal, the ID committed a reviewable error.

[23] I disagree.

[24] Mr. Kazzi is conflating two issues and wrongly assumes that the issuance of a pardon means that a person becomes entitled to answer "no" to questions relating to incarcerations and detentions. The evidence clearly reveals that, on several occasions, Mr. Kazzi failed to disclose his 1989 arrest and detention in Lebanon. He even admitted it. It was thus reasonable and open to the ID to find that Mr. Kazzi's amnesty did not allow him to make recurring false statements regarding his 1989 arrest and detention in Lebanon.

[25] Whether an amnesty has the same meaning as an acquittal or a pardon is not the issue. The question is rather whether it was reasonable for the ID not to equate an amnesty to a "carte blanche" allowing Mr. Kazzi not to respond truthfully to questions from the Canadian authorities on incarceration and detention. I conclude that it was. Under a reasonableness standard, it is not the role of the Court to reassess the evidence. This Court's role is only to determine if the ID's conclusions have the attributes of justification, transparency and intelligibility, and fall within the range of possible, acceptable outcomes. I detect nothing unreasonable in the ID's factual finding that the 1991 amnesty did not allow Mr. Kazzi to make false declarations regarding his 1989 arrest and detention, and to hide this relevant information from the Canadian authorities.

[26] I am ready to accept that events or arrests that were subsequently subject to an amnesty cannot be held against an applicant if the inadmissibility was based on *criminality*. Indeed, paragraph 36(3)(b) of the IRPA was drafted in such a way that "[c]onvictions [were] not to be taken into consideration where pardon has been granted or where they have been reversed" (*Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126 [*Cha*] at para 30). However, the situation is different here, as Mr. Kazzi's inadmissibility was based on *misrepresentation*.

Nothing in the IRPA precludes finding inadmissible for misrepresentation someone who omits to divulge a previous arrest, even when an amnesty or a pardon was granted. The fact that an amnesty was issued does not mean that Mr. Kazzi was relieved from his obligation, clearly enacted in subsection 16(1) of the IRPA, to provide truthful answers in his applications to the Canadian immigration authorities.

B. ***Did the ID commit any error in assessing the impact of Mr. Kazzi's misrepresentation on the application of the IRPA?***

[27] As a second ground of judicial review, Mr. Kazzi claims that the ID did not "correctly" assess the impact of his alleged misrepresentation on the application of paragraph 40(1)(a) of the IRPA. In essence, Mr. Kazzi argues that the ID erred in its interpretation and reading of the provision. Paragraph 40(1)(a) requires that, in order to lead to the inadmissibility of an applicant, the misrepresentation must pertain to "material facts relating to a relevant matter that induces or could induce an error in the administration" of the IRPA. Mr. Kazzi contends that there could have been no error in the administration of the IRPA in the present case, as all of his applications to the Canadian immigration authorities were denied. Mr. Kazzi claims that someone can only be found inadmissible for misrepresentation if their refugee, PRRA, H&C or residency claims were successful or remain subject to pending applications, as there could be no "error in the administration of the IRPA" in failed applications.

[28] Mr. Kazzi further pleads that the ID improperly applied the *Inocentes* case and could not have used it in support of its finding of inadmissibility. In the *Inocentes* case, the applicant had been accepted into Canada and, had she not made the misrepresentation, she may never have

been accepted. Mr. Kazzi argues that the case is distinguishable from his situation since all of his applications were denied. Mr. Kazzi further relies on subsection 109(1) of the IRPA which makes it possible to "vacate a decision to allow a claim for refugee protection, if [the ID] finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter". Mr. Kazzi contends that since subsection 109(1) of the IRPA applies to refugees, paragraph 40(1)(a) cannot apply to failed refugee claims.

[29] I disagree.

[30] I pause to note at the outset that Mr. Kazzi improperly frames the issue by stating that the question is whether the ID "correctly" assessed the impact of his misrepresentation. Since the matter involves the interpretation of a provision of the IRPA, the reasonableness standard applies. The Court must therefore determine whether the ID's interpretation was reasonable, as opposed to correct. I also add that, at the time of the ID decision, Mr. Kazzi's application for permanent residence based on H&C considerations was still pending and had not been accepted or dismissed on the merits by the Canadian authorities.

[31] Paragraph 40(1)(a) of the IRPA states:

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40. (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the	**a)** directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur

administration of this Act;	ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

[32] To find an applicant inadmissible under paragraph 40(1)(a), the ID must therefore be satisfied that (1) a direct or indirect misrepresentation has occurred by the applicant; (2) the misrepresentation concerns material facts relating to a relevant matter; and (3) the misrepresentation induces or could induce an error in the administration of the IRPA. In its Decision, the ID indeed discusses each of these three elements.

[33] It is clear that, in this case, there was a misrepresentation and that Mr. Kazzi omitted to make full disclosure. The ID also concluded that failing to reveal a previous arrest and detention was a material fact relating to a relevant matter as knowing the history of an applicant seeking permanent residence in Canada is important. It is indeed part of all forms used by the Canadian authorities.

[34] Mr. Kazzi's argument focuses on the last part of paragraph 40(1)(a), namely the requirement that the misrepresentation "induces or could induce an error in the administration of this Act". In my view, neither the wording nor the jurisprudence under paragraph 40(1)(a) support Mr. Kazzi's contention that applicants can only be found inadmissible for misrepresentation when their applications are accepted or that there can be no error in the administration of the IRPA for a denied application. To reach such conclusion, Mr. Kazzi is essentially asking the Court to amputate the words "could induce" from the provision.

[35] I underscore that the question before me is not whether the interpretation proposed by Mr. Kazzi could be sustainable or reasonable; what I have to determine is whether the ID's interpretation was and whether it falls within the range of possible, acceptable outcomes. The fact that there could perhaps be other reasonable interpretations of paragraph 40(1)(a) does not imply, in and of itself, that the decision-maker's interpretation was not.

[36] The modern rules of statutory interpretation require the courts to read "the words of an Act . . . in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*B010* at para 29; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26; *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at paras 21-23). In the present case, I find that these tools of statutory interpretation — the plain and grammatical meaning of the words, the statutory context and the legislative intent — all point inexorably to the conclusion that paragraph 40(1)(a) of the IRPA requires an assessment of the impact of the misrepresentation at the time it is made in order to determine whether it induces or could induce an error in the application of the law. Not afterwards.

[37] Looking first at the wording of paragraph 40(1)(a), it expressly uses the terms "induces or could induce" an error in the administration of the IRPA. The French version speaks of a misrepresentation "qui entraîne ou risque d'entraîner" such an error. The provision thus contemplates a forward-looking exercise and implies that, at the time the assessment is made, the application under the IRPA is not yet completed. This Court has indeed indicated in *Inocentes* that the point in time when the ID should determine whether a misrepresentation could cause an error

in the administration of the IRPA is at the time of the false statement, not afterwards at the admissibility hearing. I am not persuaded that the success or failure of the underlying application changes the interpretation that paragraph 40(1)(a) should receive and that the *Inocentes* case can be distinguished on that basis.

[38] Turning now to the case law, the general principles arising out of this Court's jurisprudence on paragraph 40(1)(a) of the IRPA have been well summarized by Madame Justice Tremblay-Lamer in *Sayedi* at paras 23-27, by Madame Justice Strickland in *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 [*Goburdhun*] at para 28 and by Mr. Justice Gleeson in *Brar* at paras 11-12. The key elements flowing from those decisions and that are of particular relevance in the context of this application can be synthetized as follows: (1) the provision should receive a broad interpretation in order to promote its underlying purpose; (2) its objective is to deter misrepresentation and maintain the integrity of the Canadian immigration process; (3) any exception to this general rule is narrow and applies only to truly extraordinary circumstances; (4) an applicant has the onus and a continuing duty of candour to provide complete, accurate, honest and truthful information when applying for entry into Canada; (5) regard must be had for the wording of the provision and its underlying purpose in determining whether a misrepresentation is material; (6) a misrepresentation is material if it is important enough to affect the immigration process; (7) a misrepresentation need not be decisive or determinative to be material; (8) an applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application; (9) the materiality analysis is not limited to a particular point in time in the processing of the application; and (10) the assessment of whether a misrepresentation could

induce an error in the administration of the IRPA is to be made at the time the false statement was made.

[39] I emphasize that it does not matter that the authorities may have the ability to catch the misrepresentation or not. What matters is whether the misrepresentation induced or could have induced an error in the administration of the IRPA. As stated many times in the jurisprudence, an applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application (*Goburdhun* at para 28; *Sayedi* at para 27; *Khan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 512 [*Khan*] at paras 25 and 27). In other words, paragraph 40(1)(a) of the IRPA cannot be interpreted so as to reward those who managed not to get caught until the assessment of their application and to give an absolution for a false statement because it ultimately did not work.

[40] I point out that no case law supports the proposition that a false statement cannot be a misrepresentation leading to inadmissibility under paragraph 40(1)(a) if the person is unsuccessful in his applications under the IRPA. Counsel for Mr. Kazzi could not refer the Court to any.

[41] When measured in light of both the text of the provision and the principles established by the jurisprudence, there can be no doubt that the ID's interpretation is entirely consistent with the explicit wording of paragraph 40(1)(a), the teachings of the case law and the objectives of the IRPA. In fact, throughout the Decision, the ID referred to the specific wording of paragraph 40(1)(a) and was guided by the principles established by this Court on the interpretation and

application of this provision. I therefore have no hesitation to conclude that the ID's interpretation falls well within the realm of rational and reasonable outcomes.

[42] The interpretation proposed by Mr. Kazzi strays away from the Court's consistent jurisprudence on paragraph 40(1)(a) and would, in my view, turn the provision on its head. To accept Mr. Kazzi's line of argument would also be an affront to subsection 16(1) of the IRPA, which imposes an obligation to all applicants to "answer truthfully all questions". It would be inconsistent with the well-established duty of candour that all applicants need to demonstrate in the immigration process (*Brar* at para 11; *Goburdhun* at para 28; *Jiang v Canada (Citizenship and Immigration)*, 2011 FC 942 at para 27). Moreover, Mr. Kazzi's interpretation of paragraph 40(1)(a) would shift the onus, which rests on the applicant, "to ensure the completeness and accuracy of his or her application" (*Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 at para 24). Given those obligations on the applicant to be truthful, and given the purpose of paragraph 40(1)(a) which is to maintain the integrity of the immigration process, M. Kazzi's claim that one cannot be found inadmissible for a misrepresentation he or she made on a prior application that was rejected flies in the face of a fundamental principle of the IRPA and would lead to "a high potential for abuse" (*Khan* at para 27).

[43] In light of the foregoing, it was certainly not unreasonable for the ID to conclude that the risk contemplated by paragraph 40(1)(a), namely the potential inducement of an error in the administration of the IRPA, must be analyzed at the moment of the misrepresentation, and not when the decision is rendered.

[44] The question this Court must decide is whether the ID's interpretation of paragraph 40(1)(a) was reasonable. This means that the role of this Court is not to re-examine the evidence available to the ID nor to replace the decision-maker's conclusions with its own. In this case, the contextual and purposive analyses as well as the case law all compel the conclusion that the ID's interpretation does not lack justification, transparency or intelligibility and obviously falls well within the range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir* at para 47). The ID's interpretation rhymes with the text of paragraph 40(1)(a) and with the jurisprudence and, in these circumstances, the Court must not intervene but defer to the decision-maker's finding.

[45] In fact, I am of the view that the ID's interpretation is likely the only reasonable statutory interpretation of paragraph 40(1)(a) of the IRPA (*McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 38).

C. *Have the Canadian immigration authorities acted fairly toward Mr. Kazzi?*

[46] As a final argument against the ID's Decision, Mr. Kazzi alleges that the CBSA knew about his 1989 arrest, which is obvious from the letters sent to him in 2011 and 2012, and that the CBSA intended to issue a report on inadmissibility on security grounds because he was a member of the Lebanese Forces. It is clear, according to Mr. Kazzi, that the CBSA had the intention to find him inadmissible under sections 34 and 35 of the IRPA, not under the provisions regarding misrepresentation. Mr. Kazzi therefore claims that, as the CBSA unexpectedly prepared an inadmissibility report based on misrepresentation, he was never given a fair chance to answer any allegations of misrepresentation. There were no procedural fairness

letters, and Mr. Kazzi contends that he was totally caught by surprise. He alleges that the CBSA failed to disclose certain documents, in breach of the rules of fundamental justice, and that it took the CBSA six years to issue a misrepresentation report, which was too late and unfair.

[47] I do not share Mr. Kazzi's conclusion and I am not persuaded that any breach in procedural fairness was committed in the context of the Decision subject to this application for judicial review.

[48] First, I agree with the Minister that, if Mr. Kazzi's complaint actually relates to the work and behaviour of the CBSA, this application for judicial review is not the right forum to voice these concerns as it does not deal with Mr. Kazzi's pending application for permanent residence on H&C grounds, nor with any decision rendered by or expected from the CBSA. This application solely deals with the ID's Decision and the process conducted by this decision-maker. Mr. Kazzi has other recourses and avenues to raise the delay or the actions taken by the CBSA in processing his H&C application. Similarly, if Mr. Kazzi thought there was a breach in procedural fairness in the issuance of the inadmissibility report, it is the CBSA officer's decision to issue this report that should have been challenged in a judicial review.

[49] Second, I find that, in any event, the ID carried out its duties in the manner provided in the IRPA and in the case law. As a result, there is no serious ground supporting an alleged breach of procedural fairness by the ID and requiring the intervention of this Court.

[50] It is well established that the law "treat[s] citizens differently than permanent residents, who in turn are treated differently than Convention refugees, who are in turn treated differently than other foreign nationals", and that "foreign nationals who are temporary residents receive little substantive and procedural protection throughout the [IRPA]" (*Cha* at para 23). When a deportation order is issued, there is a need "to inform the persons concerned of the nature of the allegations made against them, to give them a reasonable opportunity to respond and to note and take into account any representations made; and the conduct of interviews in the presence of the persons concerned or, in certain circumstances, by telephone" (*Cha* at para 49).

[51] In the present case, there was no need for a procedural fairness letter, as these letters are an opportunity "for the applicant to demonstrate that there was no misrepresentation or withholding of material facts that could have induced an error in the administration of the IRPA", in a case where the inadmissibility is found by a Minister's delegate (*Brar* at para 17). Throughout the process before the ID, Mr. Kazzi was well aware of the inadmissibility report and was able to make all the representations he wanted during the ID's inadmissibility hearing. Mr. Kazzi was issued a report on inadmissibility for misrepresentation on September 22, 2015, and there was an inadmissibility hearing on May 11, 2016, during which Mr. Kazzi had all the opportunity to explain his view of the case. M. Kazzi was represented by the counsel of his choice during the hearing.

[52] As the Federal Court of Appeal held in *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 319 [*Sharma*], the duty of fairness is "clearly not at the high end of the spectrum in the context of decisions made pursuant to subsections 44(1) and (2)" of the IRPA

(*Sharma* at para 29). I am satisfied that Mr. Kazzi was afforded the kind of participatory rights that decisions of this nature warrant.

[53] I note that it is not the ID's role to determine if the process leading to the inadmissibility report was procedurally unfair, as the only question for the ID is whether the person is inadmissible, and the ID has "no other option than to make a removal order against the foreign national or the permanent resident is he or she is inadmissible" (*Sharma* at para 19). Therefore, Mr. Kazzi's assertion that the ID should have taken into account the CBSA's actions toward him is ill-founded. When an inadmissibility report is deferred to the ID for an admissibility hearing, the ID has no discretion. If the person is inadmissible, the ID must issue a removal order (*Torre v Canada (Citizenship and Immigration)*, 2015 FC 591 at para 22, aff'd 2016 FCA 48; *Sharma* at para 19). Here, the ID carried its duties in the manner provided in the IRPA and the case law. No breach of procedural fairness has occurred.

IV. Certified questions

[54] Mr. Kazzi asks the Court to certify two questions:

A. Can a person be found inadmissible in Canada for misrepresentation, under section 40(1)(a), after their application (whatever it is) is denied. In other words, once an application under the IRPA is denied, can there still be an error in the application of the law as per section 40(1)(a) of the IRPA?

B. Considering that an amnesty clears any previous charges and sentences, can a person be found inadmissible under the IRPA section 40(1)(a) for not disclosing an arrest that was covered by the amnesty?

[55] For the reasons that follow, I do not find that these proposed questions meet the requirements for certification developed by the Federal Court of Appeal.

[56] According to paragraph 74(d) of the IRPA, a question can be certified by the Court if "a serious question of general importance is involved". To be certified, "a question must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance" (*Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 [*Mudrak*] at paras 15-16; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 [*Zhang*] at para 9). As a corollary, the question must have been dealt with by the court and it must arise from the case (*Mudrak* at para 16; *Zhang* at para 9; *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at para 29).

[57] I decline to certify the first question as it is not dispositive of the appeal and I do not consider it of general importance. The ID stated in its Decision, and Mr. Kazzi confirmed it in his submissions, that Mr. Kazzi's current application for permanent residence based on H&C considerations is pending. Therefore, this is not a situation where all applications under the IRPA are denied. Mr. Kazzi acts as if all of his applications under the IRPA were dismissed before the ID decision, which is not the case. Therefore, the first proposed question would not be dispositive of the appeal. Moreover, I am not persuaded that it is a question of general importance. No case law supports the interpretation proposed by Mr. Kazzi and the express wording of paragraph 40(1)(a) clearly contemplates that the potential risk of error in the administration of the IRPA must be examined at the time of the misrepresentation, not afterwards. The answer to the proposed question is also well-settled in this Court's jurisprudence.

[58] As for the second question, I find that it does not meet the test for certification either. Even assuming that charges and sentences might be cleared with an amnesty, such an amnesty does not remove the duty of candour in the representations to be made on issues other than charges, convictions and sentences. In this case, the misrepresentation of Mr. Kazzi stems from a failure to report an arrest and a period of detention in Lebanon in February 1989. It does not relate to the impact of an amnesty on "any previous charges and sentences", as the proposed question aims to cover. An amnesty does not provide an excuse or a justification for the failure to report other facts to the Canadian immigration authorities, such as an arrest and incarceration. Again, the proposed question would not be dispositive of the appeal.

V. Conclusion

[59] For all of these reasons, the ID's Decision represents a reasonable outcome based on the law and the evidence. Under a standard of reasonableness, the Decision under judicial review must only be intelligible, justified and transparent and fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. This is the case here. In addition, I do not find any breach of the principles of natural justice, and I am satisfied that Mr. Kazzi's basic rights were respected throughout the process followed by the ID. Consequently, I must dismiss this application for judicial review.

[60] There are no questions of general importance to be certified.

[61] The Minister indicated that the proper respondent in this case is the Minister of Citizenship and Immigration, and the style of cause will be modified accordingly, including in this judgment and reasons.

JUDGMENT

THIS COURT'S JUDGMENT is that:

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

2. No serious question of general importance is certified.

3. The style of cause is modified so that the respondent in this matter be the Minister of Citizenship and Immigration.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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