Federal Court  Cour fédérale

Date: 20190809

Docket: IMM-5520-18

Citation: 2019 FC 1063

Ottawa, Ontario, August 9, 2019

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

MARYFLOR DIRECT YLANAN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Applicant [Ms. Ylanan] seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27* [the *IRPA*] of a decision dated October 12, 2018 [the Decision] by the Immigration Appeal Division [the IAD] in which it refused Ms. Ylanan's appeal of a removal order issued against her. The Immigration Division [the ID] had issued the removal order following its finding that Ms. Ylanan was inadmissible to Canada by

application of paragraph 40(1)(*a*) of the *IRPA* for misrepresentation. Ms. Ylanan did not contest the validity of the removal order. The sole issue before the IAD was whether her appeal should be allowed on humanitarian and compassionate [H&C] grounds, taking into account the best interests of any child directly affected by the decision.

[2] At the outset I wish to state that the approximately 27-page decision penned by Panel Member Ryan of the IAD is precise and clear. In my view, it impeccably addresses the issues. While Ms. Ylanan, through her counsel, makes a valiant effort to persuade this Court that the IAD decision does not meet the test of reasonableness as established in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], I am not persuaded. The application for judicial review is dismissed for the following reasons.

II. Background

[3] Ms. Ylanan is a 39-year-old citizen of the Philippines. She is the mother of three (3) children, all of whom were born in the Philippines during her first marriage with Mr. Alegre Ylanan [Mr. Ylanan]. Her children currently live with their father in the Philippines. The children have never lived in Canada and hold no legal status in Canada.

[4] In July 2007, Ms. Ylanan travelled to Canada on a six-month (6) visitor's visa. At her request, the visa was extended by a further six (6) months. In February 2008, she attempted to remain in Canada via the live-in caregiver program. She was unsuccessful. In March 2008, she met Marisa Corpus [Ms. Corpus], an immigration consultant practising in the Toronto area. Ms. Corpus advised Ms. Ylanan that the best way for her to obtain status in Canada would be via a

spousal sponsorship. Ms. Corpus also advised her that if she did not have a partner who could sponsor her, she knew a man, Ericson Valasko [Mr. Valasko] who would marry her for a fee. Mr. Valasko was in fact the boyfriend of Ms. Corpus' daughter. Ms. Ylanan reached an agreement with Ms. Corpus to pursue a marriage of convenience [hereinafter referred to as "fraudulent marriage"] with Mr. Valasko for a fee of approximately $20,000. On December 22, 2008, Ms. Ylanan divorced her first husband through proceedings brought in Canada. This paved the way for her to enter into a fraudulent marriage with Mr. Valasko. Following their fraudulent marriage, Mr. Valasko successfully sponsored Ms. Ylanan's application to obtain permanent residency.

[5] Shortly after her fraudulent marriage with Mr. Valasko, Ms. Ylanan met her current common-law spouse, Mr. James Tabangin [Mr. Tabangin]. By 2010, they started to live together and have been doing so since that time. It is important to note that all this occurred during the time she was technically married to Mr. Valasko. On March 7, 2012, she was granted permanent resident status in Canada. Ms. Ylanan never lived with Mr. Valasko.

[6] The circumstances regarding her fraudulent marriage came to the attention of Canadian Border Services Agency [CBSA] officials when they began investigating Ms. Corpus. Pursuant to subsections 44(1) and 44(2) of the *IRPA*, a report was prepared and referred to the ID for an admissibility hearing. The ID concluded the report was well-founded and issued a removal order against her. The appeal of that removal order was before the IAD.

III. Decision Under Review

[7] With respect to Ms. Ylanan's credibility and degree of misrepresentation, the IAD noted that the misrepresentation went far beyond a mere fraudulent marriage. For several years Ms. Ylanan "deceived, provided fraudulent information, documents, pictures, had family and friends lie for her to maintain a marriage which she and they knew was not genuine". In fact, it was not until Ms. Ylanan was provided with the overwhelming evidence against her, following the CBSA investigation, that she admitted the truth regarding her fraud.

[8] The IAD then considered the merits of Ms. Ylanan's appeal; namely, whether taking into consideration the best interests of any children involved, sufficient H&C considerations existed to warrant special relief. The IAD began its H&C analysis by acknowledging the non-exhaustive factors set out in Ribic v Canada (Minister of Employment and Immigration), [1985] IABD No 4 [*Ribic*], which guide the IAD's discretionary jurisdiction in the context of appeals from removal orders. The IAD went on to cite this Court's decision in *Wang v Canada (Minister of Citizenship and Immigration*), 2005 FC 1059 [*Wang*], in which Justice O'Keefe applied a tweaked version of the *Ribic* factors. He listed them as follows:

- the seriousness of the misrepresentation leading to the removal order and the circumstances surrounding it;
- the remorsefulness of the appellant;
- the length of time spent in Canada and the degree to which the appellant is established in Canada;
- the appellant's family in Canada and the impact on the family that removal would cause;
- the best interests of a child directly affected by the decision;

- the support available to the appellant in the family and the community; and
- the degree of hardship that would be caused by the appellant by removal from Canada, including the conditions in the likely country of removal.

[9] With respect to the seriousness of the misrepresentation, the IAD found that the only reason Ms. Ylanan decided to tell the truth was because she was caught in a lie. The IAD observed that given that her lies kept accumulating, and she encouraged others to lie for her, the misrepresentation was situated at the more serious end of the spectrum.

[10] Turning to remorse, the IAD noted that Ms. Ylanan claimed to be "sorry, really really sorry". However, given the years of lies and the active involvement of her family, friends and Mr. Tabangin in the lies, the IAD concluded she is not remorseful. Rather, it opined that she is simply sorry she was caught. The IAD finds support for this conclusion regarding remorse by the fact that she never admitted the fraud at the first opportunity, while maintaining the marriage was genuine and had convinced others to confirm the same until as late as February 2017. As was the case with the misrepresentation factor, the IAD considered Ms. Ylanan's lack of remorse to be a negative factor.

[11] With respect to the issue of establishment in Canada, Ms. Ylanan contends she has been building a life here for over a decade. She works multiple jobs which allow her to remain self-sufficient without requiring financial assistance from the government. She also upgraded her education during her time in Canada by obtaining a designation as a Personal Support Worker [PSW]. The IAD correctly concluded that it was only via her lengthy and deliberate

misrepresentation that she gained any sort of establishment. The IAD cited *Dan Shallow v Canada (Citizenship and Immigration)*, 2012 FC 749 for the principle that managing to evade deportation should not advance one's right to remain in Canada on H&C grounds. The IAD concluded the indicia of establishment only exist because Ms. Ylanan "lied her way into Canada". The IAD noted that Ms. Ylanan does not own a home in Canada, appears to have worked for cash, and led no evidence of ever paying taxes in Canada. The IAD concluded its analysis of this factor by assigning it a negative value.

[12] On the topic of family in Canada and the impact of Ms. Ylanan's removal, the IAD observed that her family in Canada consists of her common-law spouse, uncles and aunts. The IAD also referred to her common-law spouse's three (3) children, two (2) uncles from her mother's side of the family, their spouses and families and a cousin who lives in Quebec. While acknowledging the hardship that would result through separation from her common-law spouse, the IAD noted that he may visit her in the Philippines, they may visit each other in a country other than the Philippines and once the five-year (5) exclusion from Canada expires, he will be able to sponsor her to come to Canada. With respect to other family members; namely, aunts, uncles and cousins, the IAD notes that none have submitted any letters of support since the filing of letters to support the fraudulent marriage. In fact, the IAD concludes that Ms. Ylanan placed those family members in "a precarious situation when they agreed to lie for her, and in the case of her uncle, not once but twice". The IAD concluded that the fact Ms. Ylanan offered no letters of support from aunts, uncles and cousins in Canada demonstrates that the relationship is not "as close as the Appellant is trying to portray it". The IAD assigned a neutral value to this factor.

[13] On the topic of family and community support in Canada, Ms. Ylanan provided multiple letters from co-workers and patients. Upon reading the letters, the IAD opines, on a balance of probabilities, that the people who wrote the letters in support of Ms. Ylanan do not know the true story behind her immigration challenges. It reached this conclusion given references in one of the letters to Ms. Ylanan's integrity. The IAD, understandably, questioned how someone could refer to her as a person of integrity if they were aware of the source of her difficulties with immigration authorities and the lies which continued from shortly after her arrival in Canada until 2017. As a result, the IAD did not assign these letters any weight, and, found them neutral at best. With respect to family support in the Philippines, the IAD noted that her mother resides there; her ex-husband resides there, as do her two (2) minor children, her adult daughter and other extended family members. Given that Ms. Ylanan's family support is principally in the Philippines, the IAD concluded this factor weighs negatively in her appeal to remain in Canada.

[14] On the topic of hardship, the IAD divided its analysis into three (3) different categories: 1. Ms. Ylanan's fear and risk of sexual violence in the Philippines; 2. her risk of a life of poverty in the Philippines; and 3. the potential hardship on her life partner, Mr. Tabangin. However, it is important to note that prior to conducting its analysis, the IAD observed that Ms. Ylanan was willing to travel back and forth on at least four (4) occasions between the Philippines and Canada. The evidence established that on those occasions she visited the Philippines for periods of two (2) weeks to a month. The hardship analysis and country condition evidence were considered in light of this backdrop.

[15] With respect to Ms. Ylanan's fear and risk of sexual violence in the Philippines, for both herself and her children, the IAD accepted and considered her evidence regarding a traumatic sexual assault upon her by a male family member when she was six (6) years of age. The IAD considered the fact that Ms. Ylanan has returned to the Philippines on numerous occasions and not experienced any sexual assault. It also noted that her children have lived there all of their lives and have experienced no sexual assault. The IAD also noted that the sexual assault committed upon Ms. Ylanan when she was young was perpetrated by a close family member who appears to have no contact with her or her children. The IAD did not limit itself to the personal circumstances of Ms. Ylanan in this assessment. It also extensively reviewed country condition documents. The IAD concluded that "the evidence before [it] is that sexual violence is high in the Philippines". The IAD accepted evidence that one woman or child is raped "every hour" according to one account. Another account cited by the IAD says that one woman or child is raped every "53 minutes". The IAD also referred to the US Department of State *Country Reports on Human Rights Practices for 2013* which concludes that domestic violence against women continues to be a serious and widespread problem in the Philippines.

[16] After considering the evidence, the IAD concluded that circumstances for women and children are much worse in the Philippines when compared to Canada. The IAD also demonstrated sympathy for Ms. Ylanan's past experience, but concluded that the risk is no longer personal. Finally, the IAD observed that the decision will not change the fact that the daughters have no status in Canada and none will be granted by it. I note that her minor children are now 17 and 14 years of age. They were 5 and 2, respectively, when Ms. Ylanan left the Philippines.

[17] Second, the IAD considered Ms. Ylanan's concern that she would be forced to live in poverty should she return to the Philippines. The IAD was not convinced of that risk. It noted that she had maintained a job there before coming to Canada and now has a new skill set which would assist in her job search. The IAD referred to Ms. Ylanan's skills as a cleaner, packer and PSW and noted a lack of evidence that these were not transferrable skills. The IAD also noted that Ms. Ylanan has been facing removal since 2017, but provided no evidence to demonstrate a lack of job opportunities for someone with her qualifications in the Philippines.

[18] Third, the IAD discussed the potential hardship on Mr. Tabangin, who would remain in Canada and her 19-year-old daughter, who lives in the Philippines. The IAD conceded that there will be some emotional hardship given Mr. Tabangin's choice to remain in Canada while Ms. Ylanan remains excluded from Canada for the mandatory five-year (5) exclusion period. Despite the possibility of emotional hardship, the IAD noted that Ms. Ylanan could be re-sponsored for residency in Canada following the five-year (5) exclusion. Also, as already mentioned, it opined that the two could visit in the Philippines or other countries. As for the impact upon Ms. Ylanan's 19-year-old daughter in the Philippines, the evidence demonstrated some targeting of politicians' children (Ms. Ylanan's ex-husband is a municipal councillor), the fact the daughter was involved in a bus accident, and had been bullied. The IAD also mentioned the generally high crime rate. Again, the IAD observed that the 19 year-old daughter has no status in Canada, has always lived in the Philippines and her status will not change regardless of the outcome of the appeal.

[19] On the factor of hardship, the IAD concluded that the country condition evidence of the Philippines weighs slightly in Ms. Ylanan's favour. However, the IAD opined that this factor alone is not determinative of the appeal.

[20] The IAD spent considerable time in its consideration of the best interests of the minor children [BIOC]. While quality can rarely be measured by quantity, I note that more than seven (7) pages of the IAD's 27-page decision were devoted to the issue of BIOC. This demonstrates the seriousness with which Panel Member Ryan approached this topic. Admittedly, the IAD spent limited time on the country condition documents, having already fully exhausted her treatment of that topic under the consideration of other factors. That said, the IAD referred to the risk of politically motivated violence given the work of the children's father as a councillor. It noted the lack of evidence of any incidents affecting the children and, furthermore, the weakness of using documentary evidence from 2010 at a 2018 hearing. It also noted that Ms. Ylanan allowed her children to live with their father because she "still has a little bit of trust that he would not put his children in danger". The IAD acknowledged the financial hardship that would result upon cessation of Ms. Ylanan's income from Canada but weighed that against the benefits of family reunification in the Philippines. The IAD referred extensively to the decisions in *Kanthasamy v Canada (Citizenship and Immigration)*, [2015] 3 SCR 909, 2015 SCC 61[Kanthasamy*]* and *Li v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 451 and the importance of considering the best interests of the children. While acknowledging that allowing the appeal would pave the way for Ms. Ylanan's to sponsor her children to come to Canada, the IAD declined to speculate on eligibility criteria at some time in the future and

repeated that regardless of her decision, the minor children would continue to live in the Philippines.

[21] Also on the issue of financial hardship, the IAD acknowledged that Ms. Ylanan's two (2) minor children might be forced to attend public school if Ms. Ylanan were deported, given that she was providing for her children financially. The IAD reiterated that this choice belongs to the parents and, regardless, it does not deny the children access to an available public education. In the final analysis the IAD considered this a positive factor in favour of Ms. Ylanan remaining in Canada.

[22] Ms. Ylanan has two (2) minor step-children through her relationship with Mr. Tabangin. The IAD acknowledged the existence of those step-children but indicated there was an absence of evidence to demonstrate whether they would face hardship following Ms. Ylanan's eventual removal to the Philippines.

[23] Overall, with respect to the BIOC factor, the IAD clearly struggled. Panel Member Ryan, faced with an exceedingly difficult issue, considered the financial consequences of Ms. Ylanan's removal on the children, juxtaposed against the possibility of her and her children being reunited in the Philippines. After a careful weighing of all relevant factors, Panel Member Ryan concluded in favour of reunification of the family in the Philippines; where the children's father and maternal grandmother reside and where they all have status.

[24] The IAD concluded the removal order was valid and that there were insufficient H&C considerations to warrant granting special relief. It follows that the IAD dismissed Ms. Ylanan's appeal of the removal order.

IV. Relevant Provisions

[25] The relevant provisions of the *IRPA* are subsections 44(1) and 44(2) as well as paragraphs 40(1)(*a*), 67(1)(*c*). They are set out in the Schedule attached to these reasons.

V. Issues raised by Ms. Ylanan

[26] Ms. Ylanan sets out the following five (5) issues for consideration by this Court. I quote verbatim:

a) Did the officer err in failing to consider the circumstances surrounding the misrepresentation?
b) Was the officer's assessment of the Applicant's establishment unreasonable?
c) Was the officer's assessment of the hardship that the Applicant would face in the Philippines unreasonable?
d) Was the officer's assessment of the best interests of the Applicant's child unreasonable?
e) Was the officer's overall assessment of whether the circumstances of the Applicant's case warranted humanitarian relief unreasonable?

[27] In argument, both oral and written, with respect to these apparent issues, Ms. Ylanan spends considerable time and effort in asserting her version of the facts and criticizing the IAD for not having considered evidence offered by her. For example, Ms. Ylanan contends that her reasons for lying, namely to make a better life for her children, should have been considered by the IAD. Its failure to do so, says Ms. Ylanan, results in a failure to consider mitigating circumstances surrounding the misrepresentation. Similarly, she refers to the many letters written by co-workers and supporters attesting to her establishment in Canada. She refers to her own testimony regarding her relationship with her spouse on the issue of establishment. With respect to the issue of the RPD's errors in assessing hardship Ms. Ylanan, on numerous occasions, makes reference to "her testimony" and uses the words "the Applicant testified" in referring to her fears and hardships she might face. Likewise, in her submission on the issue of the BIOC there are references to Ms. Ylanan's testimony and criticism of the RPD for not having fully engaged with the evidence.

[28] It is evident, given the numerous references to her own testimony, that Ms. Ylanan fails to appreciate that she was believed about very little. Also, her friends and co-workers' testimony was discounted because of their apparent lack of knowledge about Ms. Ylanan's history. Consider the following observations by the IAD:

> [22] One aspect of this appeal is the question of the Appellant's credibility. I find that I am unable to give any weight to the Appellant's *viva voce* evidence despite her common law spouse testifying and corroborating her reasons for being truthful from when she decided to do so, namely just before the admissibility hearing.
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> [23] She provided a written statement signed by Mr. Valasko for the purpose of the referral of the section 44(1) report, maintaining she was not in a MOC. She got him to provide her a statement which was a lie. The Appellant provided a statutory declaration of

> five pages signed on April 13, 2015, explaining in great length her relationship and maintaining that she was in a genuine relationship. I note that she had already changed immigration counsel by this point as the commissioner of oath was taken by her current law firm. She had her uncle, Efren Barcena, lie for her a second time when he filed a statement dated April 14, 2015, to request that her case not be referred to an admissibility hearing. Her uncle maintained again she was in a genuine married (sic) to Mr. Valasko, and even lived in his basement for a period of time and even after divorce they remain friends. She admits this is not true but her uncle agreed to lie for her this last time. She admits the first letter her uncle sent on her behalf in 2011 to CIC was false as well. The Appellant's current common-law husband has lied for her, he admitted to getting her a job under the table even though he knew she did not have status in Canada or a work permit. It should also be noted that CIC had their suspicions about the nature of the relationship between the Appelant and Mr. Tabangin in 2011. The Appellant wrote a letter to CIC dated April 14, 2011, stating that Mr. Tabangin was a good friend of theirs and he was married. This was again a lie by the Appellant because she was already living with Mr. Tabangin by 2010.
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> [24] It was not until the Appellant was disclosed the evidence against her and following the CBSA investigation of the MOC scam Ms. Corpus was heading that she then came to the ID admissibility hearing and decided to admit she had misrepresented herself. For several years, she deceived, provided fraudulent information, documents, pictures, had family and friends lie for her to maintain a marriage which she and they knew as not genuine.
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> [25] As held by the Honourable Justice Shore:
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> > An applicant who trifles with the truth in legal proceedings cannot expect to be successful; thus, a Court may discredit even true statements, not knowing where the truth begins and ends, and a climate of uncertainty then prevails." (*Navaratnam v. Canada (Citizenship and Immigration)*, 2011 FC 856, at para 1.)
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> [Emphasis added.]

[29] I make these observations simply to demonstrate that Ms. Ylanan's framing of the issues and her arguments in support of them are misplaced to the extent they rely upon her testimony.

She was determined to be totally lacking in credibility. In my view anything she had to say by way of remorse, establishment, hardship she might personally encounter on a return to the Philippines and even her expressions of fear were largely discounted, if not entirely rejected, by the IAD. I do not intend to revisit that issue of credibility. The record speaks abundantly for itself. She is also proven to be capable of convincing others to lie for her. These are not lies told in a heated debate or game of brinkmanship. These consist of a history of lies, told over many years, before quasi-judicial bodies where one is expected, either through oath or affirmation, to be truthful. A system of justice cannot be built upon lies.

[30] In light of those observations I would re-frame the questions raised on this judicial review as follows:

A. Did the RPD give appropriate consideration to country condition evidence in its assessment of hardship and BIOC?

B. Did the RPD double or even triple count the misrepresentation in its consideration of the Ribic factors? If so, does it make any difference?

C. Under s. 25(1) H & C analysis, is there a personal character to the risk, post-Kanthasamy?

VI. Analysis

A. *Standard of Review*

[31] All issues relate to the IAD's overall assessment of whether the circumstances of Ms. Ylanan's case warrant special relief based on H&C considerations. In *Canada (Citizenship and*

Immigration) v Khosa, 2009 SCC 12 [*Khosa*] at paragraphs 57-59, the Court 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 that of reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether 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; *Khosa*, at para 59).

[32] Prior to embarking upon any further analysis, it is important to remind the parties that a request for an H&C exemption is an exceptional and discretionary remedy (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15). As Justice Gascon stated in *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082, "[t]his 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" (at para 15).

B. *Did the RPD give appropriate consideration to country condition evidence in its assessment of hardship and BIOC?*

[33] As is evident from my brief summary of the IAD's decision, the answer to this question is an unequivocal "yes". Country condition evidence was assessed in detail in the hardship component of the *Ribic* factors and largely incorporated by reference in the BIOC factors. In paragraph 98, when discussing BIOC, the IAD demonstrates it considered country conditions

when it observed that the children would be destined to live in a country with a high crime rate, high rates of sexual violence and poverty. I do not accept that the IAD would have forgotten its detailed treatment of country conditions in the hardship analysis by the time it arrived at the BIOC component of the *Ribic* factors. A careful reading of the decision by the IAD demonstrates it was "alert, alive and sensitive" to the best interests of the children (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at para 75); *Kanthasamy, supra*.

C. *Did the IAD double, or even triple count, the misrepresentation in its consideration of the Ribic factors? If so, does it make any difference?*

[34] Ms. Ylanan relies upon the decision in *Jiang v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 413 to support her contention that the IAD erred by double counting the seriousness of the misrepresentation. During oral argument, counsel's exact words were that the trial judge in *Jiang* "eschews double-counting". That is a correct statement of the conclusion in *Jiang*, but it is not the complete story set in context. In *Jiang*, the degree of misrepresentation was used to discount establishment and used a second time in the "final weighing". As I understand *Jiang*, the misrepresentation was therefore considered on three (3) occasions – once as a stand-alone factor, a second time to reduce establishment, which appears to have been acceptable to the trial judge, and a third time in the final weighting. The evil appears to be the use of misrepresentation to discount a factor for which it has no relevance; for example, adverse country conditions abroad. Such an error would occur if the misrepresentation were applied to the final weighing since the final weighing considers all factors, those to which the misrepresentation has some relevance and those to which is has none.

[35] The jurisprudence is constant that immigration cheats should not be able to benefit from their misdeeds. It is an affront to rational thought to suggest that a decision maker cannot say "I am going to discount your establishment in Canada because that very establishment arose from violating the law". This Court has consistently upheld a decision maker's discretion to take such an approach. In *De Melo Silva v Canada (Citizenship and Immigration),* 2013 FC 941, at para 8, Shore, J. stated "the number of years spent in Canada, in and of themselves, under illegal circumstances, in respect of immigration law is not a reason to reward such behaviour". Similarly, in *Fouda v Canada (Immigration, Refugees and Citizenship),* 2017 FC 1176, Strickland, J. opines, at para 54, "This Court has held that misrepresentation is a relevant factor when considering a person's degree of establishment […]." *A reviewable error would therefore appear to arise in at least two circumstances as it relates to the application of misrepresentation: 1. where a decision-maker uses the misrepresentation to avoid conducting any analysis of other* Ribic *factors, including that of establishment. See, for example, the observations of Strickland, J. in* Phan v Canada (Citizenship and Immigration), 2019 FC 435, *at paragraph 36 where she concludes the IAD unreasonably discounted or dismissed all H&C factors on the basis of misrepresentation; and 2. In circumstances where misrepresentation, or any other factor for that matter, is used to assess a factor for which it has no relevance (see my observations in paragraph 34,* supra*).*

[36] In the present case, I am satisfied that each factor was properly assessed. Having said that, I wish to make it clear that I do not consider the *Ribic* factors a straitjacket. *They do not constitute, and cannot be considered, water-tight compartments. There will inevitably be double-counting or bleeding, if you will, from one factor into another where facts relevant to one factor*

are also relevant in the assessment of another. This case provides several perfect examples. Misrepresentation is relevant to the degree of establishment. Misrepresentation might also, as was here, have some relevance on community support. If the same misrepresentation contributes to establishment and support from friends, neighbours and co-workers, it might be triple counted, once as a stand-alone factor, once on the issue establishment and again on the issue of legitimacy of support letters. Similarly, if country conditions are relevant to hardship on return to one's country of origin, they might also be relevant to the best interests of the children, and even touch upon hardship related to the inability of family members to visit those destined for deportation. In such a case, the country conditions might be triple-counted. Again, the key to the approach to the use of accepted facts, is that they not be considered in relation to a factor for which they have no relevance.

[37] *In my view, it is essential that administrative tribunals be afforded the flexibility to apply common sense to the criteria and that reviewing courts decline to over-analyze the application of those criteria. Otherwise, a piece of the evidentiary puzzle that has relevance to more than one of the* Ribic *factors might not be appropriately considered under each factor for which it has relevance. Furthermore, when evidence is considered in relation to one factor and is relevant to another, courts should not require a repetition of the same evidence. A simple acknowledgement by the administrative tribunal, as was done in this case with respect to country conditions in the BIOC analysis, should be sufficient.*

D. *Under s. 25(1) H&C analysis, is there a personal character to the risk, post-Kanthasamy?*

[38] Ms. Ylanan contends that the IAD erred in its analysis of hardship by failing to apply the instruction of the Supreme Court in Kanthasamy. *Ms. Ylanan asserts that she does not need to show evidence that she would be personally affected in order to demonstrate hardship. She contends she can rely exclusively upon country condition evidence to that end.*

[39] *The Respondent contends that the general documentary evidence regarding risk does not necessarily equate to Ms. Ylanan or her children facing hardship on that basis. The Respondent contends the IAD acted reasonably when it concluded a particular risk must be personal to Ms. Ylanan or her minor daughters. The Respondent cites: Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6; *Bakenge v Canada (Citizenship and Immigration)*, 2017 FC 517).

[40] Set out below are relevant excerpts from Kanthasamy*:*

> [52] The Officer agreed to consider the hardship Jeyakannan Kanthasamy would likely endure as discrimination in Sri Lanka against young Tamil men. She also accepted evidence that there was discrimination against Tamils in Sri Lanka, particularly against young Tamil men from the north, who are routinely targeted by police. In her view, however, young Tamils are targeted only where there is suspicion of ties to the Liberation Tigers of Tamil Eelam, and the government had been making efforts to improve the situation for Tamils. She concluded that "the onus remains on the applicant to demonstrate that these country conditions would affect him personally".
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> [53] This effectively resulted in the Officer concluding that, in the absence of evidence that Jeyakannan Kanthasamy would be personally targeted by discriminatory action, there was no evidence of discrimination. With respect, the Officer's approach failed to account for the fact that discrimination can be inferred where an applicant shows that he or she is a member of a group that is discriminated against. Discrimination for the purpose of humanitarian and compassionate applications "could manifest in isolated incidents or permeate systemically", and even "[a] series of discriminatory events that do not give rise to persecution must be considered cumulatively": Jamie Chai Yun Liew and Donald

> Galloway, Immigration Law (2nd ed. 2015), at p. 413, citing Divakaran v. Canada (Minister of Citizenship and Immigration), 2011 FC 633 (CanLII).
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> [54] Here, however, the Officer required Jeyakannan Kanthasamy to present direct evidence that he would face such a risk of discrimination if deported. This not only undermines the humanitarian purpose of s. 25(1), it reflects an anemic view of discrimination that this Court largely eschewed decades ago: Andrews v. Law Society of British Columbia, 1989 CanLII 2 (SCC), [1989] 1 S.C.R. 143, at pp. 173-74; British Columbia (Public Service Employee Relations Commission) v. BCGSEU, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3; Quebec (Attorney General) v. A, 2013 SCC 5 (CanLII), [2013] 1 S.C.R. 61, at paras. 318-19 and 321-38.
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> [56] As these passages suggest, applicants need only show that they would likely be affected by adverse conditions such as discrimination. Evidence of discrimination experienced by others who share the applicant's identity is therefore clearly relevant under s. 25(1), whether or not the applicant has evidence of being personally targeted, and reasonable inferences can be drawn from those experiences. Rennie J. persuasively explained the reasons for permitting reasonable inferences in such circumstances in Aboubacar v. Canada (Minister of Citizenship and Immigration), 2014 FC 714 (CanLII):
>
> > While claims for humanitarian and compassionate relief under section 25 must be supported by evidence, **there are circumstances where the conditions in the country of origin are such that they support a reasoned inference as to the challenges a particular applicant would face on return** . . . . This is not speculation, rather it is a reasoned inference, of a non-speculative nature, as to the hardship an individual would face, and thus provides an evidentiary foundation for a meaningful, individualized analysis .[para. 12 (CanLII)]
>
> [Emphasis added]

[41] Kanthasamy does not change the law that the risk must be personal. It merely indicates that personal risk can be inferred from country conditions. In the present case, the IAD

concluded Ms. Ylanan failed to establish that she or her minor children would be personally at risk in the event the removal order was upheld. In light of the above, I see no reason to disturb the IAD's decision on this factor.

VII. Conclusion

[42] A judicial review is not a "line-by-line treasure hunt for error". A reviewing court must approach the reasons and outcome of a tribunal's decision as an "organic whole" (Kanthasamy, at para 138; Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd, 2013 SCC 34 at para 54). The reviewing court must determine if the decision as a whole falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law as set out in *Dunsmuir*.

[43] I am of the view the IAD decision meets the requirements of justification, transparency and intelligibility and falls within a range of reasonable possible, acceptable outcomes based on the facts and law as required by the jurisprudence (*Dunsmuir*, at para 47).

[44] For the foregoing reasons, the application for judicial review is dismissed.

[45] The parties proposed no question of general importance for certification and none arises from the facts of this case. As a result, no question is certified for consideration by the Federal Court of Appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

SCHEDULE

Immigration and Refugee Protection Act, SC 2001, c 27	***Loi sur l'immigration et la protection des réfugiés***, L.C. 2001, ch. 27
Misrepresentation	**Fausses déclarations**
40(1)	**40(1)**
Preparation of Report	**Rapport d'interdiction de territoire**
44(1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.	**44(1)** S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.
Referral of removal order	**Suivi**
44(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order	**44(2)** S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.
Appeal Allowed	**Fondement de l'appel**
67(1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the	**67(1)** Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :

time that the appeal is disposed of,

[…]

(c) 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.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5520-18
STYLE OF CAUSE:	MARYFLOR DIRECT YLANAN v MPSEP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 28, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	BELL J.
DATED:	AUGUST 9, 2019

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