Federal Court  Cour fédérale

Date: 20200122

Docket: IMM-2101-19

Citation: 2020 FC 104

Ottawa, Ontario, January 22, 2020

PRESENT: Mr. Justice Russell

BETWEEN:

GZIM LATIF

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada [IAD], dated March 6, 2019 [Decision], dismissing the Applicant's appeal of the Immigration Division's [ID] decision to issue a removal order against the Applicant pursuant to s 40(1)(a) of the *IRPA* and rejecting the Applicant's

request to retain his Permanent Resident [PR] status on Humanitarian and Compassionate [H&C] grounds pursuant to s 67(1)c) of the *IRPA*.

II. BACKGROUND

[2] The Applicant, Mr. Gzim Latif, is a 53-year-old citizen of Macedonia. He came to Canada on a trip in July 2005 and has lived here since.

[3] The Applicant was married in Macedonia to Ms. Fedarie Selmanova from 1982 until their divorce in 1997. Together, they have two sons.

[4] In July 2005, while in Canada, the Applicant met Ms. Vera Silajeva, a Canadian citizen, who he married four months later in November 2005. Ms. Silajeva sponsored the Applicant for PR status in Canada, which he obtained on December 30, 2008. Ms. Silajeva subsequently filed for divorce on January 7, 2009, based on a separation date of February 1, 2008. The divorce was finalized in May 2009.

[5] The Applicant, upon returning to Macedonia for three weeks in April 2010, remarried Ms. Selmanova, who he had divorced in 1997. The Applicant then applied to sponsor Ms. Selmanova for PR status in Canada. The application was refused by the ID on the basis that the Applicant's first marriage to Ms. Selmanova had been primarily dissolved so that he could acquire permanent residency through a non-genuine marriage to Ms. Silajeva. The Applicant's appeal to the IAD was subsequently denied in June 2012, and the couple divorced again in 2015.

[6] The Applicant is now married to Ms. Magdalena Latif, with whom he began living in October 2014 and married in August 2016. The couple have a child together, born on December 7, 2017, in addition to Ms. Latif's son, Kyro, who is now 18 years old.

[7] However, on March 25, 2014, the Applicant was reported as inadmissible to Canada for misrepresentation pursuant to s 40(1)(a) of the *IRPA* as it was alleged that his marriage to Ms. Silajeva was one of convenience. On April 26, 2017, the ID issued a removal order against the Applicant. The decision was appealed to the IAD, which dismissed the appeal following a hearing *de novo*.

[8] The Applicant filed an application for leave and judicial review on March 29, 2019, 16 days following his receipt of the Decision on March 13, 2019, which was sent by prepaid regular mail by the IAD on March 11, 2019.

III. DECISION UNDER REVIEW

[9] On March 6, 2019, the IAD found that the removal order against the Applicant was legally valid due to misrepresentations as per s 40(1)(a) of the *IRPA*. The IAD also found that insufficient H&C considerations existed to grant the discretionary relief requested by the Applicant.

A. *Legal Validity of the Removal Order*

[10] The IAD found that the removal order was legally valid given the seriousness of the misrepresentations in this case. More specifically, the IAD found that the Applicant misrepresented: (1) the genuineness of his marriage to Ms. Silajeva; and (2) the nature of his relationship with Ms. Selmanova following their alleged divorce in 1997. Since the first misrepresentation was deemed to have caused an error in the application of the *IRPA,* while the second was deemed to have had the potential to induce further error, the IAD found that sufficient grounds existed to declare the Applicant inadmissible for misrepresentation pursuant to s 40(1)(a).

(1) Marriage to Ms. Silajeva

[11] First, the IAD found that the Applicant directly misrepresented the primary purpose and genuineness of his marriage to Ms. Silajeva, which the IAD found to be, on a balance of probabilities, a marriage of convenience. The IAD based this finding on the inconsistencies in the evidence concerning his divorce from Ms. Silajeva.

[12] The IAD first pointed to the filing dates in the divorce process. In addition to the fact that Ms. Silajeva and the Applicant began divorce proceedings a few weeks after he received his PR status, the Applicant's divorce application states that he and Ms. Silajeva were separated as of February 2008, ten months before the Applicant received his PR status. Though the Applicant claimed that this was a mistake and that they separated in February 2009, the IAD found this not

to be credible as the couple was required to be separated for at least a year in order to obtain their divorce in May 2009.

[13] The IAD also noted that this finding is consistent with: the fact that the divorce application was served on the Applicant at his brother's address; the fact that he changed his address on his driver's licence to his brother's on January 7, 2009; and the fact that Ms. Silajeva's fourth husband changed his address to her address on December 16, 2008. The IAD also cited the contradictory testimony offered by the Applicant and Ms. Silajeva's affidavit concerning the reason for their divorce and their contact since.

[14] Overall, the IAD found that these misrepresentations induced an error in the application of the *IRPA* because the Applicant's PR status was granted on the basis of his marriage to Ms. Silajeva, and the failure to disclose the relevant information related to his marriage to Ms. Silajeva "foreclosed further inquiries into relevant lines of questioning and investigation."

(2) Marriage to Ms. Selmanova

[15] Second, the IAD found that the Applicant dissolved his first marriage to Ms. Selmanova for the purpose of gaining a benefit under the *IRPA* and that, on a balance of probabilities, had remained in a continuous relationship with her following their divorce in 1997.

[16] The IAD grounded this finding in the fact that: (1) the Applicant noted in his 2005 visa application that he was *de facto* married; (2) Ms. Selmanova stated in their second divorce application that the Applicant sent her money while in Canada and promised to "take her to

Canada"; (3) Ms. Selmanova lived across the street from the Applicant's parents' home in Macedonia rent-free; and (4) the absence of a reasonable explanation for the short delay in which the Applicant and Ms. Selmanova remarried following the Applicant's divorce to Ms. Silajeva. The IAD also noted the contradictory testimony between the Applicant and Ms. Selmanova concerning their relationship following their divorce in 1997.

[17] For these reasons, the IAD found that the Applicant's narrative concerning his relationship with Ms. Selmanova was not credible and that, on a balance of probabilities, they remained in a continuous relationship following their divorce in 1997 until 2015. The IAD found that this could have potentially induced an error in the application of the *IRPA* had Ms. Selmanova and their son been granted PR status.

B. *H&C Considerations*

[18] The IAD found that the H&C factors in this case were not sufficient to justify allowing the Applicant to retain his PR status despite the misrepresentation rendering him inadmissible. Although the IAD found that the Applicant's establishment in Canada, the impact on Ms. Latif, the best interests of Ms. Latif's son Kyro, and the best interests of the Applicant's son all weighed in the Applicant's favour, it concluded that the Applicant's six attempts to mislead authorities, his lack of remorse for his misrepresentations, and the lack of serious hardship to the Applicant should he be removed from Canada negatively outweighed the favourable factors in this case. The IAD specified that, although the best interests of the children were important factors, they were not determinative and could not overcome the serious negative factors. As such, the IAD found that the removal order should stand.

(1) Establishment in Canada

[19] The IAD gave positive weight to the Applicant's length of time in Canada as well as his employment and financial ties here. This includes the fact that he has lived continuously in Canada for nearly 15 years, his full-time employment, his payment of taxes, his payment into a pension plan, his joint savings and investments, and his property ownership (the house he shares with Ms. Latif) and his 2016 vehicle.

(2) Best Interests of Ms. Latif's Son Kyro

[20] Although the IAD acknowledged that it is in the best interests of Ms. Latif's son, Kyro, for the Applicant to remain in Canada, and subsequently granted this factor positive weight, it concluded that the evidence does not demonstrate that Kyro will regress if the Applicant is removed.

[21] Although Ms. Latif largely credits the Applicant for Kyro's progress, the IAD found that this progress is primarily due to the Ministry of Children and Youth Services' ASD2 program, which Kyro participated in between March and November 2014. The IAD grounded this conclusion in the fact that the November 2014 report detailing Kyro's progress does not mention the Applicant, who only moved in with the family a month prior to this positive report at the conclusion of the program. As such, the IAD concluded that there is no indication that Kyro would not continue to progress.

(3) Best Interests of the Applicant's Son

[22] The IAD granted positive weight to the fact that it would be in the best interests of the Applicant's son if he were to remain in Canada. However, the IAD reduced the weight of this factor by citing the fact that the child is young enough to adapt to changes in his day-to-day life. The IAD also recognized that the child would be properly cared for by his mother and his grandmother, who lives nearby. As such, this factor was not deemed determinative.

(4) Impact on Ms. Latif

[23] The IAD also found that the removal of the Applicant from Canada would have a negative impact on Ms. Latif, and therefore gave positive weight to this factor. However, the IAD reduced the weight of this factor and found it to not be determinative. Indeed, it stated that Ms. Latif "made decisions that led her to her current situation," and noted the lack of evidence demonstrating that she would not be able to manage following the Applicant's removal, her overall better "frame of mind" and the nearby presence of her mother. The IAD also found that Ms. Latif could sponsor the Applicant to return to Canada after five years.

(5) Potential Hardship to the Applicant in Macedonia

[24] The IAD found that the Applicant would initially face moderate hardship in Macedonia if removed there. However, the IAD held that the Applicant would likely be able to overcome this hardship and re-establish himself in Macedonia. The IAD noted that he was born there, speaks the language, has close family ties there, and owns a house across the street from his mother's

home. The IAD also noted that the Applicant worked in Macedonia as a truck driver before coming to Canada, has gained useful construction skills and experience in Canada, and is a "hard-working, resourceful individual" who should be able to re-establish himself.

(6) Serious Misrepresentations and Lack of Remorse

[25] The IAD found that the misrepresentations were serious and extreme, and the Applicant lacked remorse. Consequently, these factors weighed heavily against the Applicant. The IAD noted that the Applicant's misrepresentations caused serious errors in the administration of the *IRPA* and could have potentially caused additional ones. Nevertheless, the IAD noted that the Applicant continues to misrepresent his marriages to Ms. Silajeva and Ms. Selmanova so that "the deception has grown, because the [Applicant] requires further lies to cover up previous deceptions."

[26] The IAD found this to be an important negative factor weighing against the Applicant, which the positive factors in this case could not overcome. The IAD therefore decided not to grant the discretionary relief requested by the Applicant pursuant to s 67(1)(c).

IV. ISSUES

[27] The issues to be determined in the present application are the following:

1. Did the IAD err in its assessment of potential hardship should the Applicant be removed from Canada?

2. Did the IAD err in its assessment of the best interests of the children?

V. STANDARD OF REVIEW

[28] This application was argued prior to the Supreme Court of Canada's recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. This Court's judgment was taken under reserve. The parties' submissions on the standard of review were therefore made under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] framework. However, given the circumstances in this matter, and the Supreme Court of Canada's instructions in *Vavilov* at para 144, this Court found that it was not necessary to ask the parties to make additional submissions on the standard of review. I have applied the *Vavilov* framework in my consideration of the application and it does not change the applicable standards of review in this case nor my conclusions.

[29] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[30] There was no disagreement between the parties that the applicable standard of review in this matter was the standard of reasonableness.

[31] There is nothing to rebut the presumption that the standard of reasonableness applies in this case. The application of the standard of reasonableness to these issues is also consistent with the existing jurisprudence prior to the Supreme Court of Canada's decision in *Vavilov*. See *Li v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1235 at para 14.

[32] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov*, at para 89 citing *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). These contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90). Put in another way, the Court should intervene only when "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker's reasoning process; and (2) untenability "in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, at para 101).

VI. STATUTORY PROVISIONS

[33] The following statutory provisions of the *IRPA* are relevant to this application for judicial review:

Misrepresentation	**Fausses déclarations**
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 administration of this Act;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
…	…
Application	**Application**
(2) The following provisions govern subsection (1):	(2) Les dispositions suivantes s'appliquent au paragraphe (1) :
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and	a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la 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 time that the appeal is disposed of,	67 (1) Il est fait droit à l’appel sur preuve qu’au moment où il en est disposé :
…	…
(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.
…	…
Application for judicial review	**Demande d’autorisation**
72 (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is, subject to section 86.1, commenced by making an application for leave to the Court.	72 (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est, sous réserve de l’article 86.1, subordonné au dépôt d’une demande d’autorisation.
Application	**Application**
(2) The following provisions govern an application under subsection (1):	(2) Les dispositions suivantes s’appliquent à la demande d’autorisation :
…	…
(b) subject to paragraph 169(f), notice of the application shall	b) elle doit être signifiée à l’autre partie puis déposée au

be served on the other party and the application shall be filed in the Registry of the Federal Court ("the Court") within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;	greffe de la Cour fédérale — la Cour — dans les quinze ou soixante jours, selon que la mesure attaquée a été rendue au Canada ou non, suivant, sous réserve de l'alinéa 169f), la date où le demandeur en est avisé ou en a eu connaissance;
(c) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;	c) le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;

VII. ARGUMENTS

A. *Applicant*

[34] The Applicant argues that the IAD's assessment of the H&C considerations in this case was unreasonable and, as such, this judicial review should be allowed. In particular, the Applicant argues that: (1) the IAD unreasonably speculated and overlooked key facts when assessing the hardship the Applicant and Ms. Latif would face should he be removed from Canada; and (2) the IAD erred by performing a misplaced and insufficient analysis of the best interests of the children.

(1) Assessment of Potential Hardship

[35] The Applicant submits that the IAD unreasonably assessed the hardship he and Ms. Latif would face should he be removed from Canada.

[36] First, the IAD unreasonably assessed his ability to obtain employment in Macedonia. The IAD erred by speculating that his proven ability to establish himself in Canada would permit him to do the same in Macedonia, and further erred in ignoring the age-related challenges he would face and in suggesting that his hardship would be limited, given the possibility of future sponsorship in five years.

[37] Indeed, the Applicant notes that this Court has warned against using the degree of establishment in Canada to undermine the hardship faced on removal (*Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at para 26).

[38] The Applicant also highlights that his ability to obtain new manual labour employment in Macedonia at the age of 52 (now 53) is an important factual element in assessing the potential hardship faced by his removal that cannot be reasonably ignored by the IAD as per this Court's decision in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 157 FTR 35 at para 17. He submits that this is an obvious and necessary consideration that the IAD ought to have dealt with.

[39] Second, the Applicant argues that the IAD unreasonably overlooked pertinent evidence relating to the potential hardship Ms. Latif would face should the Applicant be removed from Canada.

[40] Specifically, the Applicant states that Ms. Latif relies on the Applicant for emotional and financial support that cannot be replaced with visits to Macedonia, or by her mother's support

and the uncertain outcome of applying for sponsorship in five years. He submits that the IAD failed to take into account the seriousness of Ms. Latif's situation should the Applicant be removed. She will be burdened with: (1) the sole obligation to provide constant care and support to their young son; (2) further financial obligations; and (3) having to choose between staying in Canada with her son Kyro or joining the Applicant in Macedonia for the well-being of their young son.

[41] Moreover, the Applicant submits that it was improper for the IAD to discredit the potential hardship faced by Ms. Latif by stating that it was her own decisions that led to this difficult situation. The Applicant states that Ms. Latif was unaware of the seriousness of the Applicant's immigration status when they began dating. The Applicant also adds that they purchased a house due to the high cost of rent in the area, and their son was unexpected.

(2) Analysis of the Best Interests of the Children

[42] The Applicant argues that the IAD erred in assessing the best interests of the children in this case. Specifically, the IAD erred in assessing the best interests of Ms. Latif's son, Kyro by overlooking pertinent evidence concerning the Applicant's role in his progress and success, and by failing to undertake a robust analysis.

[43] First, the Applicant submits that the IAD created an "artificial dichotomy" by finding that Kyro's progress and success was largely due to the ASD2 program and not the Applicant's presence. The Applicant states that these factors should have been interpreted as complementing each other. However, in placing them against each other, the IAD overlooked the positive impact

of the Applicant's presence on Kyro. Ms. Latif's testimony confirmed this as well as the fact that Kyro, having no relationship with his biological father, changed his last name to that of the Applicant's. Consequently, the Applicant argues that this critical evidence contradicting the IAD's findings was unreasonably overlooked.

[44] Second, the Applicant submits that the IAD's analysis of the best interests of his young son was not comprehensive and therefore not in accordance with the jurisprudence requiring a decision-maker to be "alert, alive and sensitive" to the needs and best interests of a child (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 75). The Applicant argues that the IAD unreasonably limited its analysis to whether the child would currently be able to adapt to a change in his day-to-day dynamic. However, the Applicant says that the IAD ignored the fact that the Applicant plays a vital and active role in his son's emotional and physical care and ensures the family's financial stability. Given that these are important years in the development of a child, and his son would be at least seven by the time the Applicant would be allowed to return to Canada, the Applicant states that it was improper for the IAD to hold that Ms. Latif's mother could provide a similar level of support and care.

B. *Respondent*

[45] The Respondent argues that the Decision was reasonable and assessed all the relevant factors globally according to their appropriate weight. In doing so, the IAD reasonably found that the Applicant's serious misrepresentations and lack of remorse could not be overcome by the positive factors weighing in the Applicant's favour.

[46] In response to the Applicant's arguments, the Respondent states that the IAD did not err in its assessment of the potential hardship faced by the Applicant and Ms. Latif. This is because it was the Applicant who had the onus of demonstrating that he would be unable to secure employment in Macedonia as well as the onus of providing sufficient evidence of Ms. Latif's potential hardship to overcome the negative factors in this case. The Respondent also reminds the Court that the best interests of a child does not automatically entitle the Applicant to a positive decision. In this case, it was open to the IAD to conclude that this factor was insufficient to overcome the negative factors in this case.

[47] The Respondent argues that the Applicant is simply asking this Court to re-weigh the evidence that was before the IAD, which is not this Court's role in a judicial review application, citing *Sahota v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1463 at para 32. As such, the Respondent submits that this judicial review application should be dismissed.

(1) Assessment of Potential Hardship

[48] The Respondent submits that the IAD's assessment of the potential hardship should the Applicant be removed from Canada was reasonable. The Applicant had the onus to provide sufficient evidence to show that he and Ms. Latif would face hardship that would outweigh the negative factors in this case. The Respondent notes that the Applicant has failed to do this.

[49] First, the Respondent argues that the IAD did not err in finding that the new skills acquired by the Applicant in Canada, in addition to the decades he has lived in Macedonia and his strong family ties to his native country, would allow him to re-establish himself. Though the

Applicant argues that the IAD failed to consider the hardship he would suffer as a result of his age, the Respondent notes that the Applicant did not submit any evidence of age-related hardship.

[50] Second, the Respondent submits that the Decision clearly demonstrates that the IAD considered all of the Applicant's evidence concerning the potential hardship Ms. Latif would face should the Applicant be removed from Canada, including her own testimony. Though the IAD recognized that Ms. Latif would indeed face hardship, the IAD found that the level of hardship did not outweigh the negative factors in this case. The Respondent says that this was within the reasonable outcomes available to the IAD.

(2) Analysis of the Best Interests of the Children

[51] The Respondent states that the IAD was reasonable in finding that, although the best interests of the children in this case would be for the Applicant to remain in Canada, this did not outweigh the negative factors in this case. The Respondent states that the best interests of a child do not automatically entitle the Applicant to a positive decision. It is the Applicant who had the onus to demonstrate that the best interests of the child was determinative in this case.

[52] Concerning the IAD's assessment of the best interests of the Applicant's son, the Respondent submits that the Applicant provided little evidence regarding how his son would be affected by his removal from Canada beyond Ms. Latif's financial situation and her ability to care for two children. As the Decision was responsive to the submissions and evidence put

before it by the Applicant, the Respondent submits that the IAD's assessment of the best interests of the Applicant's son, and the weight accorded to this factor, were reasonable.

[53] As for the IAD's assessment of the best interests of Kyro, Ms. Latif's son, the Respondent argues that the IAD reasonably found that the Applicant had failed to provide sufficient evidence to support his claim that Kyro would regress should he be removed from Canada. As such, the Respondent argues that the weight given to the best interests of Kyro was reasonable.

VIII. ANALYSIS

[54] Although the Applicant still denies before me that he misrepresented anything, he does not in this application dispute the IAD finding that he made a serious misrepresentation under s 40(1)(a) of *IRPA*, or say that the removal order made against him is not valid. The Applicant simply says that the IAD exercised its H&C discretion unreasonably.

[55] In cases where the IAD is called upon to assess and weigh a significant number of variables, there is obviously scope for disagreement concerning the weight to be given to each variable, as well as the decision-maker's final conclusion. Simple disagreement over these matters is not a ground of review and this Court has said many times that it is not in the business of re-weighing evidence. See *Vavilov*, at para 125 and *Zhang v Canada (Citizenship and Immigration)*, 2019 FC 1536 at para 26. Even if the Court would have reached a different conclusion than the IAD, this is not sufficient, in itself, to overturn the Decision. See *Vavilov*, at paras 15 & 83-86. In fact, in some cases, both a positive and a negative decision would be

reasonable on the facts. See *Animodi v Canada (Citizenship and Immigration)*, 2015 FC 929 at para 80. This is because Parliament has granted the IAD a discretion in the *IRPA* which, provided it is exercised reasonably and in good faith, must be respected.

[56] Another important general principle to keep in mind is that the onus is upon an applicant requesting H&C relief to provide the evidence and the justification that will allow the IAD to exercise its discretion in the applicant's favour. It is not up to the decision-maker to find reasons, or rely upon factors that are not appropriately or sufficiently proven or addressed by the applicant. See *Daniels v Canada (Citizenship and Immigration)*, 2018 FC 463 at para 32.

[57] There is no doubt that, in the context of the Applicant's family situation in Canada, this was a very difficult case for the IAD. However, apart from his family, and employment and financial ties in Canada, the Applicant had little to support his position. He does not challenge the IAD's conclusions that he "has lied to mislead and deceive immigration authorities on five separate occasions" and shows no signs of remorse. As the IAD found;

> [28] I do not find any signs of remorse as the [Applicant] denies that there was any misrepresentation, deliberate or otherwise. I find this troubling, as the [Applicant] has had numerous opportunities to take responsibility for his actions.

[58] As a result of his unapologetic misuse of Canada's immigration system, the Applicant has established himself in Canada and has the support of a loving family in Canada. He now uses these factors to resist removal. This kind of situation is a very difficult one for the IAD to address. There is no allegation in the present application that the IAD failed to identify and consider the appropriate factors. As the IAD says:

> [24] The [Applicant] bears the burden of proof. To allow this appeal, I must be satisfied, taking into account the best interests of any child directly affected by the decision, that sufficient H&C considerations warrant special relief in light of all the circumstances of the case. I am also cognizant of the immigration objectives, especially "to see that families are reunited in Canada." The Federal Court's decision in *Wang* discusses the factors that are appropriately considered by the IAD in exercising discretion in cases involving misrepresentation. These factors are non-exhaustive and will carry different weight depending on the specific facts of a case. The factors for consideration include:
>
> - the seriousness of the misrepresentation leading to the removal order and the circumstances surrounding it;
> - the remorsefulness of the [Applicant];
> - the length of time spent in Canada and the degree to which the [Applicant] is established in Canada;
> - the degree of hardship that would be caused to the [Applicant] by removal from Canada, including the conditions in the likely country of removal; and
> - the [Applicant]'s family in Canada and the impact on the family that removal would cause.
>
> I consider the relevant factors below.
>
> [References omitted.]

[59] Essentially, the Applicant's complaint in this application is that, in applying the governing law, the IAD either overlooked important considerations and evidence or reached unreasonable conclusions.

[60] The Applicant is fully aware that the Court cannot reweigh the evidence and provides a disclaimer to this effect:

> 70. The Applicant is not requesting that this court re-weigh any evidence; it is accepted that that is [*sic*] not the role of this Honourable Court in an application for judicial review. The

> Applicant rather submits that the [IAD] overlooked pertinent evidence and would not allow [itself] to give proper consideration to the overwhelmingly positive factors in this application.

[61] Notwithstanding this disclaimer, the errors alleged are largely an attempt to have the Court find that material matters were overlooked and/or that the IAD failed to give sufficient weight to certain factors that should have tipped the scales in favour of the Applicant.

[62] In the end, I am not persuaded that the IAD made any reviewable errors. The difficulties faced by the Applicant's present wife and their children if he is removed are the responsibility of the Applicant. Yet, instead of acknowledging his obvious mistakes and showing true remorse before the IAD, he chose to lower his chances of a positive H&C decision by denying he had done anything wrong, when the evidence against him on the misrepresentation is so strong. In doing this, the Applicant was clearly not thinking of his Canadian family.

[63] In written submissions (endorsed by oral argument), the Applicant makes a series of assertions that are not borne out by a simple reading of the Decision.

A. *Employment and Hardship in Macedonia*

[64] The Applicant asserts, in relation to employment in Macedonia:

> 27. It is submitted that the [IAD]'s conclusions are unreasonable for several reasons. The Applicant provided oral evidence of his employment history in Macedonia as a truck driver when he was younger. He also testified that for the last number of years in Canada, he has worked in construction, particularly as a cement finisher, despite not having any experience in that field beforehand. The [IAD]'s conclusion is speculative to suggest that the Applicant would likely be able to simply re-establish himself

> just because he is going back to his home country. The [IAD] ignores the evidence of the Applicant's past employment history in Canada, and speculates that just because the Applicant has been able to establish himself in Canada over the last 14 years, that he will be able to do the same in Canada.
>
> …
>
> 29. While it is true that the Applicant has worked steadily in Canada for the last 14 years, there is nothing to suggest that he has acquired any skills that would assist in securing well-paying employment, sufficient to support his family, back in Macedonia. He is a labourer, and given his advanced age, it strains credulity to think that he can simply return and find a job where he left off many years ago.

[65] The onus was upon the Applicant to demonstrate why he would not be able to live and work in Macedonia. At the time of the Decision, the Applicant was 52 years old. There is no evidence that this renders the Applicant "advanced" in age or that he is not able-bodied and capable of working in Macedonia. There is no evidence, in fact, that the Applicant even raised his age as an issue before the IAD.

[66] The IAD found at para 33 that the Applicant was well-established in Canada and that his "length of time in Canada and his employment and financial ties to Canada weigh favorably in the H&C considerations."

[67] The full context of the IAD's assessment of hardship in Macedonia is ignored in the Applicant's submissions. The IAD disregarded nothing that the Applicant raised in his application:

> [34] The [Applicant] is a citizen of Macedonia. He was born and raised there, speaks the language, and is familiar with the cultural context. He has his mother, sister, his two married sons and their

families, including five grandchildren (between one month and 14 years of age) there. He maintains regular communication with his sons. He has returned to visit his mother and family in Macedonia several times over the years (including 2010, 2011, 2012, 2013, 2015), most recently with his spouse and children in 2017. His mother is aging and he tries to provide her with support through his visits. The [Applicant]'s mother lives in the family home in a small village. The [Applicant] owns the house across the street from her and his eldest son now inhabits that home with his family. Before leaving Macedonia, the [Applicant] was a full-time truck driver, but since coming to Canada, he has also learned and developed skills in the construction trade.

[35] The [Applicant] states that he would face hardship should he be removed to Macedonia due to the limited work opportunities and his lack of connections. I acknowledge that the [Applicant] has been in Canada for over 13 years and the particular economic environment and lack of connections are certainly challenges that the [Applicant] would face. However, the evidence before me demonstrates that the [Applicant] is a hard-working, resourceful individual, who managed to cultivate considerable success in the Canadian context despite language, cultural, and training barriers. Given the [Applicant]'s capabilities, on a balance of probabilities, I find that he should be able to re-establish himself in Macedonia, particularly given that the [Applicant] has the advantage of advanced skill development, close family support, and property ownership, as well as being familiar with the language, culture, and society there. On a balance of probabilities, I find that while undoubtedly the [Applicant] would experience a period of adjustment upon his return to Macedonia, there is a lack of evidence that establishes the [Applicant] would suffer hardship with respect to his employment prospects.

[36] The [Applicant] said that his life is now in Canada and that it would be a hardship to lose all that he has established here. He says that he cannot earn the income that he does here if he goes back to Macedonia. While I appreciate that he has built up financial security and developed his career, he has done so with the knowledge that his immigration status was ill-gotten and, at least since 2013, was not secure. He purchased his house and vehicle in 2017, after receiving his inadmissibility report and his July 5, 2016 Exclusion Order. I do not find that these losses establish a hardship for the [Applicant] in terms of his ability to re-establish in Macedonia.

[68] As far as work opportunities in Macedonia are concerned, the IAD fully acknowledged "the challenges that the [Applicant] would face" and there is nothing to suggest that the IAD ignored any of the Applicant's evidence on point. Neither the Applicant nor the IAD can say with certainty what will happen if the Applicant returns to Macedonia and seeks employment there, so that the whole exercise is necessarily somewhat speculative. However, the onus is upon the Applicant to demonstrate what is likely to occur. It is not up to the IAD. Given the factors that are established (the Applicant's demonstrated resourcefulness, his capabilities and skills he has picked up in Canada, his close family support in Macedonia, his property ownership in Macedonia, and his familiarity with language, culture and society in Macedonia) as well as the "lack of evidence" on hardship from the Applicant, there is nothing unreasonable about the IAD's conclusions on this issue. The Applicant has selectively mischaracterized the Decision on this issue.

B. *Sponsorship*

[69] Selective mischaracterization is also evident in the Applicant's allegations of an unreasonable reliance on the prospect of future sponsorship in the Decision.

[70] The Applicant complains that "there is no guarantee that he will successfully be able to return to Canada […] [and] it was [therefore] inappropriate for the [IAD] to use the possibility of a future sponsorship to abdicate its responsibility to perform a holistic hardship analysis of the Applicant's circumstances." This is not what the IAD does.

[71] The IAD only referred to possible sponsorship in passing when it addressed the negative impact of the Applicant's removal upon his wife:

> [48] Ms. Latif testified to the negative impact that the removal of the [Applicant] would have on her life. She said that she would have to sell their current house and she would find herself as a single parent once again. However, Ms. Latif made decisions that led her to her current situation: she knew that the [Applicant] may need to leave Canada when they married, when they purchased their current house, and when they decided to have a child. Ms. Latif was described in the medical documentation as being "resilient," and I have no evidence before me to suggest that she would not be able to manage after the [Applicant]'s removal.
>
> [49] Ms. Latif is also in a much better situation than she was in when she met the [Applicant]. She is in a better frame of mind. She has a new job that pays better, joint assets with the [Applicant], and a partner that she can rely on for emotional support. Her mother is still healthy and engaged in her life, and her two sons are healthy and stable.
>
> [50] Although the absence of the [Applicant] would have a negative impact on Ms. Latif and the family, there are ways to mitigate the loss of the [Applicant] living with them: Ms. Latif and her two sons could visit the [Applicant] in Macedonia, as she has already done without issue; technology can assist with ongoing communication; and Ms. Latif can apply to sponsor the [Applicant] to return to Canada after five years. Overall, the negative impact on the family and the best interests of the children are not enough to outweigh the other negative factors.

[72] The IAD's mention of sponsorship as a possible way to mitigate hardship is not used as a way of avoiding a full acknowledgment of potential hardship as the Applicant asserts.

[73] It is clear that there is no indication in the Decision that the sponsorship will be successful. However, the Applicant has produced no evidence that it will not be. The only point the IAD is making is that sponsorship remains a possible way for the Applicant to return to Canada. There is no unreasonable reliance upon sponsorship in the full context of the Decision.

There is nothing to suggest that the IAD ignored or overlooked the difficulties of possible sponsorship in this case or the hardship the Applicant's absence will cause to the family.

C. *Hardship to Family in Canada*

[74] The Applicant asserts that the IAD "overlooked pertinent evidence as it relates to the hardship that Ms. Latif would face if the [Applicant] is returned to Canada." I think the Applicant means "Macedonia," not "Canada."

[75] In particular, the Applicant says that the IAD overlooked the extent to which Ms. Latif and his Canadian family rely upon him. The Applicant asserts that the IAD "did not adequately take into account the seriousness of the situation in which Ms. Latif would find herself" and that this "raises the serious possibility that the evidence was overlooked in the [IAD]'s brief dismissal of any hardship that Ms. Latif would face if the Applicant were removed."

[76] The brief answer to this further selective mischaracterization of the Decision is that there is nothing to suggest that the IAD overlooked any matter of material importance. The IAD showed itself to be fully aware of the situation of the Applicant's wife, Ms. Latif, and his family, and there is no "brief dismissal" of any matter that pertains to the family situation. The Applicant is simply saying that more weight should have been given to the family situation and that it should have trumped all other considerations in the IAD's final balancing of the factors. This is a weight issue and, as I have already pointed out, the Court is not in the business of re-weighing the evidence in a way that will favour the Applicant.

D. *Evidence Overlooked*

[77] The Applicant asserts that the IAD overlooked the full role he plays in family life. Ms. Latif gave forceful evidence that the Applicant is a full partner in family life ("he does everything") and that they function as a team so that his absence would have a highly detrimental impact on how this family functions, quite apart from the emotional and psychological impact.

[78] The IAD fully acknowledged at para 37 that the "main factor, that weighs in favour of the [Applicant] accessing discretionary relief is his family situation." The IAD cited *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at para 11 for the factors that it must consider and specifically noted "the [Applicant]'s family in Canada and the impact on the family that removal would cause."

[79] The IAD then provided a fairly detailed analysis of the impact upon Ms. Latif and each of the children. There is no suggestion, however, that the IAD overlooked the Applicant's full family role and his contributions as a full partner in family life. In fact, Ms. Latif's evidence to this effect is addressed in the IAD's analysis of the impact upon her. The IAD pointed out that it fully understands that "she would find herself as a single parent once again," but makes the point that:

> [50] Although the absence of the [Applicant] would have a negative impact on Ms. Latif and the family, there are ways to mitigate the loss of the [Applicant] living with them: Ms. Latif and her two sons could visit the [Applicant] in Macedonia, as she has already done without issue; technology can assist with ongoing communication; and Ms. Latif can apply to sponsor the [Applicant] to return to Canada after five years. Overall, the negative impact

> on the family and the best interests of the children are not enough to outweigh the other negative factors.

[80] Once again, I do not think there is any indication in the Decision that the Applicant's full role as a partner in family life was overlooked and was not part of the IAD's overall assessment. Moreover, I think the Applicant's real complaint is that this factor was not given sufficient weight by the IAD.

[81] The Applicant argues that the reason Ms. Latif is in a much better situation now is because of him and his stabilizing role within the family. This may well be the case, but there is no evidence that he intends to abandon his family or that his absence will mean that Ms. Latif cannot adjust and manage the separation.

E. *Best Interests of the Children*

[82] The Applicant says that the IAD "considered the best interests of the children in [its] Decision, but did not exactly arrive at a proper conclusion with respect to whether it would be in their best interests for the Applicant to remain in Canada." This is simply not accurate.

[83] As regards Ms. Latif's son, Kyro, the IAD concluded at para 46 that "[o]n a balance of probabilities, while the best interests of Ms. Latif's son is likely to have the [Applicant] remain in the family home, the evidence does not support the contention that Ms. Latif's son will regress if the [Applicant] is removed from Canada."

[84] As for the Applicant's own child with Ms. Latif, the IAD made it quite clear at para 47 that "[o]n a balance of probabilities, the best interests of this child would be that the [Applicant] live with him; […]." Nor are the IAD's conclusions on the best interests of the children "unclear," as the Applicant alleges. The IAD found that it would be in the best interests of both children if the Applicant remained in Canada. However, the examination of the evidence concerning the impact of the Applicant's removal upon each child led the IAD to conclude that the impact on the children is not sufficiently severe to tip the balance in the Applicant's favour as the best interests of the children cannot always trump all other factors. The Court, or others, might have afforded more weight to the children's interests and the likely impact of their separation from the Applicant, but that is not the point. There is no evidence that the IAD overlooked any evidence or possible consequences that were appropriately raised and established. This means that the Court cannot interfere on this ground, even though like any sentient being, I would much prefer (as would the IAD) that this separation did not take place.

[85] The Applicant says that the IAD's "analysis of the best interests of the child is inherently flawed for a multitude of reasons." However, the "reasons" cited by the Applicant are either not borne out by a simple reading of the Decision or are disagreements about weight.

(1) Kyro

[86] For example, the Applicant argues that the IAD "places far too much emphasis on the [November 17, 2014] report contrasting it with the support that the Applicant has offered both Ms. Latif and Kyro, rather than seeing them as complimenting each other."

[87] The Applicant also asserts that "[i]t is unreasonable, based solely on a report from 2014 that evidences the origin of the changes to Kyro's situation, to completely write off the role that the Applicant has played in Kyro's life, and the role he can continue to play in his future." A simple reading of the Decision makes it abundantly clear that the IAD did not "write off" the role the Applicant has played in Kyro's life and acknowledged the role the Applicant has played in Kyro's improvements. The IAD simply pointed out that the November 2014 report makes it clear that improvements were occurring "before the [Applicant] was a major part of their lives." And there is no medical or professional evidence to suggest that Kyro – although obviously upset by the Applicant's departure – is likely to regress. Had there been any real possibility of this happening, the Applicant and his wife, as responsible parents, would surely have provided the evidence required to establish this and thus enhance the possibility of a positive H&C decision.

[88] The Applicant says that the IAD "places far too much emphasis on the report, contrasting it with the support that the Applicant has offered both Ms. Latif and Kyro, rather than seeing them as complementing each other." He says that this means that the IAD created "an artificial dichotomy between the support that Kyro received from the Ministry's program and the support that he got from the Applicant."

[89] The November 17, 2014 report is, of course, important in this case because it is the only objective evidence that the Applicant chose to place before the IAD that speaks to Kyro's condition. And it does, indeed, indicate positive changes.

[90] It was Ms. Latif who gave personal evidence that she thought the Applicant had made the biggest difference in Kyro's life. This meant that the IAD had to assess the Applicant's contribution to Kyro's progress. It was Ms. Latif who said that the Applicant was more important to Kyro's progress, but the Applicant is not mentioned in the report.

[91] The IAD gave full consideration to what Ms. Latif said and set out the Applicant's involvement in Kyro's life. It fully accepted that the Applicant has played a positive role, but the Applicant's assertion (supported by Ms. Latif) that he was the most important cause of Kyro's progress, is not borne out by the objective evidence:

> While I accept that the [Applicant] has likely played a role in Ms. Latif's son's improvements, the report evidences that these changes were occurring before the [Applicant] was a major part of their lives. The report itself does not mention the [Applicant] at all.

[92] There is no "artificial dichotomy" here. The IAD was obliged to assess the Applicant's contribution to Kyro's progress. Ms. Latif said that he was the most significant factor, but the IAD was also obliged to examine what the objective evidence revealed. The IAD's conclusion was that the Applicant did have a positive impact upon Kyro, but the positive changes had already begun before he arrived.

[93] It is, in fact, the Applicant who is creating what he refers to as an "artificial dichotomy." He wanted the IAD to find that he was the most significant factor in Kyro's improvement. The IAD acknowledged his role but, after examining all of the pertinent evidence, simply concluded that changes were already occurring before the Applicant entered Kyro's life. Given the evidence

that the Applicant chose to place before the IAD, there is nothing unreasonable about this conclusion.

[94] What the Applicant is really saying is that the IAD gave more weight to the other factors in Kyro's life than to the role he played and continues to play. It is another complaint about weight which he has attempted to disguise as something he calls an "artificial dichotomy."

[95] There is nothing to suggest that the IAD overlooked any of the evidence that Ms. Latif and the Applicant provided concerning his impact upon the home environment. Once again, the Applicant is simply saying that the IAD should have accepted his own (and Ms. Latif's) assessment of the positive role he has played on the home environment and upon Kyro's positive progress, and should have given it the weight that they say it should have been given.

(2) The Youngest Child

[96] The Applicant complains that, in assessing the best interests of the youngest child, the IAD overlooked the serious impact that his absence will have. The IAD had no evidence before it as to how the family will interact if the Applicant returns to Macedonia. Obviously, his absence will have a major impact upon established family routines. Nevertheless, this is an inevitable consequence in any deportation of a parent.

[97] In oral argument, counsel for the Applicant asserted that the IAD concluded that this child was young enough to adapt but "overlooked everything else."

[98] A simple reading of the Decision makes it clear that the IAD overlooked nothing that the Applicant and Ms. Latif submitted on this issue:

> [47] Ms. Latif gave birth to the [Applicant]'s and her son on December 7, 2017. Both the [Applicant] and Ms. Latif testified to the [Applicant]'s hands-on approach to fathering this child. They described how they balance the care of this child and household duties between them, and, on a balance of probabilities, the [Applicant] has a positive bond with his son. This son has been healthy and has developed in an expected manner. On a balance of probabilities, the best interests of this child would be that the [Applicant] live with him; however, this child is young enough that he should be able to adapt to changes within his day-to-day dynamic. This child also has the benefit of his mother's care and his grandmother living nearby and being part of his care as well. Although the best interest of this child is a positive factor towards allowing this appeal, it does not outweigh the other negative factors.

[99] Once again, the Applicant (and Ms. Latif) are saying no more than that the IAD did not give sufficient weight to the impact of the Applicant's return to Macedonia upon the youngest child. They do not demonstrate that the IAD overlooked anything that they said or produced. If they thought that the impact on the youngest child would be any different from the usual situation of domestic disruption caused by the removal of a parent, or that this child would be harmed in some way, they were at liberty to speak to this and produce any evidence they had to support their case. Given the evidence they produced, it is hard to see how the IAD could have said anything else. No one, especially the IAD, was being callous. This is an extremely difficult situation for the Applicant and this family to face. But family separation, *per se*, is only one factor to weigh. It does not trump everything else. If it did, there would be no point in many H&C assessments.

F. *Hardship on Ms. Latif*

[100] In relation to Ms. Latif personally, the Applicant once again asserts that the IAD overlooked the full seriousness of the impact his removal would have on her. She gave evidence that she thought everything would fall apart. It would be most unusual, given the family situation, if Ms. Latif did not feel and think this way. What will happen is inevitably somewhat speculative and, without some kind of medical or other objective evidence, the IAD cannot just accept Ms. Latif's obvious and understandable emotional feelings as paramount. If there were medical or psychological implications, then the Applicant could easily have provided professional evidence to this effect. Apart from that, there is no evidence that the Applicant intends, or will be forced, to abandon his family if he is removed to Macedonia. There is in fact, no evidence that everything will fall apart. Life will obviously be much more difficult until the family reorganizes itself to deal with the separation and formulates its plans for future reunification. It is natural and inevitable that they will personally paint the bleakest picture possible of the future in order to resist separation, but this does not mean, once separation becomes inevitable, that they will fall apart and everything they have achieved together will be lost.

[101] Although the IAD did not quite put it this way, it is very clear that it had this in mind when it stated that "[a]lthough the absence of the [Applicant] would have a negative impact on Ms. Latif and the family, there are ways to mitigation the loss of the [Applicant] living with them."

G. *Conclusions*

[102] The Applicant's attempts to mischaracterize and misrepresent what the Decision plainly says are not convincing.

[103] The Applicant has raised no convincing argument to suggest that the IAD made a reviewable error in analyzing the best interests of the children against the other factors at play. The Applicant simply wants the conclusion to be different, which is understandable, but this does not establish grounds upon which the Court can set this Decision aside. The Applicant has not established his major premise that the IAD "overlooked pertinent evidence and would not allow [itself] to give proper consideration to the overwhelmingly positive factors in this application."

IX. CERTIFICATION

[104] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT IN IMM-2101-19

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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