Federal Court  Cour fédérale

Date: 20200417

Docket: IMM-48-19

Citation: 2020 FC 530

Ottawa, Ontario, April 17, 2020

PRESENT: The Honourable Mr. Justice McHaffie

BETWEEN:

AMERIK SINGH HAER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Amerik Singh Haer wishes to sponsor his conjugal partner, Halaa Saad Alghamdi, for permanent residence in Canada. The Immigration Appeal Division (IAD) accepted that the two were in a genuine conjugal relationship. Nonetheless, the IAD found that the relationship was excluded by subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], as it did not accept Mr. Haer's evidence that he was no longer in such a relationship

with his wife. The IAD was not satisfied that Mr. Haer's relationship with Ms. Alghamdi was exclusive, and concluded that this made Ms. Alghamdi ineligible for sponsorship.

[2] The IAD relied on three primary grounds in concluding that Mr. Haer's conjugal relationship was not an exclusive one: that Mr. Haer had a sexual encounter with his wife in late 2011 after they separated; that he kept a joint bank account with his wife, which he used to make and track the use of support payments; and that he had not obtained a divorce. With respect to each of these, the IAD's analysis was unreasonable. The reliance on the single sexual encounter long before the hearing was misplaced, and the latter two issues relied on unsubstantiated assumptions about what would be "reasonable to expect" in Mr. Haer's circumstances. The IAD also failed to assess the entirety of the evidence in assessing the question of exclusivity, relying on these three concerns without consideration of the evidence that supported the existence of a genuine conjugal relationship.

[3] I therefore find the IAD's determination to be unreasonable.

II. Issue and Standard of Review

[4] The issue raised on this application is the reasonableness of the IAD's determination that Mr. Haer's relationship with Ms. Alghamdi was not exclusive, and that she did not qualify for sponsorship as a result.

[5] The parties agree that the IAD's decision is one of mixed fact and law reviewable on a reasonableness standard: *Trieu v Canada (Citizenship and Immigration)*, 2017 FC 925 at

para 19. The Supreme Court of Canada's decision in *Vavilov*, issued after this matter was argued, confirms that the reasonableness standard applies to the merits of the IAD's decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[6] On this standard, I ought to give deference to the IAD's findings, avoiding the oft-cited "line-by-line treasure hunt for error," and only interfering with the IAD's finding regarding the relationship if it was based on irrelevant considerations or ignored important evidence: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd*, 2013 SCC 34 at para 54; *Harris v Canada (Citizenship and Immigration)*, 2009 FC 932 at paras 20–24.

III. The IAD's Decision is Unreasonable

A. *"Conjugal Relationships" Under the Immigration and Refugee Protection Regulations*

[7] Paragraph 117(1)(*a*) of the *IRPR* provides that the conjugal partner of a sponsor is a member of the family class. The definition of "conjugal partner" in section 2 of the *IRPR* requires that they have been in a "conjugal relationship" with the sponsor for at least a year:

conjugal partner means, in relation to a sponsor, a foreign national residing outside Canada who is in a conjugal relationship with the sponsor and has been in that relationship for a period of at least one year. (*partenaire conjugal*)	***partenaire conjugal*** À l'égard du répondant, l'étranger résidant à l'extérieur du Canada qui entretient une relation conjugale avec lui depuis au moins un an. (*conjugal partner*)

[8] The term conjugal relationship is not defined in the *IRPR*. However, the late Justice Cory on behalf of the majority of the Supreme Court of Canada in *M v H* noted (in the context of the *Family Law Act*, RSO 1990, c F.3) that a conjugal relationship has "generally accepted characteristics" including shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple: *M v H*, [1999] 2 SCR 3 at para 59, adopting *Molodowich v Penttinen*, 1980 CanLII 1537 (ONSC). The Supreme Court recognized that "these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal": *M v H* at para 59.

[9] Although developed in the family law context, the *M v H/Molodowich* factors have been recognized as being relevant to the *IRPR* definition, if appropriately tailored to the immigration context, notably for couples who live in different countries: *Leroux v Canada (Citizenship and Immigration)*, 2007 FC 403 at para 23; *Traverse v Canada (Citizenship and Immigration)*, 2014 FC 551 at para 15. Immigration, Refugees and Citizenship Canada (IRCC)'s current online processing manual for "Assessing conjugal relationships," cited by Mr. Haer, refers to the *M v H/Molodowich* factors. It then goes on to note:

> In both conjugal partner and common-law relationships, there is not necessarily a specific point when a commitment is made, and there is no one legal document attesting to the commitment. Instead, there is the passage of one year of co-habitation, the building of intimacy and emotional ties and the accumulation of other types of evidence, such as naming one another as beneficiaries on insurance policies or estates, joint ownership of possessions, joint decision-making with consequences for one partner affecting the other, and financial support of one another (joint expenses or sharing of income, etc.). When taken together, these facts indicate that there is significant commitment and mutual interdependence in a monogamous relationship of some permanence, similar to that of a married couple.

See also *Quezada Bustamente v Canada (Citizenship and Immigration)*, 2011 FC 1198 at paras 29–32, referring to the manual then in place.

[10] The *IRPR* also sets out who will not be considered a conjugal partner. Subsection 4(1) of the *IRPR* provides that a foreign national is not a conjugal partner if the conjugal partnership was not in good faith:

Bad faith	**Mauvaise foi**
4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership	**4 (1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) is not genuine.	**b)** n'est pas authentique.

[11] The *M v H/Molodowich* factors are related to subsection 4(1) at least to some degree, in that an "alleged conjugal relationship must have a sufficient number of features of a marriage to show that it is more than just a means of entering Canada as a member of the family class": *Leroux* at para 23; *Pashanov v Canada (Citizenship and Immigration)*, 2018 FC 788 at paras 5–6.

B. *The IAD's Framework*

[12] Two aspects of the IAD's analysis merit initial comment, although neither is determinative given my conclusions below. The first is that the IAD effectively treated "exclusivity" as an absolute requirement of a conjugal relationship. This approach may go beyond the inquiry described in *Molodowich* of whether the parties "maintain an attitude of fidelity to each other," as one factor among others: *Molodowich* at para 16; *Quezada Bustamente* at para 32. In the present case, Mr. Haer effectively conceded that exclusivity was a necessary element of a conjugal relationship, although he argues that the IAD failed to consider other *M v H/Molodowich* factors. I need make no finding as to whether it is an essential or absolute requirement that a conjugal relationship be "exclusive."

[13] Second, the IAD made clear that it found the relationship to be genuine, noting that "[a]n assessment of the genuineness of this relationship is not being considered as the immigration officer is satisfied that the relationship is [*bona*] *fide* and so does the Panel." The IAD also did not conduct any analysis or make any express conclusions about whether the relationship was entered into primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Nonetheless, the IAD determined that the issue was whether Ms. Alghamdi fell within a class of persons described in subsection 4(1) of the *IRPR* and was therefore excluded from consideration. Having found that Mr. Haer had not proven on a balance of probabilities that "the conjugal partnership that they have, which was determined to be genuine by the immigration [officer], is mutually exclusive," the IAD found

that subsection 4(1) of the *IRPR* applied and that Ms. Alghamdi was excluded from consideration.

[14] In its analysis, the IAD noted that for Mr. Haer to succeed on his appeal, he had to demonstrate that the two tests articulated in subsection 4(1) do not apply to his relationship with Ms. Alghamdi. However, at no point did the IAD indicate which paragraph of subsection 4(1) it found to apply, *i.e.*, whether conjugal partnership (a) was entered into primarily for the purpose of acquiring a status or privilege under the *IRPA*, and/or (b) is not genuine. As the IAD conducted no analysis and made no apparent findings regarding the former, and expressly found that the latter did not apply, it is difficult to know the basis on which the IAD concluded that subsection 4(1) applied.

[15] It may be that the IAD was implicitly applying the approach described in *Leroux*, namely that an alleged conjugal relationship must have a "sufficient number of features" to show that it is more than just a means of entering Canada as a member of the family class. However, this would appear to conflict with the IAD's acceptance that the relationship was *bona fide* and the absence of any assessment that it was entered into primarily for the purpose of acquiring a status under the *IRPA*. Alternatively, it might be that the IAD concluded that the relationship, although genuine, was not a "conjugal relationship" within the meaning of section 2 of the *IRPR* because it was not exclusive. However, this would appear to conflict with the IAD's conclusion that the basis for exclusion was subsection 4(1).

[16] The absence of a clear or coherent basis for the IAD's analysis of the conjugal relationship raises concerns about its reasonableness as being "transparent, intelligible and justified": *Vavilov* at para 99, adopting *Dunsmuir v New Brunswick,* 2008 SCC 9 at paras 47, 74. However, again I need not reconcile the IAD's analysis or determine whether the decision might stand despite the uncertain legal framework, in light of my conclusion that the primary conclusion regarding exclusivity is unreasonable.

C. *The IAD's Decision on Exclusivity is Unreasonable*

[17] The IAD concluded that Mr. Haer had not proven on a balance of probabilities that the conjugal partnership was exclusive. It noted that while there is a presumption of truth in sworn evidence, it did not find the evidence from Mr. Haer and Ms. Alghamdi to be "credible, trustworthy or reliable enough to overcome the immigration officer's concerns as well as the Panel's concerns." The concern in question was the nature of Mr. Haer's relationship with his wife, with whom he has four children, and to whom he remains married. The IAD set out three grounds for this concern: (1) a sexual encounter between Mr. Haer and his wife in 2011; (2) the fact that Mr. Haer and his wife maintain a joint bank account; and (3) the fact that Mr. Haer has not obtained a divorce from his wife. Mr. Haer challenges the IAD's conclusions on each of these issues.

[18] I note that while the IAD referred to the credibility of Mr. Haer and Ms. Alghamdi, it based that credibility finding on these three grounds, rather than on any assessment of their demeanour, any identified inconsistencies in their evidence, or other indicia of incredibility. Rather, the IAD did not accept Mr. Haer's explanations in respect of the three concerns, and

therefore apparently disbelieved his statement that he did not have an ongoing relationship with his wife.

(1) Mr. Haer's sexual encounter with his wife in late 2011

[19] Mr. Haer stated that he separated from his wife in June 2011. He was working in Saudi Arabia at the time, and his wife returned to their native Fiji with their three children. In late 2011, Mr. Haer started dating Ms. Alghamdi, although their relationship did not become intimate until the spring of 2012.

[20] In December 2011, Mr. Haer's wife returned to Canada with the children to make arrangements regarding her Canadian passport. Mr. Haer came to Canada at that time to see the children, and spent time with them during the course of two weeks. During this visit, Mr. Haer and his wife had a sexual encounter, which led to the birth of their fourth child in September 2012. Mr. Haer stated that he had no further relations with his wife after this visit, and indeed has not even seen her except on rare occasion on visits to Fiji, such as at his father's funeral.

[21] The IAD reached the following conclusion based on these facts:

> …the Panel has no credible idea where his relationship with his wife stands to date. The appellant had a sexual encounter with his wife six months after their separation, at a time he stated he returned to Canada to be with his children and wanted to stay with them as a family; this suggests that there was or could have been a relationship that was still on-going or could easily be resurrected.
>
> [Emphasis added.]

[22] While the conclusion that there "could have been a relationship that was still on-going" in late 2011 despite the separation may be reasonable, this is not the question that the IAD was called upon to address. The question was whether at the time of the IAD hearing in late 2018, there was an ongoing relationship with Mr. Haer's wife. With respect, the fact that Mr. Haer had a sexual encounter with his wife seven years prior is not germane to that question, whether or not the couple were separated at that time. Nor was the question before the IAD whether the relationship "could easily be resurrected." Even it if were, the evidence of the much earlier sexual contact does not speak to this question, particularly absent any other evidence regarding the ease to which the relationship could be resurrected, and in the face of other evidence to the contrary.

[23] The IAD again focused on this sexual encounter in discussing Ms. Alghamdi's evidence, stating the following:

> While the Panel is convinced that the appellant and applicant are in a relationship with one another and lived as a couple in South Africa and Australia, at least for one year and are now doing so in Canada with their daughter, the evidence remains lacking on the part of the appellant that he is not in a relationship with his wife, whom he has been separated from since approximately June 2011, yet has a sexual encounter with her after the separation and before he and the applicant become intimate, which does not mean they were not in a relationship at the time of his sexual encounter with his wife[.]
>
> [Emphasis added.]

[24] Other than the evidence regarding the joint bank account and the fact that Mr. Haer is not divorced, discussed below, the IAD gives no indication as to the evidence it considers "lacking," a material question given that Mr. Haer was essentially trying to prove a negative, that he had no

ongoing relationship with his wife. Rather, the IAD turns again to the question of the sexual encounter in 2011 and the fact that it occurred after the separation and during the relationship with Ms. Alghamdi. I conclude that it is unreasonable for the IAD to have considered the single sexual encounter seven years prior as being material evidence of the existence of an ongoing relationship, let alone evidence sufficient to outweigh the other evidence. That evidence included Mr. Haer's statements that he had had no contact with his wife for years other than in respect of the children, and the clear, and accepted, evidence of the relationship with Ms. Alghamdi, including the child that they have together.

[25] Nor does the fact that Mr. Haer had started dating Ms. Alghamdi at the time of the encounter speak to either the continuing nature of the relationship nor to the credibility of Mr. Haer (let alone Ms. Alghamdi). Mr. Haer's evidence that he had a sexual encounter with his wife was clearly believed, and that event does not make his evidence that there was no subsequent contact, and that there is no ongoing relationship, less believable. Further, the IAD appears to have considered it relevant that the encounter seven years prior was arguably a matter of infidelity, given its reference to the fact that they were "in a relationship at the time of his sexual encounter with his wife." In this regard, while the situations are different, I agree with Mr. Haer that some guidance can be had from Justice Kelen's conclusion in *Quezada Bustamente* that marital infidelity may be relevant to a determination of a marriage's genuineness, but must be weighed against other factors and evidence: *Quezada Bustamente* at paras 29, 33–35. In any event, the issue in question is a single encounter that took place long ago. Whether or not it was a case of infidelity is of little moment, particularly as Mr. Haer and

Ms. Alghamdi were not asserting that they were in a conjugal relationship in 2011 but that one developed over time.

[26] In sum, I find the IAD's treatment of and reliance on the single post-separation sexual encounter between Mr. Haer and his wife occurring many years prior to the hearing to be unreasonable.

(2) Mr. Haer's joint bank account with his wife

[27] Mr. Haer maintains a joint bank account with his wife in Fiji. He stated that he used this account to send money to support his wife and children, and that a joint bank account allowed him to see what the money is spent on. The IAD found that Mr. Haer's explanation "does not make credible sense," since he could provide for his wife and children without having a joint account, such as by sending it to his parents or siblings. The IAD concluded that:

> The very fact that the appellant has a joint account with his wife suggests there remains an aspect of their relationship that is alive and well as a couple. It would be reasonable to expect that since their separation as a couple, there would be a separation of affairs. The joint bank account does not suggest a separation of affairs. Since there is a joint bank account, it is not known to the Panel what other aspects of a relationship the appellant has with his wife.
>
> [Emphasis added.]

[28] I agree with Mr. Haer that this is unreasonable. The fact that a joint bank account is maintained in circumstances where support payments are being made does not suggest that any other emotional or conjugal elements of the relationship are "alive and well." As Mr. Haer points out, joint bank accounts are often used to make support payments between separated or divorced

spouses: see, *e.g.*, *Leithoff v Leithoff*, 2004 ABQB 698 at paras 3, 9–15; *Aquilini v Aquilini*, 2013 BCSC 217 at para 2; *Smaggus v Madonna*, 2017 ONSC 6015 at para 11.

[29] For the same reason, I disagree that the IAD's inference that it is "reasonable to expect that since their separation as a couple, there would be a separation of affairs" is a reasonable one. That may be the case for many separated couples. However, the necessary ongoing financial relationship that comes with dependents and support means that "affairs" may not be separated in the manner that the IAD appeared to expect. It is certainly not so implausible or unlikely that the fact that a joint account is maintained for support payments can lead to any inference that the relationship continues in a romantic or conjugal manner. This is particularly so given the absence of any evidence that the account was used for any other purpose. The fact that such payments could also be made by another method or through a different route cannot mean that a couple's choice to use the means of a joint bank account "does not make credible sense."

[30] The Minister suggests that it is disingenuous for Mr. Haer to complain about the IAD's reliance on the existence of a joint bank account, given that he relied on the existence of such an account with Ms. Alghamdi as evidence of their genuine conjugal relationship. I find this unconvincing. The relevance of a joint bank account depends on its context. It may be one indicator among others that a couple shares financial interdependence relevant to the "economic support" factor from *M v H* and *Molodowich*. But that does not mean that the existence of a joint bank account, when it is being used for child support payments, equally suggests the existence of an ongoing conjugal relationship with the former partner.

[31] I therefore find the IAD's reliance on the existence of a joint bank account as being suggestive of, or raising concerns regarding, an ongoing relationship to be unreasonable in these circumstances.

(3) Mr. Haer and his wife have not divorced

[32] Mr. Haer remains married to his wife. When asked why he had not obtained a divorce, Mr. Haer testified that he did not want to put stress on his parents, who had a difficult time with his earlier divorce, and he did not want to impose additional stress on his children and on his relationship with them, particularly his younger two children.

[33] The IAD did not accept this explanation, noting that Mr. Haer does not live with his wife and children, and that his children are aware that he is not in a relationship with their mother. The IAD concluded that his children's awareness that Mr. Haer was not in a relationship with his wife "may have a negative impact on his relationship with his children in Fiji," and that this situation is "already stressful." The IAD therefore concluded:

> So given this knowledge and that he does not live with them, it would be reasonable to expect the pursuit of a divorce from his wife, as there is no apparent relationship, which is known to his children and therefore move forward with [Ms. Alghamdi] the applicant on a more formal and substantive basis considering immigration to Canada is being sought. Thus, divorce would seem inevitable or logical solution. This is not the case though.

[34] I find this conclusion to be unreasonable, for two reasons. First, it is not appropriate for the IAD to simply substitute its own assessment of the stresses and impacts on Mr. Haer's children of two different potential courses of action. There was no reasonable basis on the

evidence to conclude that not pursuing a divorce would be as stressful on the children as pursuing a divorce, nor to conclude that a divorce should be pursued as a result. Second, the IAD's conclusion that a divorce ought to have been obtained for immigration purposes is problematic. The purpose of assessing a conjugal relationship is to determine whether the relationship as it actually exists is a genuine one falling within the meaning of a conjugal relationship in the *IRPR*. To suggest that a party ought to take steps in respect of their relationships that they were not otherwise going to take, solely for the purpose of improving an immigration application, is contrary to such a purpose. Indeed, it would run the risk of being considered evidence bringing the relationship into the scope of paragraph 4(1)(*a*) of the *IRPR*.

[35] The IAD appears to be suggesting that Mr. Haer ought to be getting divorced and that he and Ms. Alghamdi ought to then be getting married in order to satisfy the IAD that the relationship is exclusive. Having suggested that it would be reasonable to expect Mr. Haer to "move forward with [Ms. Alghamdi] on a more formal and substantive basis," the IAD made their meaning even clearer in its discussion of Ms. Alghamdi's evidence:

> Assuming [Ms. Alghamdi] is properly divorced, [Mr. Haer] remains married with no intention at present to divorce his wife, when he can. Since there is no prohibition to do so, divorce could or should be entertained particularly as [Ms. Alghamdi] is outside Saudi Arabia with no indication of sanctions; then proceed to legally marry in a jurisdiction outside Saudi Arabia where there would be no obligation on [Ms. Alghamdi's] part to obtain consent from a male family member to marry [Mr. Haer].
>
> [Emphasis added.]

[36] There is no obligation on Mr. Haer to get a divorce and marry Ms. Alghamdi in order to sponsor her as a permanent resident. This is clear from the very recognition in

paragraph 117(1)(*a*) of the *IRPR* that the family class includes the "spouse, common-law partner or conjugal partner" of a sponsor. The IRCC's manual confirms that "[p]ersons who are married to third parties may be considered conjugal partners provided their marriage has broken down and they have lived separate and apart from their spouse for at least one year."

[37] The IAD itself recognized this, stating that Mr. Haer "does not have to divorce his wife if he does not want to, considering the reasons for not pursuing the divorce" and that "the conjugal partner category was considered on par with that of a marriage…for immigration purposes because they are recognized in Canada." Nonetheless, the IAD reasoned that it would be reasonable to expect Mr. Haer to "move forward with [Ms. Alghamdi] on a more formal and substantive basis" and that "divorce could or should be entertained…then proceed to legally marry." Giving primacy to legal marriage in this context is inappropriate and contrary to the framework of the *IRPR*. Suggesting that it ought to be done in order to satisfy the IAD's own concerns about the lack of a divorce is circular.

[38] As Mr. Haer concedes, the fact that a sponsor remains married to a former partner can no doubt be a relevant factor for consideration in assessing whether a new relationship is a conjugal relationship in appropriate circumstances. However, I find the IAD's reliance on Mr. Haer not being divorced in these circumstances, and the reasons it gave in its analysis of this issue, to be unreasonable.

(4) Cumulative considerations

[39] None of the foregoing considerations alone was the basis for the IAD's conclusion. Rather, it considered that "[c]umulatively, the evidence suggests that the relationship is not exclusive as they would like the Panel to believe." The Minister argues that even if no single factor might be enough to conclude that Mr. Haer had not met his onus to show that he was in a conjugal relationship with Ms. Alghamdi, deference ought to be given to the IAD's cumulative assessment of the evidence.

[40] I agree with the general principle that a series of concerns, each of which considered individually might not be sufficient to be determinative, might nonetheless cumulatively give rise to a reasonable conclusion that an applicant has not met their onus. However, in the present case, the IAD's analysis of each of the primary grounds on which it relied was flawed. Further, the IAD presented these grounds as interrelated by, for example, responding to the recognition that Mr. Haer need not be divorced by pointing to its concern about the sexual encounter. In these circumstances, I conclude that the cumulative assessment of these factors by the IAD was unreasonable.

(5) Other factors

[41] Mr. Haer submits that even given the IAD's concerns, it was still required to assess the genuineness of a relationship with regard to all of the evidence, with exclusivity being but one factor: *Paulino v Canada (Citizenship and Immigration)*, 2010 FC 542 at paras 59–61; *Quezada Bustamente* at paras 32–34. Mr. Haer pointed to the evidence of the various factors that support

the existence of a conjugal relationship based on the *M v H/Molodowich* factors, including their cohabitation and their child. Mr. Haer relies on, among other things, Justice Barnes' conclusion in *Gill* that the birth of a child creates a strong presumption of the genuineness of a relationship: *Gill v Canada (Citizenship and Immigration)*, 2010 FC 122 at para 8.

[42] Much of this analysis might be considered subsumed in the IAD's recognition that Mr. Haer's relationship with Ms. Alghamdi is genuine and *bona fide*. At the same time, given the IAD's concurrent conclusion that the relationship fell within the scope of subsection 4(1), it was incumbent on the IAD to consider all relevant evidence in assessing what it found to be the determinative issue: whether the relationship was exclusive. The IAD appears to conclude that Mr. Haer could be in a genuine relationship with Ms. Alghamdi while at the same time continuing to be in an ongoing relationship with his wife. However, the IAD undertook little assessment of how the existence of the genuine relationship in Canada might affect the probability that Mr. Haer continued to be in an ongoing intimate relationship with his wife in Fiji. This failure to undertake an overall assessment of the evidence, relying only on the three adverse issues described above, compounds the unreasonableness of the IAD's decision.

IV. Conclusion

[43] For the foregoing reasons, I conclude that the IAD's dismissal of Mr. Haer's appeal to be unreasonable. The decision is set aside and the matter returned to the IAD for re-determination.

[44] Neither party proposed a question for certification, and I agree that none arises.

JUDGMENT IN IMM-48-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed. The IAD's decision dismissing Mr. Haer's appeal is set aside and the matter returned to the IAD for re-determination.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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