Federal Court  Cour fédérale

Date: 20200325

Docket: IMM-4954-19

Citation: 2020 FC 411

Ottawa, Ontario, March 25, 2020

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

RONNIE BASILIO

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Immigration Appeal Division ("IAD") of the Immigration and Refugee Board of Canada dismissing the Applicant's appeal of a deportation order issued against him. The IAD found that there were insufficient humanitarian and compassionate ("H&C") grounds to warrant special relief overcoming the Applicant's inadmissibility due to serious criminality.

[2] For the reasons that follow, this application for judicial review is dismissed.

Background

[3] The Applicant, Ronnie Basilio, is a citizen of the Philippines. He came to Canada in December 2012 as a temporary foreign worker. His wife and their four children joined him on June 28, 2017 on which date they all became permanent residents of Canada.

[4] On December 31, 2016, the Applicant was working at a hotel as a cleaner and part-time babysitter. He was hired by guests of the hotel to babysit their children. That night the Applicant fondled the genitals of a six-year-old girl, twice, while she was in bed. In September 2017, he was charged with, and on March 28, 2018, he pled guilty to and was convicted of sexual interference, pursuant s 151 of the *Criminal Code*, RSC 1985, c C-46. He was sentenced to six months less one day of imprisonment, a victim surcharge of $100, and probation for 18 months. On October 15, 2018, the Applicant was found inadmissible to Canada for serious criminality pursuant to s 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA"). He appealed his removal order to the IAD. The IAD dismissed his appeal on July 16, 2019. The IAD's decision is the subject of this this judicial review.

Decision under review

[5] The sole issue on appeal to the IAD was whether sufficient humanitarian compassionate considerations warranted special relief in all circumstances of the case, taking into account the best interests of the children. The IAD noted that it may order a stay of the execution of the

removal order, or allow an appeal of a removal order, if an applicant successfully establishes a case for discretionary relief. Factors the IAD may consider when exercising its discretionary jurisdiction include those set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL/Lexis), being:

- The seriousness of the offence
- The possibility of rehabilitation
- The length of time the Applicant has spent in Canada and the degree to which he is established here
- The family and community support available
- The hardship and dislocation to his family in Canada that deportation would cause
- The degree of hardship that would be caused to the Applicant by his return to his country of nationality, the Philippines.

[6] The IAD stated that list is illustrative, not exhaustive, and each factor's weight will vary according to the circumstances of the case (*Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at para 40). Further, that the IAD is also obliged to consider the best interests of any child affected by the decision and the objectives of the governing legislation.

[7] The IAD then set out its analysis of the relevant factors.

i. The seriousness of the offence

[8] The IAD set out the factual background to the offence and found that it was very serious. It was aggravated by the fact that it was committed against a young child, a vulnerable member of society, and while the Applicant was in a position of trust. Further, that the timing of the offence was significant. It was committed while the Applicant was a temporary resident. He

became a permanent resident three months prior to being charged. While he testified that he felt terrible about the offence, he did not approach the police because he thought it might have put his permanent residence in jeopardy. The IAD found that the offence and the manner in which it was carried out weighed heavily against granting special relief and that there was a substantial requirement for positive H&C factors to overcome serious criminality.

ii. Rehabilitation and remorse

[9] The IAD acknowledged that the Applicant expressed shame and regret for his behaviour and that he had testified that he accepted full responsibility for his mistake. The IAD found that there were positive aspects of this factor, including that two members of the community attended the IAD hearing to testify in support, one of whom testified that she believed the Applicant was very sorry. Further positive aspects included his confession when he was first questioned by police, his early entry of a guilty plea, his completion of some programs and doing some volunteer work while imprisoned, following of the requirements of his probation order when released, ensuring that his employment and volunteer work does not involve children, and that he has not re-offended and has no other criminal history. Another mildly positive factor was a letter from two psychologists from the Calgary Counselling Centre which stated that a primary motive for the Applicant's behavior was stress and he reported to managing stress more effectively.

[10] However, the IAD noted that neither of the brief letters from the Calgary Counselling Centre and the Forensic Assessment and Outpatient Services provided an opinion on the prospects of Applicant's rehabilitation or an assessment of the potential risk he posed to Canadian society. The IAD also referenced a letter from the Applicant's probation officer that

expressed a concern the Applicant continues to lack accountability for the offence. The IAD noted that the probation officer's opinion was arrived at after she had worked with the Applicant for almost one year and the IAD gave it considerable weight. The IAD expressed concern regarding the Applicant's understanding of the factors that contributed to his criminal behavior, the lack of which would negatively affect the possibility of his rehabilitation. Specifically, that he testified that stress brought about his offence and that he now managed stress by maintaining a healthy diet, doing positive activities, and that part of his relapse prevention program was to imagine what a potential victim would experience or his own children being victimized. The IAD found it was difficult to link the Applicant's understanding of what the victim suffered to a true appreciation of what led to his offending behaviour.

[11] The IAD noted the Applicant's written statement but found that it, and the documents he provided, did not indicate that the Applicant's thought patterns of temptation to engage in sexual activity with minors had in any way been addressed. The IAD expressed concern that the Applicant's focus in preventing any further sexual offences against minors was on maintaining a healthy lifestyle and reducing stress, as opposed to addressing the thought patterns themselves. The IAD found there was insufficient evidence to establish a reasonable possibility of rehabilitation. This, together with the Applicant's lack of insight into his criminal conduct, was a highly negative factor in the appeal.

[12] And, while the Applicant showed some remorse, the IAD found, based on the evidence before it, that it appeared the Applicant may regret his actions and the resulting consequences but not necessarily feel great remorse for them. Remorse was a mildly positive factor in his favour.

iii. Length of time and establishment in Canada

[13] The IAD found this was a neutral factor. The Applicant has lived in Canada for six years, which is not a long time given his age. He has never resorted to social assistance. He also has not accumulated assets as the majority of his earnings go to supporting his children.

iv. Impact on the family

[14] The IAD noted that the Applicant has been separated from his wife since a few weeks before his sentencing. After his release from prison, the Applicant's wife permitted him access to the children twice a week. However, a court proceeding in February 2019 instigated by the Applicant's wife resulted in the issuance of a court order that prevented him from contacting his children and gave her sole decision-making authority. The Applicant was challenging the order, but at the time of the IAD hearing, it remained to be seen whether the Applicant would be granted access to his children in the future. The IAD noted that the Applicant testified that the biggest impact on his family if he were removed from Canada would be a financial one. He was currently working two jobs to support them; he ensured their support would continue during his incarceration; and, he was concerned that he would not be able to secure well-paying employment in the Philippines to continue supporting his children. The IAD found that the Applicant's relationship with his children and the financial impact of his removal was a favourable factor for the Applicant.

v. Family and community support

[15] The IAD found that the Applicant's only family in Canada are his estranged wife and his children, who he is currently prohibited from contacting. He had some community support, as shown by the two individuals who attended the hearing to support him. The IAD found that this was a mildly positive factor.

vi. Best interests of the children

[16] The IAD noted the ages of the Applicant's four children, 3 to 14, and that they spent almost 5 years of their lives in the sole parenting of their mother, while their father worked overseas to support them. The IAD acknowledged that the Applicant travelled back to the Philippines twice during that time to visit and kept in contact with his family through Skype and phone calls a few times per week. The IAD also noted the Applicant's testimony that he was heavily involved in the children's activities during his absence, as well as the living situation in Canada since the separation and prohibition of contact since the court order. The IAD noted the Applicant's testimony, including that he is the sole breadwinner for the family and if he is removed from Canada that he will be unable to provide the same level of financial support to the children. The IAD found that if the Applicant was removed, it would negatively impact his ability to provide financial support for his family, and that this was a positive factor in favour of the Applicant.

[17] While the Applicant testified that he was the primary contact person for all of the children's needs, as his wife was not capable of fulfilling such duties, the IAD noted that she had been the only parent in the household in the Philippines for 5 years and had exhibited a capacity to deal with Canadian authorities. The IAD accepted that the Applicant previously had a close

relationship with his children and fulfilled the role of an active and engaged parent in the Philippines, however, it found that he is not the primary caregiver of his children and had not been for a significant portion of their lives. Further, it was yet to be seen if he would be allowed future contact with them. The IAD found that it was in the best interests of the children for the Applicant to stay in Canada and continue to support his children financially at a higher level and his capacity to do so would be seriously compromised if he were removed. This was a positive factor in the appeal.

vii. Hardship caused by removal from Canada

[18] The IAD noted that the Applicant provided no evidence as to the current employment market conditions in the Philippines and found that he would be able to re-establish himself there in work similar to what he had undertaken prior to leaving that country. The IAD accepted that the Applicant's earning potential in the Philippines would likely be worse than in Canada, which was a mildly positive factor. The IAD also accepted that the Applicant would feel emotional loss from being separated from his children. However, overall, the IAD found that the emotional and financial hardship did not establish significant hardship upon removal to the Philippines.

[19] The IAD concluded its analysis by noting that a deportation order can be overcome through granting special relief on H&C grounds, but that the existence of such grounds does not automatically overcome such an order. The IAD found that the Applicant was convicted of a serious offence, had questionable rehabilitation prospects, and would not suffer significant hardship upon removal. While there would be some hardship caused to the Applicant and his children by dismissing the appeal, it did not overcome the negative factors presented in the case.

Having weighed the evidence and considered the factors, and taken into account the best interests of the children, the IAD found there were insufficient H&C considerations to warrant granting special relief.

Issues and standard of review

[20] In my view, this matter gives rise to one preliminary issue and one issue for substantive judicial review:

1. Preliminary Issue: Is new evidence, attached as an exhibit to the August 27, 2019 affidavit of the Applicant ("Applicant's Affidavit") and provided in support of this application for judicial review, admissible?

2. Issue: Is the IAD's decision reasonable?

[21] The parties submit, and I agree, that the IAD's decision that there were insufficient H&C considerations to warrant special relief attracts the standard of review of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*")). *Vavilov* held that the standard of reasonableness presumptively applies whenever a court reviews an administrative decision (*Vavilov* at paras 16, 23, 25).

[22] The Supreme Court in *Vavilov* also addressed how a reasonableness review is to be conducted by a reviewing court (at paras 73-145). In that regard, it held that a reviewing court must develop an understanding of the decision-maker's reasoning process in order to determine whether the decision as a whole is reasonable and, to make that determination, the reviewing court "asks whether the decision bears the hallmarks of reasonableness — justification,

transparency and intelligibility — an whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paras 15, 99). When a decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and the law that constrain the decision-maker it is reasonable and is to be afforded deference by a reviewing court (*Vavilov* at para 85).

PRELIMINARY ISSUE: Is the new evidence admissible?

Applicant's position

[23] The Applicant acknowledges that it is well-established that judicial review is to proceed on the basis of the evidence that was decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 ("*Assn of Universities and Colleges*"); *Henri v Canada (Attorney General)*, 2016 FCA 38 at para 41 ("*Henri*"); *Mohitian v Canada (Citizenship and Immigration)*, 2015 FC 1393 at para 8). However, the Applicant seeks to admit, as Exhibit "A" of the Applicant's Affidavit, an Interim Parenting Order of the Provincial Court of Alberta ("Interim Parenting Order"), which replaces a prior order dated February 7, 2019, and permits the Applicant parenting time and responsibility for the children as mutually agreed upon with their mother. The Applicant's Affidavit states that the February 7, 2019 order did not allow him any parenting time and that this was the case until 2 days before the IAD appeal hearing. Further, that he received the new order by mail three weeks after the hearing and that he could not obtain a copy of the order before the appeal hearing.

[24] The Applicant submits that this new evidence, which shows his continued involvement with his children, is important and bears on central issues of the appeal, being the best interests of the children and hardship. Further, that it did not exist at the time of the hearing and should be allowed and considered as a part of the application for leave and judicial review. In his reply, the Applicant submits that this evidence goes to the general background of the matter on judicial review.

Respondent's position

[25] The Respondent submits that this Court should not grant the Applicant's request to admit new evidence because the Interim Parenting Order does not provide evidence going to general background prior to the IAD issuing its decision. Moreover, it is not clear how the admission of the Interim Parenting Order would impact the IAD's findings because the IAD found that it was in the best interest of the Applicant's children that he be allowed to remain in Canada and that the best interest of the children was a positive factor in the Applicant's appeal. Further, that the Applicant has not demonstrated that the Interim Parenting Order would have a material impact on the IAD's hardship analysis. The Applicant failed to satisfy any of the exceptions to the principle that new evidence is not admissible on judicial review and it is not required for the Court to assess the application for judicial review.

Analysis

[26] The jurisprudence is absolutely clear that, as a general rule, the evidentiary record before a court on judicial review is restricted to the evidentiary record that was before the administrative decision-maker.

[27] In *Assn of Universities and Colleges*, Justice Stratas pointed out that, in determining the admissibility of an affidavit in support of an application for judicial review, the differing roles played by the Court and the administrative decision-maker must be kept in mind. Parliament gave the administrative decision-maker, and not the court, jurisdiction to determine certain matters on their merits (*Assn of Universities and Colleges* at para 17). Because of this demarcation of roles, the court cannot allow itself to become a forum for fact-finding on the merits of the matter. Accordingly, as a general rule, the evidentiary record before a court on judicial review is restricted to the evidentiary record that was before the decision-maker (*Assn of Universities and Colleges* at para 19). Evidence that was not before the decision-maker and that goes to the merits of the matter is, with certain limited exceptions, not admissible.

[28] The recognized exceptions are when an affidavit: provides general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review but does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker; brings to the attention of the reviewing Court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker so that the Court can fulfill its role of reviewing for procedural unfairness; and, highlights the complete absence of evidence before the administrative decision-maker when it made a particular finding (*Assn of Universities and Colleges* at para 20); *Bernard v Canada*

(Revenue Agency), 2015 FCA 263 at paras 19-25 ("*Bernard*"); *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45 ("*Delios*"); *Henri* at para 41).

[29] In my view, the Applicant's submissions conflate the limited exceptions, which permit admissibility of new affidavit evidence on judicial review, with the admission of new evidence to be considered by a court at a *de novo* hearing. Further, the Interim Parenting Order does not fall within the general background exception.

[30] In that regard, in *Bernard*, Justice Statas revisited the general rule and elaborated on the three recognized exceptions. As the background information exception, he stated:

> [23] The background information exception exists because it is entirely consistent with the rationale behind the general rule and administrative law values more generally. The background information exception respects the differing roles of the administrative decision-maker and the reviewing court, the roles of merits-decider and reviewer, respectively, and in so doing respects the separation of powers. The background information placed in the affidavit is not new information going to the merits. Rather, it is just a summary of the evidence relevant to the merits that was before the merits-decider, the administrative decision-maker. In no way is the reviewing court encouraged to invade the administrative decision-maker's role as merits-decider, a role given to it by Parliament. Further, the background information exception assists this Court's task of reviewing the administrative decision (*i.e.*, this Court's task of applying rule of law standards) by identifying, summarizing and highlighting the evidence most relevant to that task.

[31] And, in *Delios*, Justice Stratas stated:

> [44] Under this exception, a party can file an affidavit providing "general background in circumstances where that information might assist [the review court to understand] the issues relevant to the judicial review": *Access Copyright*, above at paragraph 20(a).

> [45] The "general background" exception applies to non-argumentative orienting statements that assist the reviewing court in understanding the history and nature of the case that was before the administrative decision-maker. In judicial reviews of complex administrative decisions where there is procedural and factual complexity and a record comprised of hundreds or thousands of documents, reviewing courts find it useful to receive an affidavit that briefly reviews in a neutral and uncontroversial way the procedures that took place below and the categories of evidence that the parties placed before the administrator. As long as the affidavit does not engage in spin or advocacy – that is the role of the memorandum of fact and law – it is admissible as an exception to the general rule.
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> [46] But "[c]are must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider": *Access Copyright*, above at paragraph 20(a).

[32] And, in *Henri*, the Federal Court of Appeal stated:

> [39] It is well established that judicial review on the merits is to proceed on the basis of the evidence that was before the original decision-maker (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paragraph 19, [2012] F.C.J. No. 93).
>
> [40] Although affidavit evidence to present background information that assists the Court may, under some circumstances, be admissible and LeBlanc J. neglected to specifically acknowledge that exception to the rule, this Court has expressed caution that such evidence must not go any further than background, and must not be relevant to the merits of the matter (*ibidem* at paragraph 20). The Federal Court found that the affidavit Mr. Henri proposed to submit was relevant to the merits of the decision (Federal Court's reasons at paragraph 22). Mr. Henri provides no compelling reason to disturb this assessment of the affidavit.
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> [41] The general rationale prohibiting introduction of new evidence on the merits continues to hold in this case. Consideration of facts that were not before the decision-maker would turn this Court's attention away from the decision under review and towards a de novo consideration of the merits. That is never the role of a

> judicial review, and would be entirely incoherent with review on a standard of reasonableness. The Federal Court was correct in excluding Mr. Henri's new evidence.

[33] This jurisprudence makes it beyond debate that affidavit evidence that provides general background information may, as an exception to the general rule, be admissible on judicial review, but that such evidence can go no further. It cannot speak to the merits of the matter that was before the administrative decision-maker. Here, the Applicant's argument, as I understand it, is that the new Interim Parenting Order is relevant to the IAD's assessment of the best interests of the child and the hardship factors in its determination, on the merits, of whether there were sufficient H&C considerations to warrant special relief — the setting aside of the removal order. The Interim Parenting Order is, accordingly, not admissible. It is not general background information. It is information that the Applicant seeks to adduce challenge the merits of IAD's analysis, even though the Interim Parenting Order was not before the IAD when it rendered its decision. Admitting this evidence would turn this Court's attention away from the IAD's decision and towards a new consideration of the best interest so the child and hardship factors, which is not the role of this Court on judicial review (*Henri* at para 41).

[34] While this is sufficient to dispose of the issue, I would also observe that the IAD acknowledged in its reasons that it was anticipated at the time of the hearing that a new parenting order would be issued. However, there is no evidence in the record suggesting that the Applicant requested that he be permitted to submit the new order for consideration by the IAD when the order became available and prior to the IAD making its decision.

ISSUE: Was the IAD's decision reasonable?

[35] The Applicant accepts that the IAD's power to grant discretionary relief is exceptional and that the IAD's ability to allow an appeal is a highly discretionary exercise that must be afforded deference. However, the Applicant submits that, when viewed in whole, the IAD's decision is not reasonable.

[36] The Respondent submits that the Applicant's submissions do not establish that the IAD committed a reviewable error. The IAD is entitled to determine the plausibility, credibility and weight of testimony, and as long as its conclusions were reasonably open to it, this Court should not intervene. The IAD's decision shows that it weighed and assessed the evidence in the record and that its findings were founded in the evidence and fell within the range of possible, acceptable outcomes available on the law and the facts.

[37] I would first observe that the IAD may allow an appeal from an removal order, pursuant to s 67(1)(c) of IRPA, if "sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case." The relief is available in exceptional circumstances. It is also a highly discretionary decision that is owed deference (see *Santiago v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 91 at paras 27- 28).

[38] I have addressed below each of the basis on which the Applicant asserts that the decision was unreasonable.

i. Seriousness of the offence

[39] The Applicant submits that, as to the seriousness of the office, the IAD failed to consider that he is a first offender and has not re-offended, and that this was unreasonable.

[40] However, I note that when assessing the Applicant's rehabilitation and remorse, the IAD explicitly acknowledged that the Applicant has no criminal history and has not offended since his first offence, which it found were positive aspects of that consideration. I am not persuaded that these facts actually speak to the seriousness of the offence. Rather, they were properly assessed by the IAD in the context of rehabilitation. The fact that the IAD did not mention those facts when assessing the seriousness of the offence was not an error and does not make the decision unreasonable.

ii. Rehabilitation and remorse

[41] With respect to his rehabilitation and remorse, the Applicant submits that this Court defined remorse in *Pu v Canada (Citizenship and Immigration)*, 2018 FC 600 at para 20 ("*Pu*") (which, in fact, cites *Lin v Canada (Public Safety and Emergency Preparedness)*, 2017 CanLII 26505 (CA IRB) at para 51 in that regard). Based on that definition, being the feeling of deep regret or guilt for a wrong committed and a feeling of being sorry for doing something bad or wrong in the past, the Applicant submits that the IAD erred in finding that he was more regretful than remorseful.

[42] In my view, the Applicant seizes on one sentence in paragraph 24 of the IAD's reasons, being that based on the evidence before the IAD that the Applicant may regret his actions, and the resulting consequences, but not necessarily feel great remorse for them. The Applicant takes

no issue with the IAD's finding as to rehabilitation. His submission also ignores that the IAD dealt with rehabilitation and remorse in detail, in paragraphs 14-24 of its decision. As set out above, the IAD acknowledged the Applicant's testimony expressing shame and regret for his behaviour. It also assessed all of the evidence before it — both positive and negative. It found that letters from the Calgary Counselling Centre and the Forensic Assessment and Outpatient Series confirmed the Applicant's attendance at counselling and other programs, but did not provide an opinion or risk assessment on rehabilitation. The letter from the Applicant's probation officer was afforded significant weight by the IAD as the probation officer continued to be concerned about the Applicant's accountability for his offence, even after she had worked with the Applicant for almost a year. The IAD was very concerned that the Applicant lacked an understanding of the factors that contributed to his criminal behaviour. He attributed his act to stress and failed to focus on or address his thought patterns of temptation to engage in sexual activity with minors. The IAD found this to be a highly negative factor in his appeal.

[43] The IAD also referenced evidence that supported that the Applicant is remorseful, such as his apology letters to the victims and her parents. However, the probation officer's letter stated that the Applicant expressed dissatisfaction at having to register as a sex offender and that his remorse appeared "self-focused". He also complained about having to attend the probation and counselling and expressed concerns about sessions affecting his employment. The letter from the probation officer supports the IAD's concern that the Applicant regretted the negative consequences of his conviction for himself, in terms of employment and sex offender status.

[44] In short, I see no error in the IAD's treatment of the evidence as to remorse and rehabilitation. The Applicant does not point to any evidence that was not considered, and in any event, the IAD found the Applicant's remorse was a mildly positive factor in his favour. In the result, the Applicant simply takes issue with the weight afforded to this consideration.

iii. Best interest of the child

[45] With respect to the best interests of the child, the Applicant's only submission is that the IAD focused on the involvement of the Applicant in the lives of the children rather than the specific needs of the children. The Applicant does not identify how this amounts to a reviewable error.

[46] Pursuant to s 67(1)(c) of the IRPA, the IAD was required to assess the best interests of the child. And, as stated by the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61:

> [35] The "best interests" principle is "highly contextual" because of the "multitude of factors that may impinge on the child's best interest": *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4 (CanLII), [2004] 1 S.C.R. 76, at para. 11; *Gordon v. Goertz*, 1996 CanLII 191 (SCC), [1996] 2 S.C.R. 27, at para. 20. It must therefore be applied in a manner responsive to each child's particular age, capacity, needs and maturity: see *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 (CanLII), [2009] 2 S.C.R. 181, at para. 89. The child's level of development will guide its precise application in the context of a particular case.

[47] *Kanthasamy* goes on to list factors related to a child's emotional, social, cultural and physical welfare that decision-makers should consider (at para 40).

[48] Here, the IAD noted the ages of the Applicant's children and that a significant part of their lives, almost five years, was spent under the sole parenting of their mother while the Applicant worked overseas. During this time, they communicated with him a few times a week through Skype or phone calls. The IAD noted that the children were also living apart from their father for the last year leading up the IAD hearing. The IAD also acknowledged the Applicant's testimony that he is the sole breadwinner for the family and his removal from Canada will negatively impact his capacity to financially provide for them. The IAD also considered that the financial role that the Applicant plays in his family's life was a positive factor in his appeal.

[49] Although the Applicant argues that the IAD did not address the specific interests or needs of the children, the Applicant does not point to anything in the record that the IAD failed to mention. I agree with the Respondent that the IAD's reasons show that it assessed and did not disregard the Applicant's written statement and his testimony. The written statement states only that he is involved in his children's lives, is spending time with them, particularly on weekends, and that they would go to the mall and have lunch or dinner together. Further, that he would buy them clothes, toys, school supplies and medicines, as demonstrated by some receipts found in the record. Further, that the children need the emotional support and guidance of their parents. The transcript of the Applicant's testimony before the IAD adds little to this.

[50] Thus, the record demonstrates that the Applicant plays a financial role in the lives of his children, which was assessed by the IAD. The Applicant points to no evidence in the record that was not considered and which addresses his further involvement with the children or their specific needs. For example, there is nothing in the record that speaks to any health, educational

or additional considerations specific to these children that were identified but were not addressed by the IAD. As a result, in my view, it was reasonable for the IAD to focus on the financial dependence and the limited relationship between the Applicant and his children. The burden is on an applicant to submit meaningful evidence of a child's best interests, and in this case, the evidence before the IAD on this issue was extremely limited (*Fouda v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1176 at paras 35, 39). In sum, the IAD's best interest of the child analysis was responsive to the needs of the Applicant's children when viewed in light of the limited evidence submitted by the Applicant (*Louisy v Canada (Citizenship and Immigration)*, 2017 FC 254 at paras 9-11).

[51] And again, it is significant that the IAD found that the best interests of the child was a positive factor in favour of the Applicant. Thus, in effect, the Applicant is arguing that the positive weight attributed to the best interest of the child analysis should have been given more value within the entirety of the IAD's analysis when it balanced all of the factors. However, this Court cannot interfere on the basis that an applicant thinks more weight should be given to factors which favour his case (*McCurvie v Canada (Citizenship and Immigration)*, 2013 FC 681 at para 71). Further still, while the best interests of the children is an important factor, it is generally not determinative in and of itself, and must be weighed together with the other factors (*Gill v Canada (Citizenship and Immigration)*, 2019 FC 772 at para 48).

iv. Hardship

[52] With respect to the hardship analysis, the Applicant submits that the IAD focused on the hardship that removal will have on the Applicant, but mentioned nothing of the devastating

effect on the children, financially and emotionally. Further, that the IAD minimized or ignored the hardship to the children and was not alert, alive and sensitive to the best interests of the children and the hardships that they will face if the Applicant is removed.

[53] In my view, the Applicant conflates the assessment of hardship with the best interests of the child assessment, addressed above. Nor does the Applicant point to any evidence that he submitted to the IAD in support of the claimed devastating emotional effect of his removal from Canada to support his submission that the IAD erred in its treatment of that evidence.

[54] The IAD addressed the Applicant's submission that he would have difficulty finding employment in the Philippines but found that he would be well positioned to re-establish himself and find work there similar to that which he had held before coming to Canada. The IAD acknowledged that his employment and earning potential would likely be less there than in Canada — which the Applicant had related to his ability to support his children — and found this to be a mildly positive factor in his favour. The IAD also acknowledged that the Applicant would face emotional and some financial hardship, but found that that this was not significant hardship. I find no reviewable error in the IAD's assessment of hardship. I see no error in the IAD's treatment of the evidence or its analysis.

Conclusion

[55] At the end of the day, the Applicant is taking issue with the weight afforded to the factors assessed by the IAD. As the IAD indicated, however, the weight afforded to any particular factor will vary according to the particular circumstances of the case. Here, the IAD was very

concerned with the seriousness of the offence and indicated that there would be a substantial requirement for positive H&C factors to overcome the Applicant's serious criminality. The IAD also had serious concerns with the Applicant's lack of accountability and his lack of understanding of the factors that contributed to his criminal behaviour and found that there was insufficient evidence to establish that there was a reasonable possibility of rehabilitation, which was a highly negative factor in the appeal. It balanced those factors against others that were more positive, including the best interests of the child, but found that they did not overcome the negative factors and concluded that there were insufficient H&C considerations to warrant the granting of special relief in the circumstances of the case.

[56] The IAD's decision was made with regard to the evidence before it, and was justified in relation to that evidence. The IAD is entitled to deference and this Court will not interfere with its decision to weigh the factors as it did. It is not the Court's role to reweigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61). Finally, and although Applicant submitted to the contrary when appearing before me, the IAD reasons were clear, based on a coherent line of reasoning and were justified. The IAD's decision was reasonable.

JUDGMENT IN IMM-4954-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4954-19
STYLE OF CAUSE:	RONNIE BASILIO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	FEBRUARY 25, 2020
REASONS FOR JUDGMENT AND JUDGMENT:	STRICKLAND J.
DATED:	MARCH 25, 2020

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