

Federal Court



Cour fédérale

Date: 20220328

Docket: IMM-6227-20

Citation: 2022 FC 413

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 28, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

SEBAHAT ABEID

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Sebahat Abeid is seeking judicial review of a decision by the Immigration Appeal Division [IAD] rendered on November 9, 2020. The IAD concluded that there were insufficient humanitarian and compassionate grounds to justify quashing the removal order issued against Ms. Abeid for misrepresentation. Ms. Abeid claims that the IAD failed to take a humanitarian

approach by placing too much emphasis on her misrepresentations, that it did not reasonably analyze the best interests of her two sons, and that it erred in its analysis of her medical reports.

[2] In applying the reasonableness standard of review, I find that the IAD's decision is reasonable. The fact that the IAD made multiple references to the misrepresentations does not on its own make the decision unreasonable. The IAD took the relevant factors into account in its analysis, and I am not convinced that it focused unreasonably on the misrepresentations. The IAD also analyzed the best interests of the children [BIOC] reasonably and concluded that this factor was important enough to allow the children's appeal and to grant them permanent resident status, but that it was not sufficient to offset Ms. Abeid's misrepresentations. This analysis is reasonable in the circumstances. Finally, I do not accept Ms. Abeid's arguments on the subject of the medical reports, which were considered and analyzed reasonably by the IAD.

[3] The request for judicial review is therefore dismissed.

II. Issues and standard of review

[4] In this application for judicial review, Ms. Abeid raises the following issues:

- A. Did the IAD err in the methodology it used to examine humanitarian and compassionate considerations?
- B. Did the IAD err in its analysis of the best interests of the children?
- C. Did the IAD err in its treatment of the submitted medical and psychological reports?

[5] The parties agree that the IAD's decision, including these three issues, should be reviewed against the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. A reasonable decision is justified, transparent, and intelligible to the affected party. It demonstrates an internally coherent and rational analysis and is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at paras 85, 90, 99, 105–107.

[6] When performing a review based on the reasonableness standard, the Court does not reassess the evidence or make its own findings: *Vavilov* at para 125. It must rather defer to the IAD's findings and determine only whether the IAD's decision was reasonable, taking into account the evidentiary record and the factual matrix: *Vavilov* at paras 125–126.

III. Analysis

A. *The IAD did not err in the methodology it used to examine humanitarian and compassionate considerations*

(1) Factual and procedural background

[7] Ms. Abeid is a citizen of Turkey. She has two sons, born in 2000 and 2004, from her first marriage. She was divorced in 2005.

[8] In 2009, Ms. Abeid got married again, to Mr. Hussam Abeid. Mr. Abeid sponsored Ms. Abeid and her two sons, and all three became permanent residents in March 2010. As part of the sponsorship application, the couple submitted a false document showing that Mr. Abeid had

divorced his first wife in 2004, and they made multiple statements to that effect. In fact, Mr. Abeid's divorce was not official until August 2009, several months after his marriage to Ms. Abeid. Since coming to Canada in March 2010, Ms. Abeid has had very little contact with Mr. Abeid. The couple divorced in 2013.

[9] In April 2015, Ms. Abeid filed an application to sponsor her first husband. This application was withdrawn in 2020.

[10] In the meantime, in 2016 and 2017, Mr. Abeid and Ms. Abeid were both called for interviews with an officer of Immigration, Refugees and Citizenship Canada because of suspicions that their marriage was not genuine and that they had made misrepresentations. Following these interviews, the officer prepared a report under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] in January 2017. The Immigration Division [ID] held a hearing in June 2018. Ms. Abeid did not contest the fact that the 2004 divorce certificate was false, but she claimed that it had been submitted by Mr. Abeid and that neither she nor her children were responsible. The ID concluded that a misrepresentation had been made and that Ms. Abeid and her two sons were inadmissible for misrepresentation under paragraph 40(1)(a) of the IRPA. The ID then issued removal orders on July 17, 2018.

[11] Ms. Abeid and her sons appealed the removal orders to the IAD. They acknowledged that they had made misrepresentations. However, they submitted that there were sufficient humanitarian and compassionate considerations to warrant special relief to retain their permanent resident status: IRPA, paragraph 67(1)(c). Ms. Abeid and her two sons testified at the IAD

hearing, which took place on February 27 and October 15, 2020. However, neither the certified tribunal record nor the applicant's record contains a transcript of the hearing before the IAD.

(2) The IAD's decision

[12] In its decision of November 9, 2020, the IAD concluded that misrepresentations had been made and that the removal orders were therefore legally valid. With regard to the humanitarian and compassionate considerations, the IAD concluded that there were sufficient reasons to allow the appeals of the two sons, but not to grant special relief in the case of Ms. Abeid.

[13] The IAD's decision describes the factual context and, particularly, the misrepresentations made by Ms. Abeid. The misrepresentations are not limited to Mr. Abeid's divorce date, but also include multiple false statements regarding the marriage itself, the sponsorship application, and the divorce, as well as misrepresentations regarding Ms. Abeid's first marriage and, finally, the application to sponsor her first husband in 2015. The IAD described the application to sponsor her first husband as being a misrepresentation in its entirety.

[14] After having enumerated the misrepresentations, the IAD turned to the humanitarian and compassionate considerations. The IAD analyzed various factors, namely, seriousness of the offence, remorse, degree of establishment, family situation and BIOC, and hardship in the event of removal to Turkey. The IAD concluded that, at the end of the day, [TRANSLATION] "the misrepresentations are very serious and [Ms. Abeid's] remorse almost nonexistent". The IAD acknowledged that Ms. Abeid's establishment in Canada was a positive factor for her but concluded that it was undermined by the fact that it resulted from misrepresentations. The IAD

did not accept that hardship in the event of removal would exceed the normal hardship experienced by someone who returns to their country of origin after years abroad. The IAD concluded that [TRANSLATION] “the best interests of the two children in Canada do not offset the totality of the negative factors”. The IAD therefore dismissed Ms. Abeid’s appeal.

[15] As for the children, the IAD concluded that they had little to do with the misrepresentations, that their establishment was positive, and that their ties to Canada were stronger than those to Turkey. The IAD therefore allowed their appeals under paragraph 67(1)(c) of the IRPA.

(3) The IAD’s decision was reasonable

[16] Citing *Jiang v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 413 at paras 10–12, Ms. Abeid alleges that the IAD gave too much weight to her misrepresentations, [TRANSLATION] “triple counting” their seriousness. She claims that the IAD thus used an approach that goes against the humanitarian and compassionate analysis required under paragraph 67(1)(c) of the IRPA. She also notes that the IAD mentioned the misrepresentations frequently in its decision, including with regard to her establishment in Canada, in its discussion of family separation and BIOC, and again in its overall analysis of humanitarian and compassionate considerations.

[17] I do not agree that these references in the IAD decision render the decision unreasonable.

[18] There is no question that a misrepresentation is just one factor to consider when examining humanitarian and compassionate considerations, and it should not be treated as the only factor: *Kobita v Canada (Citizenship and Immigration)*, 2012 FC 1479 at paras 30–31, 35. However, this does not mean that the IAD is limited to only one mention of the misrepresentations in its analysis. In this regard, I note my colleague Justice Pallotta’s analysis on the subject of “double counting” misrepresentations in *Zhao v Canada (Citizenship and Immigration)*, 2021 FC 38 at paras 40–41, citing *Ylanan v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1063. Like Justice Pallotta, I find that the IAD did not err in its analysis of humanitarian and compassionate considerations by referring to the misrepresentations in the context of other relevant factors: *Zhao* at para 41.

[19] This Court has recognized that an applicant’s establishment in Canada may be considered in the light of the circumstances that gave rise to it, including whether time accumulated in Canada arose from misrepresentations: *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082, at paras 48–51; *Tartchinska v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15032 (FC) at para 22; *Ylanan* at para 35. Therefore, I find that it was reasonable for the IAD to state that Ms. Abeid’s establishment in Canada was [TRANSLATION] “positive overall” but that it would be inappropriate to assign it significant weight given that it arose from her misrepresentations.

[20] I agree with Ms. Abeid that the reappearance of this point in the context of the family separation analysis raises more concerns. However, I find that this reference does not render the decision unreasonable. The IAD did not simply dismiss the BIOC or the impact of family

separation because of the misrepresentations. The IAD considered the impact of removal on Ms. Abeid and recognized that it would be in the children's best interest for her to retain her permanent resident status. However, the IAD weighed these factors against [TRANSLATION] "misrepresentations repeated over a long period of several years". I find that the fact that this analysis takes place within the discussion of the family separation and BIOC factor, and not only within the analysis of the final weighting, though not ideal, does not render the decision as a whole unreasonable.

[21] I also cannot accept Ms. Abeid's claim that the IAD's long and detailed analysis of the misrepresentations demonstrates an unreasonable focus on them. On the contrary, the seriousness of the misrepresentations as well as Ms. Abeid's remorse are relevant factors that must be considered in the analysis of humanitarian and compassionate grounds: *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 at para 14; *Gao v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1238 at para 17; *Canada (Citizenship and Immigration) v Liu*, 2016 FC 460 at para 29. The IAD could not deal with these factors without considering the nature and context of the misrepresentations. Though Ms. Abeid acknowledged that a misrepresentation had been made, her acknowledgement was circumscribed, and she portrayed herself as Mr. Abeid's victim. The IAD's analysis of the misrepresentations and Ms. Abeid's role in them is not proof of undue emphasis on this subject in the context of an appeal based on humanitarian and compassionate grounds.

B. *The IAD did not err in its analysis of the BIOC*

(1) The IAD's analysis of the BIOC

[22] The IAD analyzes the best interests of Ms. Abeid's two sons within its analysis of the family situation under the heading [TRANSLATION] "Family in Canada and dislocation to the family that removal would cause / Family and community support / Best interests of the children". The IAD described the children's current situation, their studies, their ties to Canada, and their lack of ties to Turkey. The IAD concluded that it is in the best interests of the two children to have their mother with them in Canada. However, the IAD noted that the two sons were approaching the age of majority (they were 14 and 17 years old respectively on the date on which the appeal was filed with the IAD, and 16 and 20 years old on the date of the decision), and that they would be able to choose between continuing their lives and studies in Canada and joining their mother in Turkey.

[23] This analysis was performed in the context of the IAD's conclusion that humanitarian and compassionate grounds justified allowing the children's appeal. The IAD's BIOC analysis paid particular attention to the impact of Ms. Abeid's potential removal on the best interests of the children.

(2) The IAD's decision is reasonable

[24] Ms. Abeid claims that the IAD painted an unrealistic picture of the impact of her separation from her children. In particular, she criticizes the IAD's comment that the children

would be able to choose between staying in Canada without their mother and returning to Turkey with her. She notes that such a choice is heartbreaking and claims that the IAD downplayed the impact of her removal on the children, the difficulties they would face if they stayed in Canada without her, and the upheaval they would suffer if they returned to Turkey with her.

[25] I find that the IAD's analysis was reasonable. In this regard, I reiterate that the Court's role in a judicial review is not to reassess the evidence or make its own findings, but only to determine whether the IAD's analysis is justified, transparent, and intelligible: *Vavilov* at paras 85, 90, 99, 105–107, 125.

[26] The IAD acknowledged that it was in the best interests of the two boys to remain in Canada with their mother. The IAD then considered the options if this were not possible in the event that Ms. Abeid were deported to Turkey: remaining in Canada without her or returning to Turkey with her. The IAD expressly noted that remaining in Canada would be possible only if the children are able to do so. Given the specific context of this family, and considering the other humanitarian and compassionate factors, the IAD concluded that the BIOC did not outweigh all the negative factors.

[27] Even if the IAD could have reached the opposite conclusion, I agree with the Minister that Ms. Abeid's claims essentially ask the Court to reweigh the BIOC as a factor in the overall analysis of humanitarian and compassionate considerations. The IAD was sympathetic to the children's situation and acknowledged that the BIOC weigh in Ms. Abeid's favour, but, in the end, concluded that the best interests were not sufficient to allow the appeal. Given that the

BIOC is just one relevant factor and that it is not determinative of the issue of removal, it was reasonable for the IAD to reach the conclusion it did: *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at para 2.

[28] In this regard, I note that the reasonableness of an administrative decision is evaluated in light of the arguments of the parties before the tribunal: *Vavilov* at paras 127–128. As with all issues before the IAD, the BIOC analysis does not occur in the abstract, but in the context of the submissions made by the parties on the issue. As I indicated earlier, the record before this Court does not include the submissions of the parties before the IAD. It is clearly very difficult for this Court to assess the reasonableness of the IAD’s analysis without knowing what submissions were made before it.

C. *The IAD did not err in its treatment of the medical and psychological reports*

(1) The submitted medical evidence

[29] Ms. Abeid was diagnosed with colon cancer in 2017. She underwent an operation and began chemotherapy that same year. She remains in remission but must be monitored given the risk of relapse. Ms. Abeid filed documents from her oncologist confirming her treatment, as well as a letter from a general practitioner (GP). In her letter, the GP provides Ms. Abeid’s medical history and gives her opinion that returning to Turkey [TRANSLATION] “risks ending her ongoing medical follow-up, which began in 2017 and is essential for her health”, and would [TRANSLATION] “cause her significant anxiety and thus impact her physical and mental recovery and would lead to a serious deterioration of her health”.

[30] Ms. Abeid also submitted a psychological assessment. This assessment had been prepared for the hearing before the ID [TRANSLATION] “on the veracity of her marriage to and divorce from” Mr. Abeid. It appears to be particularly focused on this issue, with the final conclusion being that [TRANSLATION] “the overall picture makes it unlikely that the purpose of [Ms. Abeid’s] second marriage was to allow her first husband to settle in Canada”. That said, the report mentions Ms. Abeid’s psychological state and notes that she experiences [TRANSLATION] “clearly above-average psychological distress, which tends to manifest as anxiety, depression, and a marked distrust of other people’s intentions”. The report does not mention the possibility of her removal to Turkey and does not provide an opinion regarding the impact on Ms. Abeid of such a removal.

(2) The IAD’s analysis of the reports

[31] In its summary of the filed documents, the IAD made reference to the medical letters and the psychological assessment report. In its analysis of [TRANSLATION] “Hardship in the event of removal to the country of nationality”, the IAD noted that Ms. Abeid has had medical problems and is in remission from cancer. The IAD described her current state of health in detail. Referring to the GP’s opinion, the IAD concluded that it [TRANSLATION] “cannot agree with the conclusion that removal ‘would lead to a serious deterioration of her health’ as her condition has been stable for many months, and even years for certain issues”. In response to Ms. Abeid’s concerns about continued medical follow-up in Turkey, the IAD noted that she had been aware of her medical condition when she returned to Turkey in 2018, after having had cancer, and that she had not presented any corroborative evidence about medical care in Turkey.

[32] Ms. Abeid claims that the IAD does not have expertise in healthcare or oncology, and that it is unreasonable for the IAD to reject the GP's medical opinion. She notes that she has multiple medical issues and submits that it is illogical to affirm that her condition is [TRANSLATION] "stable".

[33] I do not find that the IAD's analysis is unreasonable. Contrary to Ms. Abeid's claims, the IAD's conclusion that her state of health is stable is not contradicted by the medical evidence. In light of all the evidence before it, the IAD was not required to accept the GP's rather general and non-specific conclusions. The IAD gave this evidence serious and careful consideration and reached a transparent and justified conclusion.

[34] The IAD also made reference to the conclusions of the psychological report, including the anxiety issues and the recommendation of psychotherapy. As Ms. Abeid notes, this topic is discussed within the analysis of her establishment in Canada. It is somewhat difficult to understand why the analysis appears in this section, especially given the lack of a transcript of the arguments before the IAD. That said, I find that the IAD did not unreasonably ignore the psychological evidence. As stated, the psychological report does not mention the issue of Ms. Abeid's removal to Turkey, and its conclusions regarding her psychological state are rather limited. In this context, I find that the IAD's analysis of the report was sufficient in the circumstances and that its decision satisfies the requirements of justifiability, transparency, and intelligibility.

IV. Conclusion

[35] For the above reasons, the application for judicial review is dismissed.

[36] The parties did not raise a question of general importance for certification. I agree that there is none.

JUDGMENT in IMM-6227-20

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

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