Federal Court  Cour fédérale

Date: 20220922

Docket: IMM-6660-21

Citation: 2022 FC 1320

Ottawa, Ontario, September 22, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

IBRAHIM MOLLA

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ibrahim Molla, seeks judicial review of the decision of the Immigration Appeal Division ("IAD"), dated September 17, 2021, in which the IAD decided not to allow the Applicant's appeal of his removal order pursuant to subsection 67(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"), or to stay the removal order pursuant to subsection 68(1) of the *IRPA.* The IAD concluded that after taking into account the best interest

of the children ("BIOC") directly affected by the removal order, there were insufficient humanitarian and compassionate ("H&C") grounds to warrant special relief in the Applicant's circumstances.

[2] The Applicant submits that the IAD's decision is unreasonable because the IAD failed to adequately assess the BIOC and the H&C factors in his case.

[3] For the reasons that follow, I find the IAD's decision to be reasonable. I therefore dismiss this application for judicial review.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 37-year-old citizen of Bangladesh. In May 2017, the Applicant became a permanent resident of Canada. Prior to immigrating to Canada, he lived and worked in the United Arab Emirates ("UAE") for approximately seven years.

[5] The Applicant's spouse, Mim Aktary (Ms. "Aktary"), is also a citizen of Bangladesh. The Applicant and Ms. Aktary were married in Bangladesh in 2015. In October 2018, the couple settled in Edmonton, Alberta. The Applicant and Ms. Aktary have two young sons who were born in Canada and are Canadian citizens.

[6] On January 17, 2019, Ms. Aktary phoned the police. Once the police arrived at the family's residence, Ms. Aktary told them that the Applicant had hit her. She also showed them a video of a previous incident that had taken place on December 23, 2018. The December 23, 2018 video was presented at the Applicant's sentencing hearing, and allegedly shows the Applicant pulling out a belt from a pair of pants, holding it with two hands, and repeatedly whipping Ms. Aktary for approximately one minute while she cries out in pain.

[7] At the IAD hearing, the Applicant was asked what led him to commit the offence against Ms. Aktary. The Applicant testified that they had argued because of a miscommunication, as Ms. Aktary had allegedly blamed the Applicant for a miscarriage she had experienced shortly before the offence, and had gotten upset about a woman the Applicant had spoken to on the phone. The Applicant testified that the woman he had spoken to on the phone was his cousin, who was in Canada on a study permit.

[8] After the offence, the Applicant attended a two-day anger management workshop called "Men & Anger", and completed the first phase of the "Changing Pathways" program. In August 2019, he and Ms. Aktary also attended five sessions of counselling together.

[9] The Applicant and Ms. Aktary's first son was born on September 5, 2019.

[10] On January 27, 2020, the Applicant pled guilty to assault with a weapon in the Provincial Court of Alberta. He was sentenced to 30 days in prison and twelve months of probation. Because of the Applicant's conviction, an inadmissibility report dated July 13, 2020 was

prepared in accordance with subsection 44(1) of the *IRPA*. The Immigration Division then issued a deportation order against the Applicant for serious criminality pursuant to paragraph 36(1)(a) of the *IRPA* and paragraph 229(1)(c) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227).

[11] On May 12, 2021, the Applicant appealed the removal order against him, requesting that the IAD exercise its discretionary jurisdiction to stay his removal order on H&C grounds. The Applicant did not challenge the validity of the deportation order.

[12] The hearing before the IAD took place on July 28, 2021. The Applicant and Ms. Aktary's second son was born shortly after the IAD hearing.

B. *Decision Under Review*

[13] In a decision dated September 17, 2021, the IAD dismissed the Applicant's appeal, finding that discretionary relief was not warranted pursuant to the factors outlined in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL) ("*Ribic* factors"). In reaching its decision, the IAD considered the BIOC and the H&C factors raised by the Applicant.

[14] The IAD gave significant weight to the seriousness of the offence, noting that the Applicant's offence involved domestic violence against his wife, who was living in a new city with little social supports, and who was grieving a miscarriage. The IAD also pointed out that the offence involved the use of a belt.

[15] In assessing the Applicant's remorse, the IAD noted that the Applicant had been a cooperative witness and had testified in detail about the December 2018 incident that led to his conviction in January 2020. The IAD found that the Applicant expressed some sorrow for his criminal activities and for breaking the law, yet demonstrated a limited understanding of the circumstances. The Applicant's remorse was of some assistance to the IAD's assessment.

[16] With respect to the Applicant's rehabilitation, the IAD gave positive weight to the Applicant's participation in programs since his arrest. However, the IAD found that in his testimony, the Applicant demonstrated a limited understanding of the circumstances surrounding his offence, and little appreciation for his actions. Specifically, the IAD observed that the Applicant seemed unable to fully take responsibility for his own actions, independent of Ms. Aktary's actions, as he spoke to both of their actions in contributing to the offence. Ultimately, the IAD concluded that this factor was of limited assistance to the Applicant.

[17] The IAD also considered the Applicant's establishment, noting that he had lived in Canada continuously since 2014, and that he and Ms. Aktary have started a family in Canada. The IAD further observed that the Applicant has participated in English as a Second Language courses, has worked for some of his time of Canada, has formed friendships through his mosque, and is involved in the local Bangladeshi community. The IAD concluded that the Applicant's establishment was short and limited, but still assisted his application.

[18] In assessing the impact of removal, the IAD found that there was no evidence that the Applicant's friends in Canada would face hardship if he were to leave Canada. However, the

IAD noted a letter from Ms. Aktary, which states that she would suffer some hardship if the Applicant were to leave Canada. Nonetheless, the IAD found that the evidence indicates that it is more likely than not that Ms. Aktary would be returning to Bangladesh with the Applicant. Furthermore, the IAD found that the Applicant had not demonstrated that he would face significant hardship if removed from Canada. The IAD noted that the Applicant had testified that his family could live at his father's home in Bangladesh, and that his work experience in the hospitality industry in UAE, Bangladesh and Canada would enable him to re-establish himself professionally in Bangladesh. The IAD gave this factor neutral weight.

[19] Finally, in reviewing the BIOC, the IAD observed that while both of the Applicant's children are Canadian citizens, they are quite young and would be less aware of the relocation to Bangladesh, where they would likely continue to live with both of parents and would benefit from extended family; compared to the few relatives they have in Canada.

[20] The IAD ultimately concluded that there were insufficient H&C considerations to warrant special relief in light of all of the circumstances in the Applicant's case.

III. **Issue and Standard of Review**

[21] The sole issue in this application for judicial review is whether the IAD's decision is reasonable.

[22] Both parties agree that the issue is to be reviewed on the reasonableness standard. I agree that the appropriate standard of review for the IAD's decision is reasonableness (*Dayal v Canada*

(Citizenship and Immigration), 2022 FC 802 ("*Dayal*") at para 5; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at para 10).

[23] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[24] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. **Analysis**

[25] The IAD considered the *Ribic* factors when exercising its discretion under paragraph 67(1)(c) of the *IRPA* to allow an appeal, or under subsection 68(1) to grant a stay of removal

based on H&C considerations and all the circumstances of a case,. The *Ribic* factors include: the seriousness of the offence leading to the removal order; the possibility of rehabilitation; the length of time in Canada; the degree of establishment in Canada; the applicant's family and community supports in Canada, and the impact of the applicant's removal on the family; friend and community support; the degree of hardship that would be caused to the applicant by removal from Canada; and the BIOC directly affected by the decision (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 328 at para 28). The remedy is discretionary, and the IAD must be satisfied that sufficient H&C considerations warrant special relief (*Dayal* at para 11).

A. *Demonstration of Remorse and Steps toward Rehabilitation*

[26] The Applicant submits that the IAD minimized and ignored aspects of his remorse. He argues that in assessing whether he had demonstrated remorse, the IAD failed to take into account his guilty plea and the letters from Ms. Aktary and the Applicant's family friend, Dr. Rafat Alam ("Dr. Alam"). The Applicant also submits that the IAD ignored evidence demonstrating that he was making good progress towards rehabilitation. The IAD did not reference a letter from the Applicant listing the programs he had attended and asserting that he is a new person, or the letter from Dr. Alam indicating that the Applicant made a mistake and has reformed himself, and that he would not be convicted of criminal activities in the future.

[27] Furthermore, with respect to the IAD's comments that the Applicant seemed to be of the view that Ms. Aktary shared responsibility for the offence, the Applicant argues that this was due to his limited understanding of the English language and his use of words such as "we" and "us". While a translator was present during the hearing, they were only present on a "stand-by" basis

and did not provide continuous translation. As a result, the IAD misconstrued the Applicant's testimony. The Applicant relies on *Kamara v Canada (Citizenship and Immigration)*, 2011 FC 243 ("*Kamara*") for the proposition that a valid waiver of a procedural right must be clear and unequivocal and must be done with knowledge of the rights the procedure was enacted to protect. The Applicant maintains that his waiver of continuous translation was done without him fully understanding his rights and the effect of the waiver on those rights.

[28] The Respondent maintains that it was reasonable of the IAD to find that the Applicant was unable to take full responsibility for his actions surrounding the offence, independent of Ms. Aktary's actions. A review of the transcript demonstrates that the Applicant fails to grasp that he bears responsibility for the offence. For instance, when asked during the IAD hearing how Ms. Aktary was to blame for the offence, the Applicant replied by explaining that (a) Ms. Aktary did not believe him that the woman he had been speaking with was his cousin, and that (b) Ms. Aktary did not realize that miscarriages can happen for no reason. Further, it was reasonable of the IAD to emphasize that this is particularly problematic considering Ms. Aktary's isolation and lack of social supports in Canada. The Respondent also notes that Ms. Aktary's understanding of the events is an issue, as her support letter states that it was her mistake to call the police, and she would not have done this had she been aware of the criminal process that would follow. With respect to the Applicant's rehabilitation, the Respondent contends that the IAD's decision does in fact acknowledge that the Applicant has made some steps towards rehabilitation, including participating in courses and counselling.

[29] In response to the Applicant's critique of the lack of continuous translation at the IAD hearing, the Respondent submits that counsel represented the Applicant during the hearing, and that an interpreter was provided for the Applicant. At the hearing, both the Applicant and the interpreter stated that they understood each other when asked, and the Applicant advised that he should be comfortable in English. The IAD told the Applicant that the interpreter could explain anything he did not understand. The IAD explicitly stated, "If you're struggling even with one word, one expression, one question, one sentence, let us know and he will come in".

[30] I agree with the Respondent. I find that the Applicant's submissions amount to a request for the Court to re-weigh the evidence. The IAD adequately considered the Applicant's remorse and his steps toward rehabilitation. In fact, the IAD's decision states that the Applicant's degree of remorse is of "some assistance" to the assessment. While the Applicant argues that the IAD failed to reference certain pieces of evidence in assessing remorse, it is a well-settled principle that an administrative decision maker is presumed to have considered all the evidence before them and is not required to comment on every piece of evidence (see: *Sing v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 at para 90; *Vavilov* at para 128). In the same vein, a failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). This principle is equally applicable to the Applicant's submissions on the impact of removal on the Applicant's family and friends.

[31] I also agree with the Respondent's submission that it was reasonable for the IAD to raise concerns about Ms. Aktary's view of the offence. In her letter of support dated January 5, 2021,

Ms. Aktary writes "[…] it was my mistake to call police and I was not aware of about this country rule if I know[*sic*] this circumstance will be happen I would never call police[*sic*]" and "I can making that there will be no problem in future [*sic*]". Given the domestic violence nature of the Applicant's offence, I find that Ms. Aktary's support letter raises the concerning possibility that a future offence would not be reported.

[32] Furthermore, the Applicant's arguments regarding the issue of translation are not persuasive. I do not find that the IAD misconstrued the Applicant's testimony. As rightly noted by the Respondent, the Applicant was provided with an interpreter and was asked if he wished to proceed in English. The case at hand is also distinguishable from *Kamara,* where the Court found that due to the applicant's counsel's lack of experience, the applicant did not make an informed waiver of her right to continuous interpretation (at para 41). Here however, a review of the transcript of the IAD hearing reveals that the Applicant was clearly given the choice of standby or continuous translation, and his counsel indicated that translation on a standby basis "should be fine". The Applicant himself stated, "No, I will be okay with the English". The IAD also informed the Applicant that even if one word was unclear to him, he could ask for continuous translation. I am not convinced by the Applicant's argument that the IAD misconstrued his testimony, and I find that it was reasonable of the IAD to conclude that the Applicant failed to take full responsibility for his actions.

B. *Impact of Removal*

[33] The Applicant submits that the IAD erred in only giving neutral weight to the impact his removal would have on his family and friends. In particular, the Applicant states that the IAD

erred by not considering a letter from Ms. Aktary's doctor explaining how she is dependent on him, and erred by concluding that Ms. Aktary would likely return to Bangladesh with the Applicant. The Applicant argues that Ms. Aktary would suffer significant hardship should he be removed from Canada.

[34] I agree with the Respondent's position that it was reasonable of the IAD to conclude that while there was some evidence that Ms. Aktary would likely face some hardship flowing from the Applicant's removal, she would "more likely than not" be returning to Bangladesh with the Applicant if he were to be removed from Canada. The IAD based this finding on the Applicant's testimony, in which he stated that if his appeal failed, Ms. Aktary "says she will go with me". While the IAD did not specifically quote the Applicant's testimony in its reasons, it was not obliged to; it was sufficient for the IAD to refer to the Applicant's evidence generally. I find that the IAD's conclusion stems from a reasonable interpretation of the Applicant's testimony.

C. *BIOC*

[35] The Applicant submits that the IAD did not adequately address the BIOC in this case, limiting its analysis to one paragraph. The IAD failed to indicate how the removal of one parent would affect the children. With this in mind, the Applicant submits that the IAD's limited analysis does not demonstrate that it was "alert, alive and sensitive" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 ("*Kanthasamy*") at para 38, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), at paras 74-75) to the BIOC.

[36] In determining the reasonableness of the IAD's analysis of the BIOC, the BIOC factor is assessed in the context of subsection 25(1) of the *IRPA* (*Dayal* at para 21; *Phan v Canada (Citizenship and Immigration)*, 2019 FC 435 ("*Phan*") at para 19). The BIOC must be well identified and defined, and examined with care and attention (*Phan* at paras 21-22, citing *Kanthasamy* at paras 23-25, 35, 38, and 41). In my view, the IAD accomplished this.

[37] The IAD's decision states that both of the Applicants' children are Canadian citizens and that they would be able to return to Canada in the future if they choose to. The IAD also states that because the children are very young, they would likely not be aware of the relocation, and that they can likely return to Bangladesh and live with their parents. Finally, the IAD remarks that unlike in Canada, where the Applicant's children only have two relatives, they would benefit from extended family on both sides if they relocated to Bangladesh. I find that the IAD's analysis met the BIOC principles in a way that took into account the children's ages, capacity, needs, maturity and level of development (*Kanthasamy* at para 35).

[38] Overall, I find that the IAD reasonably weighed all of the factors in this case in exercising its discretion not to allow the Applicant's appeal or stay the removal.

V. **Conclusion**

[39] For the reasons above, I find that the IAD's decision was reasonable. Accordingly, this application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6660-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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