

Federal Court



Cour fédérale

**Date: 20230713**

**Docket: IMM-6186-22**

**Citation: 2023 FC 964**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, July 13, 2023**

**PRESENT: The Honourable Mr. Justice Pamel**

**BETWEEN:**

**SUZAN ABDEL-QADER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Suzan Abdel-Qader, is a citizen of Germany and she obtained her permanent residence in Canada on May 18, 1997, sponsored by her then spouse. In March 2017, she pleaded guilty to one count of fraud in excess of \$5,000 and was fined \$30,000 and ordered to pay restitution in the amount of \$50,000. Ms. Abdel-Qader repeatedly over a period of about 14 years (between 2000 and 2014) obtained thousands of dollars in government benefits to which

she was not entitled. Ms. Abdel-Qader submitted three fraudulent applications for Canadian citizenship based on a false number of days of presence in Canada or simulating her residence while living in Saudi Arabia. Her false tax returns and simulated residency in Canada were made in collaboration with or under the direction of an immigration consultant and, for all the fraudulent citizenship applications except the last in 2012, her ex-husband.

[2] On September 29, 2021, the Immigration Division of the Immigration and Refugee Board of Canada determined that Ms. Abdel-Qader was a person described in paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], and issued a removal order against her pursuant to paragraph 45(d) of the Act. In a decision dated May 19, 2022, the Immigration Appeal Division [IAD] dismissed the appeal of Ms. Abdel-Qader's removal order under subsection 63(3) of the Act, because it was not satisfied that Ms. Abdel-Qader had advanced sufficient humanitarian and compassionate grounds to obtain special relief.

[3] The IAD considered that a large part of the criteria does not favour the appeal. The panel noted the seriousness of the crime, a serious fraud of several tens of thousands of dollars over a long period of time, and considered that Ms. Abdel-Qader's remorse was minimal and that her rehabilitation potential was not particularly clear. The panel noted that, although Ms. Abdel-Qader's time in Canada was favourable to her appeal, her establishment is still very weak for a person living in Canada since 2008 and her lack of financial autonomy or occupation does not help to significantly eliminate the risk of recidivism. Moreover, although Ms. Abdel-Qader would face dislocation when she returned to Germany, there are pros and cons to her return, in part because of the financial support she received from her ex-husband and the presence in

Germany of her mother, her brother and two of her three sisters. The fact that Ms. Abdel-Qader would see less of her adult children, aged 27 and 22 respectively at the time of the decision, also militated in favor of the appeal. However, and although this aspect is unfortunate, the IAD's conclusion is that it does not counterbalance all the aspects that do not militate in favor of the appeal.

[4] Before this Court, Ms. Abdel-Qader is seeking judicial review of this IAD decision, citing the existence of sufficient humanitarian and compassionate grounds to obtain special relief in order to maintain her permanent residence. The application for judicial review raises the following question: is the IAD's decision reasonable? The standard of reasonableness applies to the IAD's decision on the assessment of humanitarian and compassionate grounds (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 23; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 58; *Basilio v Canada (Citizenship and Immigration)*, 2020 FC 411 at para 21). 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). The Court will intervene only if the applicants demonstrate that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[5] Ms. Abdel-Qader submits that the IAD failed to apply the analytical approach to humanitarian and compassionate considerations set out in *Chirwa v Canada (Minister of Citizenship and Immigration)*(1970), 4 IAC 338 at 351 [*Chirwa*], and affirmed by the Supreme

Court in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*], according to which the decision maker must consider whether the facts “would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another” (*Kanthasamy* at para 21; *Chirwa* at 362).

[6] According to the respondent, the IAD, in exercising its discretion, relied on the non-exhaustive factors that guide the humanitarian and compassionate grounds assessment for the purposes of paragraph 67(1)(c) of the Act, as set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL) at para 14 (approved in *Al Sagban v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 4, and *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3).

[7] Ms. Abdel-Qader presents herself as a poor woman, subject to the complete control of her ex-husband and dependent on him for financial support. The respondent, on the other hand, describes Ms. Abdel-Qader as a person who knows exactly what she is doing and who blames her husband for everything she has done. In any event, the IAD considered that the possibility that Ms. Abdel-Qader would be under the full influence of her ex-husband was not a factor in favour of the appeal. The panel acknowledged that the fraudulent activities were primarily directed by the applicant’s ex-husband, but the IAD determined that in the absence of signs that she had changed or that she was no longer totally dependent on her husband, Ms. Abdel-Qader remains a risk to Canadian society.

[8] The problem for the Court is that there is no evidence of the possibility of serious dislocation if the applicant were returned to Germany. She does not have a job, is not involved in the community and speaks virtually no English or French, even though she has lived in Canada for nearly 14 years. The situation is distinct from that before me in *Truong v Canada (Citizenship and Immigration)*, 2022 FC 697, where the officer did not adequately assess whether the interruption of the applicant's establishment in Canada, if she had to return to Vietnam to apply for permanent residence, argued in favor of an exemption under subsection 25(1) of the Act. In this case, there is no real establishment to consider.

[9] Apart from not seeing her two adult children every day, there is no evidence that Ms. Abdel-Qader's life would be different in Germany. She would continue to spend her days reading and walking, as she does in Canada according to the evidence in the record, and there is no evidence that her ex-husband would stop supporting her financially as he does now.

[10] Before me, Ms. Abdel-Qader claims that she will suffer greatly if we separate her from her children since all she has known in life is to take care of her children. However, there is no evidence, no finding, nor testimony from Ms. Abdel-Qader that mentions the level of dislocation she would suffer in leaving Canada. The two adult children testified to the significant dislocation they would suffer if their mother were sent back to Germany, but, according to the IAD, Ms. Abdel-Qader only stated matter-of-factly that if her ex-husband did not buy her a house, she could find an apartment. Her counsel argued that it was because of a cultural difference that she did not testify in detail about the level of dislocation, but the fact remains that there is no evidence before me that the impact on Ms. Abdel-Qader would be more than minimal.

[11] In the end, this is not a case where there are sufficient humanitarian and compassionate grounds to excite in a reasonable person a desire to relieve the misfortunes of another (*Kanthasamy* at paras 13 and 21). In fact, I do not see the slightest misfortune that the IAD improperly assessed or failed to consider. Ms. Abdel-Qader did not identify any fundamental flaws in the IAD's consideration of her appeal and the application for judicial review must therefore be dismissed.

**JUDGMENT in IMM-6186-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. There are no questions to certify.

“Peter G. Pamel”

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Judge

Certified true translation

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6186-22

**STYLE OF CAUSE:** SUZAN ABDEL-QADER v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JULY 5, 2023

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** JULY 13, 2023

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