Federal Court  Cour fédérale

Date: 20110118

Docket: IMM-2095-10

Citation: 2011 FC 53

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 18, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ARTUR KACPRZAK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] In view of the decision in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the degree of deference for the findings of fact made by the Immigration Appeal Division (IAD) has also been noted. The Supreme Court confirmed that the criteria set out in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL/Lexis) were still applicable and that the deference shown by the Federal Court also applies to findings of fact concerning the possibility of rehabilitation:

> [65] In terms of transparent and intelligible reasons, the majority considered each of the *Ribic* factors. It rightly observed that the factors are not exhaustive and that the weight to be attributed to them will vary from case to case (para. 12). The majority reviewed the evidence and decided that, in the circumstances of this case, most of the factors did not militate strongly for or against relief. Acknowledging the findings of the criminal courts on the seriousness of the offence and possibility of rehabilitation (the first and second of the *Ribic* factors), it found that the offence of which the respondent was convicted was serious and that the prospects of rehabilitation were difficult to assess (para. 23).
>
> [66] The weight to be given to the respondent's evidence of remorse and his prospects for rehabilitation depended on an assessment of his evidence in light of all the circumstances of the case. The IAD has a mandate different from that of the criminal courts. Khosa did not testify at his criminal trial, but he did before the IAD. The issue before the IAD was not the potential for rehabilitation for purposes of sentencing, but rather whether the prospects for rehabilitation were such that, alone or in combination with other factors, they warranted special relief from a valid removal order. The IAD was required to reach its own conclusions based on its own appreciation of the evidence. It did so. [Emphasis added.]

(*Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 SCR 339).

II. Judicial procedure

[2] The applicant was found to be inadmissible on grounds of serious criminality by the Immigration Division (ID) of the Immigration and Refugee Board, under paragraph 36(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). A removal order was accordingly made.

[3] The applicant exercised his right to appeal to the IAD. However, he did not dispute the validity of the removal order; rather, he asked the IAD to take into account humanitarian and compassionate considerations that warrant special relief, under paragraph 67(1)(*c*) of the IRPA.

[4] On March 19, 2010, the IAD dismissed the appeal, concluding that the humanitarian and compassionate considerations cited by the applicant did not warrant special relief. That determination regarding humanitarian and compassionate considerations is the subject of this application for judicial review.

III. Facts

[5] The applicant, Artur Kacprzak, is a citizen of Poland. He arrived in Canada in 1991 at the age of 14. He is now 33 years old and has permanent resident status in Canada.

[6] The applicant has no dependants at present: he has no children and is not married.

[7] On April 6, 2001, the applicant pleaded guilty to:

a. two counts of robbery under paragraph 344(1)(*b*) of the *Criminal Code*, RSC 1985, c C-46;
b. one count of conspiracy to commit robbery under paragraph 465(1)(*c*) of the *Criminal Code*; and
c. one count of using an imitation firearm in the commission of an indictable offence under paragraph 85(2)(*a*) of the *Criminal Code*.

[8] Also on that date the applicant was sentenced to imprisonment for two months to be served concurrently for the three counts of robbery and conspiracy and to imprisonment for one year, consecutive, for using an imitation firearm in the commission of an indictable offence, followed by probation for two years.

[9] On April 26, 2001, the applicant also pleaded guilty to one count of possession of cocaine for the purposes of trafficking under paragraph 5(2)(3)(*a*) of the *Controlled Drugs and Substances Act*, SC 1996, c 19 and one count of possession of methadone under paragraph 4(1)(4)(*a*) of that Act.

[10] The applicant was then sentenced to imprisonment for four months concurrent, followed by probation for two years.

[11] On November 16, 2001, two 27 reports were written under the former *Immigration Act*, RSC 1985, c 12, concerning the possibility that the applicant was inadmissible.

[12] The 27 reports were not referred for an inquiry, because the Minister's representative made a positive recommendation regarding the applicant, who had expressed remorse and undertaken to stay away from criminal activities.

[13] On November 16, 2001, however, the applicant was informed by letter that any further offence could be reported under the *Immigration Act*.

[14] Notwithstanding the Minister's favourable recommendation, and during his periods of probation, the applicant was nonetheless involved in at least one other incident.

[15] As a result of an incident that occurred on September 2, 2002, the applicant was convicted of possession of heroine for the purposes of trafficking, under paragraph 5(2)(3)(*a*) of the *Controlled Drugs and Substances Act*. That offence is punishable by imprisonment for life.

[16] On October 6, 2004, the applicant was given a conditional sentence of imprisonment for two years less a day, to be served in the community, followed by probation for three years.

[17] As a result of that same incident of September 2, 2002, the applicant was also convicted of possession of cocaine, also for the purposes of trafficking, under the same paragraph of the *Controlled Drugs and Substances Act*.

[18] On October 5, 2005, a 44 report was filed stating that the applicant was inadmissible on the grounds of serious criminality.

[19] On March 16, 2009, an inquiry was held by the ID, which concluded that because of the offences committed and the sentences imposed, the applicant was in fact inadmissible on the grounds of serious criminality under paragraph 36(1)(*a*) of the IRPA. A deportation order was therefore made by the ID.

[20] The applicant appealed the removal order to the IAD under paragraph 36(1)(*a*) of the IRPA. A deportation order was therefore made by the ID.

[21] The applicant appealed the removal order to the IAD under subsection 63(3) of the IRPA. The applicant did not dispute the legality of the removal order; rather, he cited humanitarian and compassionate considerations.

[22] The appeal was heard on February 10, 2010, and it was dismissed on March 19, 2010. The IAD examined the relevant criteria as set out in *Ribic*, above, and concluded that the applicant had not shown circumstances to warrant special relief. It is that decision by the IAD that is now challenged in the application for judicial review.

IV. Issue

[23] Is the decision of the IAD reasonable?

V. Analysis

[24] The Court agrees with the respondent that the decision of the IAD is reasonable, for the reasons that follow.

[25] Subsection 63(3) of the IRPA allows for an appeal to the IAD from a removal order made at an examination or a hearing before the ID.

[26] Under paragraph 67(1)(*c*) of the IRPA, the IAD has discretion to allow an appeal even if the removal order is valid where the applicant establishes that there are humanitarian and compassionate considerations that warrant special relief.

[27] In this case, on appeal, the applicant did not challenge the validity of the removal order; his appeal to the IAD was based solely on humanitarian and compassionate considerations.

[28] The factors to be considered by the IAD in its assessment for the purpose of determining whether it should exercise its discretion were set out by the Immigration Appeal Board in *Ribic*, above, and approved by the Supreme Court of Canada in *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 SCR 84, *Al Sagban v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 4, [2002] 1 SCR 133 and, more recently, in *Khosa*, above. It is settled law that these factors are not exhaustive and the weight to be given to each of them may vary depending on the circumstances of the case.

[29] The relevant factors set out in *Ribic*, above, are the following:

a. the seriousness of the offence leading to the removal order;
b. the possibility of rehabilitation;
c. the length of time spent in Canada and the degree to which the applicant is established;
d. family in Canada and the dislocation to that family that deportation of the applicant would cause;

e. the support available for the applicant not only within the family but also within the community; and

f. the degree of hardship that would be caused to the applicant by his return to his country of nationality.

[30] In this case, the IAD said specifically, at paragraph 5 of its decision, that the factors in *Ribic* were considered in reaching the final conclusion that there were no circumstances that warranted special relief. It also said, in the same paragraph, that it was fully aware that those factors are not exhaustive and that the weight to be given to each of them may vary depending on the circumstances of the case.

[31] There was no error regarding the test used by the IAD to assess the humanitarian and compassionate considerations in the case.

[32] Moreover, the IAD's assessment of humanitarian and compassionate considerations is a discretionary decision that clearly falls within its expertise (*Gonzalez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1274, 302 FTR 81, at para 21).

[33] It is settled law that this Court must show great deference on judicial review and ask itself whether the findings of fact are unreasonable:

> [12] It is well-settled that the IAD's decisions based on findings of fact cannot be set aside unless they meet the criteria set out in section 18.1(4)(*d*) of the Federal Courts Act, which provides that the Court may set aside a decision of the tribunal if the decision is based "on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it." Traditionally, the standard of patent unreasonableness has been applied to questions of this kind. In

> light of *Dunsmuir, supra,* and the degree of deference that is to be afforded to the IAD's credibility findings and findings of fact, I find that the applicable standard of review of the Decision is reasonableness. As stated by the Court in *Dunsmuir, supra,* at para. 47, this standard "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Thus, the Decision should stand unless I find that, with regard to the facts and law, the Decision falls outside the "range of possible, acceptable outcomes."
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> [18] The Applicant has made a number of submissions which, in my view, merely suggest that she disagrees with the findings of the IAD. She has not established that the IAD ignored or misconstrued evidence before it, thereby basing its Decision on an erroneous finding of fact or without regard to the material before it. It is important to remember that the IAD's Decision whether or not to grant H&C exemption from the provisions of the Act is a discretionary one and requires due deference from the Court. [Emphasis added.]

(*Barm v Canada (Minister of Citizenship and Immigration)*, 2008 FC 893, 169 ACWS (3d) 171).

[34] For these reasons, therefore, this Court should not undertake a reassessment of the evidence in a judicial review application and substitute its opinion for the opinion of the IAD:

> [51] An analysis of his allegations reveals that he wishes the Court to re-weigh the evidence. The problem with this argument is that courts on judicial review cannot simply re-weigh the evidence and substitute their opinions unless the decision does not, according to *Dunsmuir*, *supra*, "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law"; or, if you wish, constitutes perverse and capricious findings under paragraph 18.1(4)(*d*) of the *Federal Courts Act* (*Sahil v. Minister of Citizenship and Immigration*, 2008 FC 772, at paragraphs 9 and 10; *Matsko v. Minister of Citizenship and Immigration*, 2008 FC 691, at paragraph 8; and *Barm v. Minister of Citizenship and Immigration* 2008 FC 893, at paragraph 12). [Emphasis added.]

(*Sharma v Canada (Minister of Citizenship and Immigration)*, 2009 FC 277, 2009 FCJ 339 (QL/Lexis); see also *Barm*, above; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059, 277 FTR 216).

[35] With respect to the assessment of the facts or the evidence in this case, it is clearly apparent from the reasons for decision that the IAD assessed the oral and written testimony and the other evidence presented. The IAD considered all the relevant factors and gave them the appropriate weight. The detailed reasons indicate an exhaustive analysis of the evidence presented and do not disclose any error.

Possibility of rehabilitation

[36] Counsel for the applicant alleged (Applicant's Memorandum, at paras. 15-27), that the IAD had to take the possibility of rehabilitation into account and did not do so. He alleged (Applicant's Memorandum, at paras. 19-22) that the IAD made no reference in the decision to the subject of heroin and that the IAD had an obligation to take into account the applicant's dependence on that strong drug.

[37] Those allegations are not correct; the IAD took the specific offence of possession of heroin for the purpose of trafficking into account and if we read the decision as a whole it is clear that the member was aware of the applicant's addiction problems.

[38] Those factors were considered by the IAD (Decision, at paras. 7-9 and 14-21). The IAD referred to the applicant's various offences, the circumstances surrounding the offences, and even the fact that, in the IAD's opinion, the applicant had been treated with considerable indulgence by Citizenship and Immigration Canada (CIC). The IAD also referred to the various treatments the applicant had undergone, the efforts he had made and the consequences of his drug use for the people close to him.

[39] The fact is that in April 2001, the applicant was convicted of two counts of robbery, one count of conspiracy to commit robbery and another count of using an imitation firearm in the commission of an indictable offence.

[40] The circumstances of those crimes indicate that the robbery victims were preparing to make a commercial deposit at the bank when they were robbed of several thousand dollars and threatened by the applicant and his co-conspirator (Decision, at para. 14).

[41] The applicant was then given concurrent sentences of imprisonment for four months followed by probation for two years.

[42] Following those first offences, CIC wrote a report, but did not refer the applicant for an inquiry; it gave him a chance because he undertook to stay away from criminal activities, he showed remorse, and he was going to enter an addiction treatment program.

[43] The applicant was also informed in November 2001 of the consequences for his permanent resident status if he were to go back to criminal activities, because any further offence would be reported under the *Immigration Act* then in force (Decision, at paras. 10-11).

[44] Notwithstanding the privilege he was given, the applicant fell back into criminal activities almost immediately.

[45] In fact, as a result of an incident that occurred on September 2, 2002, he was convicted of possession of heroin for the purposes of trafficking (Decision, at paras. 7-8).

[46] At the time of that crime, (1) the applicant had already been informed by CIC that any further offence would be reported under the *Immigration Act*; (2) he was on probation for the crimes committed in 2001; and (3) he was also awaiting trial for possession of cocaine for the purposes of trafficking in connection with another incident that occurred before September 2, 2002.

[47] The applicant then entered an eight-month residential program at Addington House that ended in 2003.

[48] On October 6, 2004, the Court of Québec sentenced him in connection with the incidents that had preceded the residential treatment program. The Court was informed of the eight-month treatment program at that time, and of the fact that the applicant did not then seem to be a danger to the community.

[49] The applicant was then given a conditional sentence of imprisonment for two years less a day to be served in the community, followed by probation for three years.

[50] The IAD said in its decision that that sentence should have been the end of the applicant's criminal activities. It also said that when an immigration officer called him in for interview and for a 44 report to be written in October 2005 based on inadmissibility on the grounds of serious

criminality, this should have been an incentive to stay away from drug use and other criminal activities. Unfortunately, that is not what happened (Decision, at para. 16).

[51] First, the applicant did not stay away from drug use, and second, he was arrested again for possession of cocaine and heroin in March 2009. Although those charges had not yet been dealt with by the Court of Québec, Criminal Division, at the time of the hearing before the IAD, the applicant admitted to the IAD that he had committed them (Decision, at paras. 17-18).

[52] The applicant also entered four more treatment programs, in 2007, 2008, April 2009 and December 2009 (Decision, at para. 17).

[53] As the IAD noted, at paragraphs 20 and 21 of its decision, even the applicant's mother stated, in April 2009 and January 2010, that she was afraid of the applicant and no longer wanted her son to live with her as long as he was using drugs.

[54] Accordingly, the IAD was not unreasonable in finding that the applicant had had several opportunities and incentives to rehabilitate himself in the last five years and had made no progress.

[55] Having regard to the number of offences and the fact that they were virtually continuous, and having regard to the number of treatment programs unsuccessfully completed, the IAD's conclusion is certainly not unreasonable: the applicant did not establish the possibility of rehabilitation.

[56] In fact, as the IAD noted, he has made no progress in this regard. It is apparent that it was not established to the IAD, on a balance of probabilities, that the applicant was being rehabilitated.

[57] In fact, the applicant's most recent treatment was in December 2009 and the hearing before the IAD was in February 2010. The two months away from drug use were plainly not sufficient to establish the beginnings of rehabilitation, having regard, in particular, to the applicant's history of drug use, treatment and relapse.

[58] This is clearly a matter of assessment of the facts. The IAD heard the applicant. It is a specialized tribunal, one of whose primary tasks is precisely to assess the possibility of rehabilitation after the commission of crimes. In this case, it was plainly in a better position than this Court to assess the seriousness of the offences and the possibility of rehabilitation in the applicant's case, having regard to the other circumstances of the case.

[59] It was up to the applicant or his former counsel to establish that he was in the process of being rehabilitated or that he was well integrated into Canadian society.

[60] As counsel for the applicant said, the offences that the applicant committed were connected with his drug problems.

[61] Insofar as those drug problems had continued up to two months before the hearing before the IAD, there is nothing to indicate that the criminal activities connected with the drug problems were completely at an end. The IAD's conclusion is not unreasonable.

Time spent in Canada and degree to which the applicant is established

[62] Counsel for the applicant alleged that the IAD did not consider the applicant's curriculum vitae, showing his employment from 1996 to 2009, other than the employment for which he introduced documentary evidence.

[63] It should be noted that the applicant has no dependants, neither a wife nor children, and to date he seems to have held only precarious employment.

[64] In fact, the IAD noted the following in relation to the applicant's degree of establishment:

> [4] The appellant was born in Poland on September 2, 1977, and he was landed with his mother on September 25, 1991. The appellant was never married and he has no children.
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> …
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> [12] … Upon their arrival in Canada, the family, minus the stepfather who remained in Germany, lived with the appellant's maternal grandparents in Trois-Rivières where he went to high school. He continued his high school studies in Montreal and finished them in Ontario. His English is excellent and he speaks French well.
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> [13] Upon his return from Ontario, he worked as a courier and eventually delivered drugs. He also started using them which explains his convictions. The robbery was committed to help pay off his drug debts.
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> …
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> [19] The appellant testified that since April 2009, he has been benefiting, for the first time in his life, from social assistance. The documentary proof of the appellant's work record shows that in 2008 he earned $5,539.28 and that he made $1,713.49 in 2009.

[65] The IAD also stated, in footnote 34 to the decision, that the applicant's curriculum vitae also showed other employment.

[66] It is therefore incorrect to say that the IAD did not consider the applicant's employment, since, on the contrary, it referred to it more than once. Unfortunately, the applicant's evidence on this point does not show that, at his age, he is able to support himself or is becoming able to do so.

[67] Apart from his curriculum vitae and the evidence of employment income, the applicant submitted nothing else relating to his integration into Canadian society, although he had the burden of proof. The case law is very clear on this point:

> [29] With regard to the burden of proof, as this Court recently pointed out in *Bhalru v. Minister of Citizenship and Immigration*, 2005 FC 777, the person relying on paragraph 67(1)(*c*) is seeking a discretionary privilege and has the burden of establishing that there are exceptional grounds justifying that he be allowed to remain in Canada:
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> > [16] In *Prata v. Canada (Minister of Manpower and Immigration)* [[1976] 1 S.C.R. 376 at page 380], the Supreme Court of Canada stated that a removal order "establishes that, in the absence of some special privilege existing, [an individual subject to a lawful removal order] has no right whatever to remain in Canada. [An individual appealing a lawful removal order] does not, therefore, attempt to assert a right, but, rather, attempts to obtain a discretionary privilege."
> >
> > [17] As a person seeking "special relief" or a discretionary privilege, the onus was on Mr. Bhalru to establish exceptional reasons why he should be allowed to remain in Canada (*Chieu v. Canada (M.C.I.)* [[2002] 1 S.C.R. 84].

(*Camara v Canada (Minister of Citizenship and Immigration)*, 2006 FC 169, [2006] FCJ No 222 (QL/Lexis); see also *Bhalru v Canada (Minister of Citizenship and Immigration)*, 2005 FC 777, 139

ACWS (3d) 920, at para 17; *Arthur v Canada (Minister of Citizenship and Immigration)* (2000), 105 ACWS (3d) 927, [2000] FCJ No 1286 (QL/Lexis)).

[68] The IAD cannot be criticized for failing to consider evidence that was not submitted to it. Having regard to the little evidence provided by the applicant concerning his integration into Canadian society, the IAD's conclusion is not unreasonable, in particular if we take into account all the circumstances of the case.

> Family in Canada and the dislocation to that family that deportation of the applicant would cause, and the degree of hardship that would be caused to the applicant by his return to his country of nationality

[69] Counsel for the applicant addressed the foregoing two factors as a unit. He cited various facts found in the record and alleged that the IAD should not have concluded that separation of the applicant from his family would be without consequences, in particular because speaking several languages would not be sufficient in Poland and because the IAD acknowledged that the applicant would likely be alone in Poland. He argued that the IAD had not had sufficient regard to the dislocation to the applicant's family.

[70] First, all of the facts cited by the applicant and referred to by the IAD were relevant for assessment of the criteria set out in *Ribic*, above. What the applicant is challenging is solely the weight given to them by the IAD.

[71] The weight to be given to the various factors was up to the IAD and it was up to the applicant to establish that certain factors should be given more weight than others, which the

applicant did not do. In the circumstances, the IAD did its own assessment of the facts and gave weight to the various factors as it considered appropriate. As noted earlier, that approach was approved by the Supreme Court of Canada in *Khosa*, above.

[72] When the decision is read in its entirety, it must be concluded that it is not unreasonable and falls within the range of acceptable outcomes of the case.

[73] In fact, it is clear from this decision that the applicant has no spouse or children. He lived with his mother in Canada but has not lived with her since April 2009. His mother is afraid of her son when he takes drugs. Of course, it is admitted that she is also afraid for him. As the IAD said in its decision, she is afraid that her son will die while using drugs.

[74] The applicant now lives with his grandmother, who is 71 years old. She testified on his behalf and said she is not afraid of him and he is not aggressive. She also reported what was said by her daughter, the applicant's mother, who is afraid of her son and also afraid for him.

[75] The applicant has a 16-year-old brother who was born in Canada. He wrote a letter that was submitted to the IAD. In it, he stated that he loves his brother and needs him.

[76] The IAD said in its reasons that the 16-year-old brother lives with the applicant's mother and her spouse and the spouse is doing an excellent job of being an example for the younger brother.

[77] The applicant's sister gave birth to a daughter in February 2010 and her life goes on in the applicant's absence.

[78] It is clear from the evidence that the family members who do associate with the applicant have not been able to supervise him to prevent him from committing offences or falling back into drug use.

[79] As well, the IAD said in its reasons that according to the addiction worker's report, it could be beneficial for the applicant to gain autonomy by living alone and making his own decisions.

[80] The applicant testified before the IAD that he did not want to be sent back to Poland, because he does not read or write Polish.

[81] The IAD noted, however, that he had said in his curriculum vitae that he spoke Polish, German, English and French, and that he described himself in it as a person with numerous resources who enjoys challenges and finds solutions to all problems.

[82] The IAD admitted that the applicant would be alone in Poland since he had only a few family members still there, and thus acknowledged that there would be a degree of hardship for the applicant if he went to Poland.

[83] The IAD concluded, however, that this hardship was far from sufficient to attract the IAD's compassion and grant him an additional stay of removal since had had already had clemency from

CIC and had never used it to rehabilitate himself. It reiterated that the applicant had had numerous chances to rehabilitate himself and incentives to do so, but had made no progress.

[84] It should be noted that the burden of proof rested on the applicant, and that having regard to the evidence he submitted, the IAD's conclusion is not unreasonable in itself. In fact, it is clear from the record that the applicant is not supporting anyone, either financially or otherwise. It is clear from the record that although he is 33 years old, the only thing he creates around him at present is concern on the part of the people who love him, such as his mother and grandmother. No one relies on him, and accordingly it seems that the only hardship that will be caused for the applicant's family is to be separated from him by a greater distance.

The support available for the applicant not only within the family but also within the community

[85] The applicant has always had support available from his family, including his mother. He argues that the fact that she has refused to lend him money is, in the circumstances of the case, an indication of a degree of support.

[86] The support of the applicant's mother and grandmother was considered at length by the IAD in its decision.

[87] It is admitted that there is a degree of support available for the applicant from his mother and support available from his grandmother.

[88] However, the IAD assessed all of the circumstances of the case, including the fact that the applicant is in his thirties, his numerous chances for rehabilitation that he did not avail himself of, his numerous treatment programs, the report of the addiction worker saying it would be good for the applicant to start looking after himself, and his ability to speak several languages, including Polish.

[89] The IAD therefore concluded that all the circumstances of the case did not warrant special relief to allow him to remain in Canada. In the circumstances, that final conclusion is certainly not unreasonable.

[90] In his memorandum, counsel for the applicant also made a general argument that does not specifically address the factors assessed by the IAD. Counsel for the applicant alleged, first, that the IAD exhibited [TRANSLATION] “bias” and did not act in good faith.

[91] That argument is without basis. An allegation of bias or bad faith is a very serious assertion that must be supported by the evidence and cannot be based on mere suspicion or insinuations:

> [15] With respect to the concept of reasonable apprehension of bias, I refer to the comments of my colleague Mr. Justice Beaudry in *Fenanir v. Canada (Minister of Citizenship and Immigration)* 2005 FC 150, at paragraphs 10, 11, 12 and 14 of his decision:
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> > ...
> >
> > [12] In *Arthur v. Canada (Attorney General)*, [2001] F.C.J. No. 1091 (F.C.A.) (QL), 2001 FCA 223, we read the following at paragraph 8:
> >
> > ... An allegation of bias, especially actual and not simply apprehended bias, against a tribunal is a serious allegation. It challenges the integrity of the tribunal and of its members who participated in the impugned decision. It cannot be done lightly. It cannot rest on mere suspicion, pure conjecture, insinuations or mere

> impressions of an applicant or his counsel. It must be supported by material evidence demonstrating conduct that derogates from the standard. ...

(*Acuna v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1222, 303 FTR 40).

[92] The applicant did not provide any concrete or specific example in his affidavit of any inappropriate conduct or comment on the part of the IAD that would have suggested that it was biased. This is a speculative allegation that is unfounded and for which there is no support.

[93] Because the applicant did not see fit to introduce the transcript of the hearing held before the IAD, there is nothing in the record to suggest that the decision was made on the basis of prejudice, bias or bad faith.

[94] Accordingly, since the applicant has provided no evidence to support the allegation of bias and prejudice, that argument is unfounded and must be ignored by this Court.

[95] Plainly, the applicant has stated his disagreement with the decision of the IAD but has presented no sound argument showing any error. The intervention of the Court is therefore not warranted.

VI. Conclusion

[96] For all of the foregoing reasons, the applicant’s application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. There is no question to be certified.

"Michel M.J. Shore"
Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2095-10
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