

Federal Court



Cour fédérale

**Date: 20111027**

**Docket: IMM-7422-10**

**Citation: 2011 FC 1191**

**Ottawa, Ontario, this 27<sup>th</sup> day of October 2011**

**Before: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**MINISTER OF PUBLIC SAFETY  
AND EMERGENC PREPAREDNESS**

**and**

**SAMAR FAISAL BAIG**

**Applicant**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of Mariam S. Pal, member of the Immigration Appeal Division of the Immigration and Refugee Board (the “IAD”), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001 c. 27, (the “Act”) by the Minister of Public Safety and Emergency Preparedness (the “applicant”). In its decision, the IAD allowed Samar Faisal Baig’s (the “respondent”) appeal against the removal order issued against her

for her failure to comply with the permanent residency requirements (section 28 of the Act) under subsection 63(3) of the Act, on the basis of humanitarian and compassionate grounds. Thereby, the respondent, who was born in Pakistan, was granted permanent residency status.

[2] The respondent admits failing to meet the residency requirements under section 28 of the Act. However, she asserts that she fears persecution by her father, neighbours and religious authorities in Pakistan for having had a child with another man during her marriage. Accordingly, she appealed the removal order based on humanitarian and compassionate grounds for special relief and the best interest of her child. This appeal was heard on November 9, 2010 by the Immigration Appeal Division. On December 2, 2010, the IAD rendered its decision allowing the respondent's appeal for humanitarian and compassionate grounds. On December 17, 2010, the applicant filed the present application for judicial review.

[3] Therefore, the only issue before the IAD was whether humanitarian and compassionate considerations warrant the tribunal granting special relief in light of the circumstances, despite the validity of the deportation order. The IAD concluded that special relief was warranted, allowing the appeal against the removal order and granting the respondent permanent residency status. The IAD went through the non-exhaustive list of humanitarian and compassionate considerations summarized in *Dorothy Chicay Bufete Arce v. The Minister of Citizenship and Immigration*, [2003] I.A.D.D. No. 370, and attached the greatest weight to the best interest of the respondent's son; being directly affected by the tribunal's eventual decision. The IAD also gave significant weight to the respondent's family ties with Canada, having a maternal aunt and cousin in Toronto; to the fact that she no longer has any contact with her family in Pakistan; to the respondent's justification for her

lengthy stay abroad due to her mother's illness and her inability to return to Canada due to the confiscation of her passport; and to the special circumstances of the present case, specifically the respondent's fear of returning to Pakistan due to the risk her and her child would face.

[4] Despite inconsistencies with the respondent's testimony and previous documents she had filled out, her testimony was held to be credible. Thereby, the contradictory written answers contained in the respondent's *Loss of Residency Humanitarian Reasons* form were found not to be credible since the form was not signed. The IAD also relied on the documentary evidence the respondent provided which depicts the conditions of single women and mothers in Pakistan.

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[5] The present application raises two issues, namely:

- i. Did the IAD breach its duty of procedural fairness by failing to provide adequate reasons for its decision?
- ii. Did the IAD make perverse findings of fact and fail to consider contradictory evidence, thereby committing a reviewable error, in concluding that the respondent had established humanitarian and compassionate grounds warranting the retention of her permanent residency status?

[6] The applicable standard of review to issues of procedural fairness raised by an inadequacy of reasons in the IAD's decision is that of correctness (*Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, cited in *Minister of Citizenship*

*and Immigration v. Charles*, 2007 FC 1146 at para 24; and in *Junusmin v. Minister of Citizenship and Immigration*, 2009 FC 673).

[7] The applicable standard of review to the IAD's factual determinations, assessments of credibility and weighing of the evidence is reasonableness (*Minister of Citizenship and Immigration v. Tirer*, 2010 FC 414 at para 11).

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I. Did the IAD breach its duty of procedural fairness by failing to provide adequate reasons for its decision?

[8] The applicant asserts that the IAD erred by not providing reasons for its conclusions, which would constitute a breach of its duty of procedural fairness. Specifically, the applicant believes the IAD came to unsupported conclusions in contradiction to the evidence before it, without providing any intelligible explanation. The respondent disagrees, finding the IAD correctly set out the facts upon which its conclusions were based.

[9] I also disagree with the applicant: the IAD did provide reasons in support of its decision. The IAD considered the relevant principles, set out its findings of fact and the principal evidence upon which its findings were based, namely the respondent's testimony. The IAD did not merely summarize the parties' submissions and then state its holding (*VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (C.A.) at para 22).

[10] There is no general rule as to what constitutes adequate reasons: adequacy turns to the circumstances of each case (*VIA Rail*, above). The applicant correctly points out that the IAD's duty to provide adequate reasons includes an obligation to address the relevant contradictory evidence (*Junusmin, supra*, at para 28). However, the IAD addresses the contradictions in the respondent's testimony and written statements, and then makes findings as to the respondent's credibility, and the credibility of the contradictory documents before it:

[16] With regard to the Appellant's interview at Trudeau airport in May 2009, the Panel notes that while the Appellant testified that she did not have access to interpretation services until four hours after she was called aside by immigration authorities, documentation on record states that interpretation services were provided from 18h45 to 22h. . . . However, the Panel finds that some of the answers on the Appellant's *Loss of Residency Humanitarian Reasons* form are not credible such as those contradicting Q.4 where the Appellant states she has family in Canada, Q.8 states she has no family or community network and Q.7 states that there would be no consequences for the family if the subject were removed. The Panel notes that this form was not signed by the Appellant and does not find the written answers to several questions on this form, as noted above, credible.

[17] . . . The Panel does not look favourably on the Appellant's failure to appear for her admissibility hearing in 2006 but accepts her explanation . . .

### **Conclusion**

[18] It is therefore the Panel's decision that taking into account the best interests of a child directly affected by this decision, there are sufficient humanitarian and compassionate considerations warranting special relief . . .

[11] As cited above, the IAD sets out the evidence (testimony and documents) and then makes its findings. The IAD found the respondent to be a credible witness. In addition, the tribunal explains that it does not find the *Loss of Residency Humanitarian Reasons* form to be credible as it is

unsigned by the respondent. The IAD further addresses the documents regarding the situation of women in Pakistan at paragraph 15 of its decision. Moreover, the IAD clearly stated it attached great weight to the best interest of the respondent's son, a child directly affected by its decision, in coming to its conclusion. Therefore, the reasons provided do explain how the IAD came to its conclusion (*Polgari v. Minister of Citizenship and Immigration*, 2001 FCT 626). Contradictory evidence is not merely disregarded or ignored (see *Orgona v. Minister of Citizenship and Immigration*, 2001 FCT 346; and *Cepeda-Gutierrez et al. v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 at para 17).

[12] Accordingly, while the applicant disagrees with the IAD's findings, the IAD did not breach its duty of procedural fairness, its decision being anchored in its determinations of facts and credibility. The question then remains, whether these determinations were reasonable.

II. Did the IAD make perverse findings of fact thereby committing a reviewable error in concluding that the respondent had established humanitarian and compassionate grounds warranting the retention of her permanent residency status?

[13] The applicant claims that the IAD completely disregarded the evidence, merely accepting the respondent's testimony as credible, despite her numerous contradictions. The IAD's reasons for rejecting certain elements of evidence would not be supported by the material that was before it.

[14] Upon reviewing the evidence, the applicant has failed to satisfy me that the IAD based its decision on erroneous findings of fact made in a perverse or capricious manner, or that the IAD made its decision without regard to the evidence before it (see paragraph 18.2(4)(d) of the *Federal Courts Act*, R.S.C. 1985, c. F-7). The errors identified by the applicant are not significant to the

point of making the decision unreasonable. Generally, the IAD's findings, in the case at bar, are to be given significant deference and must only be disturbed if the tribunal's "reasoning process was flawed and the resulting decision falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190).

[15] Considering that the respondent is correct in stating that it was the role of counsel for the applicant to question the respondent at the hearing before the IAD, I do not find that the IAD's acceptance of the respondent's testimony as credible, in spite of minor errors, lacks transparency and intelligibility (see *Dunsmuir, supra*).

\* \* \* \* \*

[16] Consequently, having found that the applicant has failed to show that the IAD did not provide adequate reasons for its decision and failed to establish that the IAD's conclusion as to the respondent's credibility was unreasonable, the application for judicial review is dismissed.

[17] No question of general importance is certified.

**JUDGMENT**

The application for judicial review of the decision of the Immigration Appeal Division of the Immigration and Refugee Board allowing the respondent's appeal against the removal order issued against her for her failure to comply with the permanent residency requirements of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, on the basis of humanitarian and compassionate grounds, is dismissed.

“Yvon Pinard”

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Judge



**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-7422-10

**STYLE OF CAUSE:** MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS v. SAMAR FAISAL BAIG

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** September 22, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Pinard J.

**DATED:** October 27, 2011

**APPEARANCES:**

Me Émilie Tremblay FOR THE APPLICANT

Me Dan Bohbot FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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