Federal Court  Cour fédérale

Date: 20170221

Docket: IMM-1959-16

Citation: 2017 FC 204

Ottawa, Ontario, February 21, 2017

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

SAMSON BEKURE TEFERA
KALKIDAN TADESSE ALEMU
THEOBESTA SAMSON TEFERA
ADONAI SAMSON TEFERA
AMRAN SAMSON TEFERA
YODANE SAMSON TEFERA

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The respondents, Mr. Samson Bekure Tefera, his spouse Ms. Kalkidan Tadesse Alemu and their four children, are Ethiopian nationals [the Tefera family]. In September 2008, they all

became permanent residents of Canada. They stayed briefly in Canada for six weeks in a furnished apartment, and then they all returned to Ethiopia.

[2] It took until August 2012 for the Tefera family to come back to Canada, for the first time in almost four years. At the time, they all had return tickets to Ethiopia dated for a few days later, which they claimed they had no intention of using. As only some 400 days remained until the end of the five-year period during which they had to stay in Canada for the required minimum of 730 days, it was impossible for the Tefera family to comply with their residency obligation as permanent residents under section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. An inadmissibility report pursuant to subsection 44(1) of the IRPA was therefore prepared, and the Minister's delegate issued departure orders against them.

[3] The Minister's delegate advised the Tefera family that, unless they appealed from that decision, they would have to leave Canada. The Tefera family thus filed an appeal against the departure orders before the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada, alleging that humanitarian and compassionate [H&C] considerations warranted a discretionary relief in their favour under paragraph 67(1)(c) of the IRPA. However, they did not stay in Canada while waiting for their appeals. They all returned to Ethiopia where they have lived ever since.

[4] In April 2016, the IAD allowed the Tefera family's appeals, concluding that there were sufficient H&C considerations to overcome their inadmissibility [the IAD Decision]. In its

Decision, the IAD relied essentially on the reasons invoked by the Tefera family for leaving Canada and for staying in Ethiopia, and on the family's intention to settle in Canada.

[5] The Minister now seeks judicial review of the IAD Decision and submits that the IAD's conclusions are wholly unreasonable and based on numerous erroneous factual findings. In particular, the Minister emphasizes that the Tefera family stayed merely six weeks in Canada in the relevant five-year period of reference. In addition, the Minister claims that the IAD overlooked evidence directly contradicting its findings regarding the reasons invoked by the Tefera family for leaving Canada after six weeks in 2008, for not coming back sooner than August 2012 to establish themselves in the country, and for returning again to Ethiopia in 2012 despite their pending appeals before the IAD. The Minister asks this Court to quash the IAD Decision and to order another panel of the IAD to reconsider the matter.

[6] The sole issue to be determined is whether the IAD Decision was reasonable.

[7] For the reasons that follow, I agree with the Minister and conclude that the IAD Decision is unreasonable and clearly does not fall within the range of possible, acceptable outcomes based on the facts and the law. In the circumstances of this case, I find that granting the special H&C relief of paragraph 67(1)(c) to overcome the Tefera family's abysmal failure to meet the IRPA residency obligations is not a reasonable outcome, given the absence of any meaningful H&C issues. In addition, in its reasons, the IAD ignored evidence directly contradicting some of the findings it made to support the sole standing factor on which its H&C determination was ultimately based. This application for judicial review must therefore be allowed.

II. Background

A. *The IAD Decision*

[8] In its decision, the IAD concluded that "in light of all the circumstances of the case, taking into account the best interests of any child directly affected by the decision", there were sufficient H&C considerations to warrant special relief. The IAD laid out the analytical framework for its appeal function under paragraph 67(1)(c) of the IRPA, and specifically listed the various, non-exhaustive criteria elaborated by prior decision-makers to guide the IAD in the exercise of its discretion in residency obligation appeals. The IAD identified those as being the initial and continuing degree of establishment in Canada; the reasons for departure from Canada and for a continued or lengthy stay abroad; ties to Canada in terms of family; whether reasonable attempts to return to Canada were made at the first opportunity; and the existence of unique or special circumstances.

[9] I pause to note that these factors relating to H&C considerations are generally known as the *Ribic* factors, first outlined in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD 4 (QL), endorsed by the Supreme Court of Canada in *Chieu v Canada (Minister of Citizenship & Immigration)*, 2002 SCC 3 at paras 40-41, and developed in multiple decisions of this Court (*Canada (Citizenship & Immigration) v Wright*, 2015 FC 3 [*Wright*] at paras 75-78).

[10] In this case, the IAD singled out and analyzed the following factors before reaching its Decision: the extent of non-compliance by the Tefera family, their establishment in Canada, the reasons for their departure after obtaining permanent resident status and for their continued stay

abroad, and the hardship they would face if they had to return to Ethiopia. The IAD ultimately found that these factors all negatively weighed against allowing the appeals, save for the Tefera family's reasons for their departure from Canada and for their continued stay in Ethiopia.

[11] The IAD first found that staying only six weeks in Canada after arriving and never coming back was extremely short and, as a result, the extent of non-compliance was a negative factor that weighed "heavily" against allowing the Tefera family's appeal. The IAD also found that the Tefera family had little establishment in Canada, essentially limited to one active bank account in which Mr. Tefera kept a few thousand dollars and to a business registered in Canada in May 2012. The IAD found the Tefera family's establishment to be a negative factor, that weighed "a medium amount against" them.

[12] The IAD then analyzed the reasons for departure and for the Tefera family's continued stay abroad. The IAD considered that the Tefera family had legitimate reasons for returning to Ethiopia in 2008, as they needed to liquidate their assets and to sell the family home as well as the shares in Mr. Tefera's company. The IAD also determined that the Tefera family tried to come back at the earliest opportunity. The IAD further accepted that the family intended to settle permanently in Canada, on the basis of email communications whereby Mr. Tefera indicated his intent to purchase a condo in Canada. The IAD observed that Mr. Tefera tried to obtain the permanent resident cards for his family. The fact that he relied on some erroneous advice from a consultant and that the whole family finally stayed in Ethiopia even though they could have come back without the cards did not weigh negatively against the family as, said the IAD, "immigration legislation and regulations are complex and reasonable people seek professional

advice" (*Zamzam v Canada (Citizenship and Immigration)*, [2011] IADD No 1447 [*Zamzam*] at para 25).

[13] In June 2010, when the Tefera family finally received their permanent residency cards, Mr. Tefera's mother was ill, and they said they could not return to Canada. The IAD was satisfied with that explanation and further concluded that the Tefera family was also unable to return in 2010 because Mr. Tefera's first business plan was no longer viable. The IAD found that these factors all weighed "in favour of allowing the appeals".

[14] As for the fact that the Tefera family went back to Ethiopia in 2012 and bought a house there while waiting for their appeals, the IAD indicated that it did "not consider that the fact that the family returned to Ethiopia to be a negative factor that weigh[ed] heavily against allowing their appeals", even though it recognized that staying in Canada would "have mitigated the seriousness of the non-compliance" and that, at that time, "there was no longer any reason to go back to Ethiopia".

[15] Finally, the IAD analyzed the hardship the Tefera family would encounter if they had to return to Ethiopia. The IAD noted that Mr. Tefera and his spouse both indicated that there would be no adverse impact if they had to return to Ethiopia and that they would not be subject to persecution. The IAD also noted the absence of family members in Canada. As a result, the IAD determined that the lack of hardship was "a negative factor that weigh[ed] against allowing their appeals".

[16] No other H&C factors were considered by the IAD in its analysis.

[17] Then, the IAD weighed the factors reviewed in its reasons, and reached the conclusion that "the positive and negative factors are almost equally balanced between allowing and dismissing the appeals". However, because the IAD believed that the Tefera family would have been in Canada earlier had they been told they could return to the country and that there was a serious intention to settle in 2008 and 2012, it concluded that "the balance tip[ped] slightly in favour of allowing the appeals". The IAD therefore found that there were sufficient H&C considerations to warrant special relief, and it allowed the Tefera family's appeals.

B. ***The standard of review***

[18] In *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*], the Supreme Court of Canada determined that the standard of review of IAD's decisions based on H&C considerations in the context of the exercise of its equitable discretion under paragraph 67(1)(c) of the IRPA is reasonableness (*Khosa* at paras 57-59, 64 and 67; *Dandachi v Canada (Citizenship and Immigration)*, 2016 FC 952 [*Dandachi*] at para 13; *Wright* at para 25; *Nekoie v Canada (Citizenship and Immigration)*, 2012 FC 363 [*Nekoie*] at para 15). I add that the determination of the residency obligations under the IRPA involves the interpretation by the IAD of its constituent statute with which it has particular familiarity. Since *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, the Supreme Court has repeatedly stated that "when an administrative tribunal interprets or applies its home statute, there is a presumption that the standard of review applicable to its decision is reasonableness" (*Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8

at para 32; *Tervita Corp v Canada (Commissioner of Competition)*, 2015 SCC 3 at para 35). This is the case here.

[19] This standard requires deference to the decision-maker as it "fosters access to justice [by providing] parties with a speedier and less expensive form of decision making", and as the reasonableness standard is "grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at paras 22 and 33). When reviewing a decision on the standard of reasonableness, the analysis is concerned with the existence of justification, transparency and intelligibility within the decision-making process, and the decision-maker's findings should not be disturbed if the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at paras 16-17).

III. Analysis

[20] The only issue to be determined is whether the IAD's conclusions that the Tefera family had demonstrated sufficient H&C grounds to justify the retention of their permanent resident status are reasonable. The Tefera family argues, among other things, that the IAD did not err in

deciding that they had legitimate reasons for going back to Ethiopia in 2008, for not returning to Canada until August 2012, and for leaving again soon thereafter while waiting for their appeals of the departure orders. The Tefera family further pleads that the IAD did not err in weighing the various factors identified in the Decision and that its overall conclusion has the attributes of a reasonable decision.

[21] I disagree.

[22] Instead, I find that in concluding that the reasons for the Tefera family's departures from Canada and for their continued stay abroad were positive factors weighing in favour of the appeals, the IAD ignored evidence directly contradicting its findings. I further find that, in the circumstances of this case, the ultimate outcome reached by the IAD in the Decision falls well outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

A. ***Erroneous assessment of the evidence***

[23] In the Decision, the IAD determined that the various H&C factors it had retained were evenly balanced and that, in the end, they just "slightly" tipped in favour of the Tefera family. This apparent "almost equal" balance found by the IAD must, however, be put in its proper context. In fact, a close reading of the IAD's reasons reveals that the IAD effectively determined that only one factor positively weighed in favour of allowing the appeals: it was the Tefera family's reasons for their departure from Canada and for their continued stay abroad. True, within that single factor, the IAD identified three stages corresponding to different points in time

which, in its view, each weighed positively in favour of the Tefera family's appeals. More specifically, the IAD was satisfied with the Tefera family's reasons for not having stayed longer in Canada in 2008, for not having come back to Canada before August 2012, and for having returned to Ethiopia after 2012 while their appeals were pending. But, in the end, those three events represented different manifestations of one particular factor discussed by the IAD in its reasons.

[24] I must emphasize that this was the sole factor singled out by the IAD in a landscape otherwise totally deserted of any other positive H&C element. All the other factors retained by the IAD in its analysis were indeed found to be negative. It was the case for the extremely short six-week stay in Canada during the period of reference, for the minimal establishment in Canada and for the lack of any hardship, each identified as negative factors by the IAD. As to other usual *Ribic* factors such as the best interests of a child, they played no role whatsoever in the IAD's assessment.

[25] Therefore, when distilled, the IAD Decision to grant the exceptional and special relief under paragraph 67(1)(c) of the IRPA on the basis of a "slightly" tilting balance in favour of the Tefera was in fact hanging solely by a very fine thread, namely one stand-alone factor albeit having three different time dimensions.

[26] I am of the view that, in its assessment of this sole positive factor, the IAD erred in its analysis of at least three elements that it found in favour of the Tefera family, and that it ignored evidence directly contradicting its findings.

[27] First, I find that the IAD erroneously accepted ignorance of the law as an excuse for the Tefera family's failure to fulfill their residency obligation, citing the *Zamzam* case. The IAD relied on such an error to conclude that the Tefera family could not have returned to Canada before August 2012, because they did not have their permanent resident cards, and it considered this as a factor tilting the weighing exercise in favour of the Tefera family's appeals. Not only was the IAD not bound by that *Zamzam* case (as it was a decision originating from the IAD itself) but in that decision, the IAD had found that the appellant was "ultimately responsible for following the advice of the consultant he hired", and that the delay in returning was caused by a combination of incorrect advice and health issues. The *Zamzam* case could therefore not be reasonably used, in my view, to allow the IAD to permit people who received bad advice or who did not inquire about their rights to overcome a breach of their residency requirements.

[28] In addition, it is a well-known principle that, unless very particular circumstances exist, "ignorance of the law is no excuse" for not complying with IRPA obligations (*Taylor v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349 at para 93; *Charles v Canada (Citizenship and Immigration)*, 2013 FC 25 at para 26; *Williams v Canada (Minister of Citizenship and Immigration)*, 2005 FC 697 at para 10). It was therefore erroneous for the IAD to accept that it was reasonable for Mr. Tefera to have relied on some incorrect advice while completely omitting to mention that "ignorance of the law is no excuse". Similarly, "poor legal representation" is not a valid excuse for failures to comply with the IRPA (*Cornejo Arteaga v Canada (Citizenship and Immigration)*, 2010 FC 868 [*Cornejo Arteaga*] at para 17; *Mutti v Canada (Minister of Citizenship and Immigration)*, 2006 FC 97 at para 4).

[29] When an error from counsel or consultant is alleged, which results in a failure to comply with a legislative requirement, a claimant must still show that he or she acted "as a reasonable person in the same situation would have done to protect the rights and obligations imposed on her by the Act" (*Canada (Attorney General) v Larouche*, [1994] FCJ No 1720 (QL) at para 6; *Cornejo Arteaga* at para 18). It is well recognized that improper advice from a consultant cannot, in and of itself, excuse an applicant (*Sultana v Canada (Citizenship and Immigration)*, 2009 FC 533 at para 27). For the IAD to retain this as a contributing positive factor supporting the case of the Tefera family was an error.

[30] Second, I agree with the Minister that the numerous contradictions in Mr. Tefera's declarations regarding his mother's illness could not reasonably have led the IAD to believe Mr. Tefera, in the absence of other reliable evidence on his mother's sickness. While the reasons must not "be read hypercritically by a court", the IAD cannot act "without regard to the evidence" (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*] at paras 16-17). Moreover, "the more important the evidence that is not mentioned [is], the more willing a court may be to infer from the silence that [the IAD] made an erroneous finding of fact" (*Cepeda-Gutierrez* at para 17). Here, the IAD could not simply have accepted Mr. Tefera's claim regarding his mother's illness without mentioning and discussing the contradictions in the evidence on this issue. This was another error.

[31] I accept that a decision-maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). I also agree that failure to mention

a particular piece of evidence in a decision does not mean that it was ignored (*Newfoundland Nurses* at para 16). But, when an administrative tribunal is silent on evidence clearly pointing to an opposite conclusion and squarely contradicting its findings of fact, the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its decision (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez* at para 17). This is the case here. The IAD was faced with contradictory evidence and, in those circumstances, it had the obligation to provide an analysis and explain why it preferred one part of the evidence over the other. It did not.

[32] Third, I also find that the IAD made a reviewable mistake in finding that going back to Ethiopia after the issuance of the departure orders in August 2012 was not a negative factor weighing against allowing the Tefera family's appeals, and that it instead weighed in their favour. Incidentally, despite the valiant efforts by counsel for the Tefera family at the hearing before this Court, I do not agree with counsel's interpretation of the Decision and with his view that, on this particular point, the IAD did not state or suggest that this was a positive factor but simply found it not to be a negative one. If an H&C element is not negative, it must be either neutral or positive and, here, the IAD clearly viewed the 2012 return as a positive factor. It was indeed considered as such in the balancing exercise conducted by the IAD.

[33] To find that it was not a negative factor to leave Canada while the Tefera family had no reason to go back to Ethiopia in August 2012 was wholly unreasonable. In its reasons, the IAD indicated that "it does not make sense […] that the appellants would not have remained in Canada if they had been advised that it would be beneficial to their appeal" and that therefore, it

would not be considered as a negative factor. The problem is that this specific statement is speculative, and directly contradicted by the evidence on the record, as the evidence demonstrated that the Tefera family was specifically told they would have to leave Canada unless they appeal their departure orders. The Tefera family was clearly informed of their right to appeal and that they could stay in Canada pending their appeals. This evidence was completely ignored by the IAD in the Decision, and it is directly opposite to its factual finding on this front.

[34] Once again, because it was faced with contradictory evidence squarely contradicting its findings on this important issue, which was one of the three timing elements supporting the IAD's sole positive factor in favour of the Tefera family, the IAD had the obligation to provide an analysis of the evidence and to explain why it set it aside and why it preferred evidence pointing otherwise. It did not and, in those circumstances, it was unreasonable to give a positive consideration to the Tefera family's departure in 2012 despite the evidence on the record.

[35] I pause to add that the IAD's obligation to discuss the contradictory evidence was particularly important in a case like this one where the IAD's ultimate conclusion on the existence of sufficient H&C considerations to warrant special relief was built on very thin grounds, namely the single factor revolving around the Tefera family's reasons for leaving Canada twice and for continuously staying abroad.

[36] Moreover, I do not accept the Tefera family's suggestion that the only period that must be analyzed is the one prior to their departure orders, and that their absence from Canada from 2012 to the end of the five-year period could not be seen as a negative factor. The case at bar must not

be confused with the *Wright* decision, where the period after the departure order was not assessed, as the applicants were permanent residents for more than five years, and as the relevant period in that case was the five-year period immediately before the examination and departure orders. In the case of the Tefera family, the period of reference went from 2008 to 2013, beyond the issuance of the departure orders. Paragraph 28(2)(b)(i) of the IRPA is clear that if an applicant has been a permanent resident for less than five years, which was the case for the Tefera family, the period of reference is "the five-year period immediately after they became a permanent resident". In this case, the whole period of reference thus needed to be assessed, whether or not removal orders were issued.

[37] I am very mindful of the fact that a judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54), and that a reviewing court should approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Ragupathy v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 151 at para 15). Reasonableness, not perfection, is the standard. However, since the IAD Decision relied on one single positive factor to justify the existence of sufficient H&C considerations (i.e., the reasons for the Tefera family's rapid departures from Canada and extended stays abroad), I am of the view that these erroneous factual findings in the IAD's reasons are more than enough to render unreasonable the fragile conclusion reached in this case. When a finding literally hangs by the finger nails, as the IAD Decision does in this case, and relies on such an extremely narrow margin in favour of one conclusion, as soon as the finding starts to fray around the edges, it is sufficient to push it outside the scope of reasonable decisions

and to call for the intervention of the Court. This is what the errors discussed above lead me to conclude.

B. *Unreasonable outcome*

[38] That said, there is, in my view, an even more fundamental problem with the IAD Decision, which further supports the granting of the Minister's application for judicial review.

[39] In assessing reasonableness, the Court is not limited to ask whether the reasons are acceptable and defensible, and whether the reasons allow to understand how the decision-maker reached its ultimate conclusion. Rather, reviewing courts are also tasked with the duty to assess "whether the *outcome* reached is acceptable and defensible" (*Bergeron v Canada (Attorney General)*, 2015 FCA 160 [*Bergeron*] at para 59 (emphasis in original)). A reviewing court must thus also ensure that the outcome itself is acceptable and defensible, analyzing the decision as a whole in its proper context (*Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3; *Newfoundland Nurses* at para 15; *Bergeron* at paras 59 and 62).

[40] Here, the outcome reached by the IAD is the granting of an exceptional, special relief to a family of six applicants based on H&C considerations, thereby allowing them to overcome an inadmissibility to Canada for manifestly failing to comply, by a significant margin, with their residency requirements as permanent residents, and thus to retain their permanent resident status. It bears repeating and underlining that, further to the IAD Decision, the exceptional H&C relief offered by paragraph 67(1)(c) of the IRPA was granted to applicants who happened to have stayed in Canada merely six weeks and who have showed no evidence of hardship, no ties to

Canada, no adverse impact on the best interests of a child, no family in Canada, no support in Canada, no integration in Canada, no contribution to the Canadian economy, no financial investments of any magnitude, and very minimal establishment in Canada.

[41] Pursuant to section 28 of the IRPA, permanent residents must comply with a residency obligation with respect to every five-year period, and are required to be physically present in Canada for at least 730 days in each five-year period. By any measure, the Tefera family's shortfall in their residency requirement is more than significant in this case, as it totals about 42 of the required minimum of 730 days. This is a colossal shortfall. In addition, none of the usual material tenets of H&C considerations is present in this case: there is no hardship to be suffered, there are no interests of a child to protect, there are no personal or family ties to Canada to preserve, there are no contributions to Canada to recognize.

[42] Having reviewed the IAD Decision and the evidence on the record, I am at a loss to find even a pinch of humanitarian elements or of compassionate considerations at play in the analysis and reasoning of the IAD. When a decision under paragraph 67(1)(c) of the IRPA lacks (as the IAD Decision does here) the basic H&C considerations on which this exceptional and special relief is anchored, it loses the attributes of a reasonable decision. This is a situation where the Tefera family's application for H&C relief appears to be so totally devoid of any substantive H&C dimensions, so divorced from the very fundamental elements on which H&C relief are meant to be based that the outcome cannot fall within the wide spectrum of possible, acceptable results. Looking at the IAD Decision as a whole in the context of the record and the applicable

legislation, I can find no reasonable basis for the outcome reached by the IAD in the circumstances of this case.

[43] Here, the outcome reached by the IAD defies all logic. It cannot be reasonable that a family who stayed only six weeks in Canada, who had close to no establishment in the country, whose members went back to their country of origin while awaiting for their appeals, and who have not showed hardship in case of removal from Canada, can still be found to have proven sufficient H&C considerations to obtain the benefit of the exceptional relief provided by paragraph 67(1)(c). The provision is not meant to allow the retention of permanent resident status with such a track record.

[44] This is not a situation where the number of days required to meet the residency obligations set out in the IRPA were nearly attained by the Tefera family. They were instead very far from it. This is not a situation where some of the usual indicia of H&C considerations were present and others not. This is instead a situation where every single traditional milestone typically supporting H&C considerations and the grant of special relief is just absent, whether it is hardship to be suffered, interests of a child to be protected, or family ties to be preserved. Here, save perhaps for concerns about the illness of Mr. Tefera's mother, the IAD Decision lacks the very essence of what humanitarian or compassionate considerations are or could be. Needing two years to come up with a new business plan, leaving Canada to liquidate certain assets or having vague intentions to invest or to settle certainly do not rhyme with the notion of humanitarian or compassionate concerns.

[45] In other words, the outcome reached in the IAD Decision is so at odds with the residency requirements set out in the IRPA and with the H&C factors identified by the case law to justify special relief that is falls well beyond the scope of possible, acceptable outcomes defensible on the facts and law.

[46] The range of reasonable outcomes takes its colour from the context of the decision (*Dunsmuir* at para 64). In the present case, this context is informed by a number of factors, but primarily by the purpose, *raison d'être* and objectives at the heart of the H&C relief provided by paragraph 67(1)(c) of the IRPA. The granting of an appeal for H&C consideration is an "exceptional relief" (*Khosa* at para 57; *Nekoie* at para 30; *Shaath v Canada (Citizenship and Immigration)*, 2009 FC 731 at para 42). It has been consistently held that an H&C exemption under the IRPA provisions is an exceptional and discretionary remedy (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15; *Adams v Canada (Citizenship and Immigration)*, 2009 FC 1193 at para 30). This relief sits outside the normal immigration classes or refugee protection streams by which foreign nationals can come to Canada permanently or permanent residents can maintain their status. It acts as a sort of safety valve available for exceptional cases. A common theme animating the H&C considerations in the IRPA is the need to link the H&C relief to some form of serious hardship to be corrected, to some misfortunes that amount to more than the normal and expected consequences of removal from Canada and that need to be relieved (*Wright* at paras 97-99).

[47] None of the H&C features at the root of paragraph 67(1)(c) of the IRPA and of the special relief sought by the Tefera family is present in this case. In my view, no matter against

which yardstick of H&C concerns the IAD Decision is measured, the outcome reached by the decision-maker fails to meet it. This is therefore a situation which strongly calls for this Court's intervention as allowing the IAD Decision to stand in those circumstances would only contribute to render this important H&C provision of the IRPA meaningless, and undermine a process aimed at offering relief to those permanent residents who face some serious form of hardship and misfortunes rightly warranting special consideration.

[48] I make a few final observations.

[49] I agree with counsel for the Tefera family that the Court must show a high degree of deference to the IAD's assessment of the evidence and its weighing of the H&C factors, given its specialized expertise in immigration matters. However, while a reviewing court should resist the temptation to intervene and to usurp the specialized expertise that Parliament has opted to confer to an administrative body like the IAD, the Court cannot show "blind reverence" to a decision-maker's interpretation (*Dunsmuir* at para 48). This is especially true when the outcome does not make sense, as is the case here.

[50] I also accept that, in conducting a reasonableness review of factual findings, it is not the role of the Court to reweigh the evidence or the relative importance given to a particular element by a decision-maker in the exercise of its discretion. The IAD is even free to give no weight whatsoever to any of the *Ribic* factors in conducting an appeal under paragraph 67(1)(c) of the IRPA. However, under a reasonableness review, it is the Court's role to detect "irrationality or arbitrariness of the sort that implicates our rule of law jurisdiction", such as "the presence of

illogic or irrationality in the fact-finding process" or in the analysis, or the "making of factual findings without any acceptable basis whatsoever" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 99; *Dandachi* at para 23). This will normally be exceptional but again, this is where the IAD Decision regrettably falls in this case. I add that conducting such an exercise does not amount to a reweighing of the evidence assessed by the IAD or of the various factors singled out in its Decision. It is rather a process which leads to a determination that the evidence required to reasonably support the exceptional H&C relief granted by the IAD was just lacking.

[51] I further acknowledge that a decision-maker is not required to refer to each and every detail supporting his or her conclusion. It is sufficient if the reasons permit the Court to understand why the decision was made and to determine whether the conclusion falls within the range of possible, acceptable outcomes (*Newfoundland Nurses* at para 16). But the standard of reasonableness also requires that the findings and overall conclusion of a decision-maker withstand a somewhat probing examination (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 63; *Wright* at para 68). Where parts of the evidence are not considered or are misapprehended, where the findings do not follow from the evidence and where the outcome is not defensible, a decision will not withstand such probing examination. This, again, is the situation here.

[52] In his oral argument before the Court, counsel for the Tefera family referred to my decision in *Canada (Citizenship and Immigration) v Suleiman*, 2015 FC 891 [*Suleiman*]. However, this case is distinguishable. I mentioned in the *Suleiman* decision that it was not a

situation where "the exercise of discretion […] went too far and the [decision-maker] accepted weak and unconceivable explanations" (*Suleiman* at para 30). The factual errors identified by the Minister in that case were minor, immaterial and far from being sufficient to make the decision unreasonable (*Suleiman* at paras 30-31). I of course still agree, as I did then, that the Court should not substitute its view of the evidence for that of the decision-maker. However, in the current case, contrary to the situation in *Suleiman*, the IAD ignored evidence that contradicted its findings: there is a basis for a finding that the IAD ignored material evidence that squarely contradicted its conclusions (*Cepeda-Gutierrez* at para 17). In addition, the reasonableness of the outcome of the decision was not at issue in *Suleiman*, while the ultimate conclusion reached by the IAD in this case is manifestly unreasonable.

[53] To borrow the words of the Federal Court of Appeal in *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 27, the IAD Decision bears several "badges of unreasonableness". The effects of the decision sharply conflict with the very purpose and underlying elements of the provision which the IAD was bound to apply. In addition, the Decision relies on key factual findings with no rational basis and at odds with the evidence before the IAD. This is amply sufficient to warrant the Court's intervention.

IV. Conclusion

[54] For the reasons detailed above, in the circumstances of this case, I am not satisfied that the outcome reached by the IAD Decision is reasonable and represents a possible, acceptable outcome based on the law and the evidence presented before the IAD. In addition, the reasons provided by the IAD are flawed and ignored evidence directly contradicting some of its findings,

which ended up being key elements in its determination of a positive factor supporting the Tefera family's appeals. The application for judicial review filed by the Minister must therefore be allowed, and this matter needs to be sent back to the IAD for a new determination by a different panel.

[55] Neither party has proposed a question of general importance for me to certify, and I agree there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, without costs.

2. The decision of the Immigration Appeal Division allowing the appeals of the Tefera family is set aside.

3. The matter is referred back to the Immigration Appeal Division for re-determination on the merits by a differently constituted panel.

4. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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