Federal Court  Cour fédérale

Date: 20211018

Docket: IMM-6517-19

Citation: 2021 FC 1089

Toronto, Ontario, October 18, 2021

PRESENT: Justice Andrew D. Little

BETWEEN:

GBENGA WILLIAMS ADEOSUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The central issue on this application is whether the Immigration Appeal Division ("IAD") made a reviewable error when it decided that it had no jurisdiction to hear the applicant's appeal under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "*IRPA*").

[2] The applicant, Mr. Adeosun, is a permanent resident of Canada. He married Shukurat Olaide Olaonipekun in August 2017. Ms. Olaonipekun applied for permanent residence in Canada and Mr. Adeosun sponsored her.

[3] A visa officer found that Ms. Olaonipekun was inadmissible to Canada for misrepresentation and therefore was not allowed to apply for permanent residence under the *IRPA*. The officer refused the application and refunded the application fees.

[4] The applicant appealed to the IAD. The IAD dismissed the appeal for lack of jurisdiction under subsection 63(1) of the *IRPA*.

[5] The questions to be answered on this application for judicial review are:

- how does the reasonableness standard of review apply to decisions involving statutory interpretation?
- did the IAD make a reviewable error, by:
    - unreasonably interpreting its statutory jurisdiction to hear an appeal under *IRPA* subsection 63(1)?
    - unreasonably applying the law to the facts?

[6] Subsections 63(1) and 40(3) of the *IRPA* were central to the IAD's reasoning and the parties' submissions on this application. Subsection 63(1) provides:

Right of Appeal	**Droit d'appel**
Right to appeal — visa refusal of family class	**Droit d'appel : visa**
63 (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	**63** (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

[7] Subsection 40(3) provides:

Inadmissibility	**Interdictions de territoire**
Inadmissible	**Interdiction de territoire**
40 (3) A foreign national who is inadmissible under this section may not apply for permanent resident status during the period referred to in paragraph (2)(a).	40 (3) L'étranger interdit de territoire au titre du présent article ne peut, pendant la période visée à l'alinéa (2)a), présenter de demande pour obtenir le statut de résident permanent.

[8] I have underlined phrases in both provisions that are pertinent to this application. All of the legislative provisions mentioned in this decision are collected in Appendix "A".

I. The Visa Officer's Decision

[9] By letter dated October 22, 2018, the visa officer advised that Ms. Olaonipekun's application for permanent residence did not meet the requirements of the *IRPA* because in May 2017, she applied for a study permit that was refused for misrepresentation. The visa officer found that Ms. Olaonipekun was inadmissible to Canada for a period of 5 years from May 18,

2017 and could not submit an application for permanent residence during that period under *IRPA* subsection 40(3). The officer therefore refused her application for permanent residence and advised that she would receive a refund for the application fees. The visa officer was also satisfied that Ms. Olaonipekun was inadmissible under *IRPA* subsection 11(1). That provision states that a visa may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of the *IRPA*.

[10] Certain legal and factual facets of the visa officer's decision affected the submissions to this Court. The legal aspect concerned *IRPA* subsection 40(3), under which a foreign national who is inadmissible under section 40 "may not apply for permanent resident status" during the period in paragraph 40(2)(*a*) – in this case, five years from a final determination of inadmissibility for misrepresentation. The factual aspect of the visa officer's decision was that the officer reviewed Ms. Olaonipekun's application in some detail; this is clear from the officer's notes in the Global Case Management System ("GCMS"). In addition, the visa officer's letter stated that the officer had "completed an assessment" of Ms. Olaonipekun's application. Finally, the officer "refused" the application, rather than merely returning it with the refund.

[11] Mr. Adeosun filed an appeal to the IAD. In this Court, the applicant seeks to set aside the IAD's decision that it had no jurisdiction to hear the appeal.

II. The IAD's Decision

[12] The IAD member requested preliminary submissions on whether the IAD had jurisdiction to hear the appeal under subsection 63(1) of the *IRPA.* The IAD found that it had no jurisdiction.

[13] The IAD found that on a "plain reading" of *IRPA* section 40, persons who are inadmissible to Canada for five years are precluded from applying for permanent resident status for a period of five years from the final determination of their inadmissibility for misrepresentation. The application in this case was "improperly made" because Ms. Olaonipekun was barred from making it under subsection 40(3).

[14] The IAD considered that subsection 63(1) had two key elements: a person must have filed an application to sponsor a foreign national "in the prescribed manner"; and the appeal had to be against "a decision not to issue" the permanent resident visa.

[15] On the first element, the IAD concluded that the filing of the sponsorship application was barred by subsection 10(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *"IRPR"*), which the IAD found set out the requirements for an appeal to be filed "in the prescribed manner" under *IRPA* subsection 63(1). On that view, *IRPR* subsection 10(6) applied, so that the improperly-made sponsorship application was not "an application filed in the prescribed manner for the purposes of subsection 63(1) of the [*IRPA*]". The application for permanent resident status should have been returned under section 12 of the *IRPR*, which provides in part that "… if the requirements of [*IRPR*] sections 10 and 11 are not met, the application and all documents submitted in support of it, [with certain stated exceptions] shall be returned to the applicant".

[16] On the second element of subsection 63(1), the IAD found that the officer had not made any findings with respect to the merits of the application and had merely conducted an initial

review of the evidence. The officer had “abruptly ceased” processing the application when the officer ascertained that the applicant was inadmissible under paragraph *IRPA* 40(1)(*a*). As there was clearly no decision on the merits, the IAD found it was more likely than not that the officer’s decision was not a “decision not to issue” a permanent resident visa under subsection 63(1).

[17] In its conclusion, the IAD held that it had no jurisdiction to entertain an appeal where the finding of inadmissibility for misrepresentation under *IRPA* paragraph 40(1)(a) and the bar under *IRPA* subsection 40(3) “precedes the filing of the PR [permanent residence] application”. The IAD reiterated its conclusions on the combined effects of *IRPA* subsection 40(3) and *IRPR* subsections 10(1) and (6).

[18] The IAD therefore dismissed the appeal for lack of jurisdiction.

III. Standard of Review

[19] The applicant filed his written submissions before the Supreme Court’s decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 and focused on the correctness of the IAD’s decision. However, the parties correctly agreed at the hearing that reasonableness is the applicable standard of review, as described in *Vavilov* and *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67.

A. *Reasonableness Review – General Principles*

[20] In conducting a reasonableness review, a court considers the outcome of the administrative decision in light of its underlying rationale, in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15.

[21] The focus of reasonableness review is on the decision made by the decision maker, including both the reasoning process that led to the decision and the outcome: *Vavilov*, at paras 83 and 86. The starting point is the reasons provided by the decision maker, which the reviewing court must read holistically and contextually and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 84, 91-96, 97 and 103; *Canada Post*, at para 31.

[22] On judicial review, the court asks whether the decision bears the hallmarks of reasonableness (i.e., justification, transparency and intelligibility) and whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov*, at para 99. A reasonable decision is one that is: (a) based on an internally coherent and a rational chain of analysis and (b) justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at paras 83-86 and 96-97.

[23] Reasonableness review entails a sensitive and respectful, but robust, evaluation of administrative decisions: *Vavilov* at paras 12-13. As the respondent noted, to intervene, the reviewing court must be satisfied 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.

[24] The Supreme Court identified two types of fundamental flaws in *Vavilov*: a failure of rationality internal to the reasoning process in the decision; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it: *Vavilov*, at para 101.

[25] Statutory interpretation rules were the main legal constraint that applied in the present case.

B. ***Reasonableness Review – Statutory Interpretation***

[26] In *Vavilov*, the Supreme Court set out principles applicable to a reviewing court's analysis of the reasonableness of an administrative decision maker's interpretation of a statute. *Vavilov* and *Canada Post* contain specific instructions. The Court's role is not to determine the correct interpretation of the provisions of the statute, in this case the *IRPA*. The question is whether the IAD's interpretation was reasonable: *Vavilov*, at paras 115-124; *Canada Post*, at para 41.

[27] The reviewing court does not undertake a *de novo* analysis of the question or "ask itself what the correct decision would have been": *Vavilov*, at para 116; *Canada Post*, at paras 40-41; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156, at para 20. Rather, the court takes the same approach as with other aspects of judicial review. It must examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached. It does so by applying the "modern principle" of statutory

interpretation, that is, that the words of a statute must be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, at para 21.

[28] The administrative decision maker’s task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue: *Vavilov*, at para 121; *Canada Post*, at para 40-42; *Court v Canada (Attorney General)*, 2020 FCA 199, at para 65; *Mason*, at paras 11 and 41-42.

[29] If the meaning of a statutory provision is disputed, the decision maker must demonstrate in its reasons that it was “alive to the essential elements” of proper statutory interpretation: *Vavilov*, at para 120; *Canada Post*, at para 42. If the decision maker fails to consider a key element of a statutory provision’s text, context or purpose and would have arrived at a different result if it had, the omission may cause the reviewing court to lose confidence in the overall decision.

[30] In addition to being harmonious with the text’s purpose and context, a reasonable statutory interpretation should conform with any interpretive constraints in the governing statutory scheme (such as statutory definitions) and applicable interpretive rules (such as the *Interpretation Act*, RSC, 1985, c I-21): *Canada Post*, at paras 42 and 46. For example, if the decision maker’s statutory interpretation would render another provision redundant, it may be unreasonable: *Canada Post*, at paras 57-58. Similarly, if the interpretation frustrates the statutory purpose of the provision, it may be unreasonable: *Canada Post*, at para 59.

[31] The decision maker's interpretation need not refer to all aspects of the statutory context, such as every statutory provision that may impact the interpretation at issue: *Canada Post*, at para 52. The impact of such an omission will be case-specific and will depend on whether the omission causes the reviewing court to lose confidence in the outcome reached: *Canada Post*, at para 52-53; *Vavilov*, at para 122.

[32] If there is only a single reasonable interpretation of the provision, the reviewing court may intervene and provide its interpretation, albeit hesitantly. As the Supreme Court stated in *Vavilov*, at paragraph 124, the court "should generally pause before definitively pronouncing upon the interpretation of a provision entrusted to an administrative decision maker".

IV. Did the IAD Make a Reviewable Error?

[33] The applicant's submissions focused on three points. First, the applicant submitted that the IAD misinterpreted *IRPA* subsection 63(1) and *IRPR* subsection 10(1) as requiring a sponsor to file an application for permanent residence that complies in substance with *IRPA* subsection 40(3). The applicant contended that for appeal purposes under subsection 63(1), the filing must comply with the administrative requirements in subsection 10(1). In other words, non-compliance with subsection 40(3) does not prevent an appellant from filing an appeal "in the prescribed manner".

[34] Second, the applicant submitted that a "decision not to issue" in *IRPA* subsection 63(1) means a decision on the merits of the application and that the visa officer made such a decision on the facts of this case.

[35] Third, the applicant argued that in interpreting the scope of its appeal jurisdiction, the IAD erred in failing to find it had jurisdiction by virtue of *IRPA* subsection 64(3):

Right to Appeal	**Droit d'appel**
Misrepresentation	**Fausses déclarations**
64 (3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.	64 (3) N'est pas susceptible d'appel au titre du paragraphe 63(1) le refus fondé sur l'interdiction de territoire pour fausses déclarations, sauf si l'étranger en cause est l'époux ou le conjoint de fait du répondant ou son enfant.

[36] The applicant maintained that this provision was designed to alleviate the hardship of the separation of an applicant for permanent resident from their spouse, common law partner and children. The applicant also noted that nothing in subsection 40(3) states that appeal rights are affected.

[37] The respondent submitted that *IRPA* subsection 40(3) and this Court's decision in *Gill v Canada (Citizenship and Immigration)*, 2020 FC 33 (Simpson J.) were a full answer to the applicant's arguments. According to the respondent, because a person inadmissible for misrepresentation is not allowed even to apply for permanent residence under subsection 40(3), there was in law nothing to appeal to the IAD. As Justice Simpson held in *Gill*, the application was void *ab initio*: *Gill*, at para 16.

[38] The respondent also submitted that *IRPR* subsection 10(1) does "prescribe" that an application be made in accordance with *IRPA* subsection 40(3). The respondent pointed to *IRPA*

subsection 15(1) as a prescribed requirement. On the respondent's view, subsection 15(1) authorizes an officer to engage in an examination of the permanent residence application if the application is made "in accordance with" the *IRPA*, including subsection 40(3). Subsection 15(1) provides:

Examination	**Contrôle**
Examination by officer	**Pouvoir de l'agent**
15 (1) An officer is authorized to proceed with an examination if a person makes an application to the officer in accordance with this Act or if an application is made under subsection 11(1.01)	**15** (1) L'agent peut procéder à un contrôle dans le cadre de toute demande qui lui est faite au titre de la présente loi ou qui est faite au titre du paragraphe 11(1.01).

[Underlining added.]

[39] The respondent maintained that no Federal Court case constrained the IAD's interpretation of its jurisdiction on this issue (*Gill* was decided after the IAD's decision here), and that other IAD decisions were consistent with the IAD's decision in this case (referring to *Lefter v Canada (Minister of Citizenship and Immigration)*, [2017] IADD No 182, *Dhillon v Canada (Minister of Citizenship and Immigration)*, [2018] IADD No 1162, *Keays v Canada (Minister of Citizenship and Immigration)*, [2018] IADD No 532, *Delos Reyes v Canada (Minister of Citizenship and Immigration*), [2018] IADD No 1821).

[40] The respondent observed that the applicant adduced no evidence of the purpose of *IRPA* subsection 64(3), whereas the respondent submitted a new affidavit on this application attaching evidence from Parliamentary debates about the aims of subsection 40(3).

[41] Last, the respondent argued that there were no serious shortcomings in the IAD's decision (*Vavilov*, at para 100) and that returning the matter for redetermination would not change the outcome because subsection 40(3) could continue to bar Ms. Olaonipekun from applying for permanent residence.

[42] Both parties also made submissions on the applicability or correctness of *Gill*. The applicant submitted that *Gill* could be distinguished and noted that Simpson J. made no mention of *IRPA* subsection 64(3) in her reasons. The respondent maintained *Gill* was applicable and correct—except as to the Court's conclusion that compliance with *IRPA* subsection 40(3) was not prescribed by *IRPR* subsection 10(1), which the respondent submitted was incorrect.

[43] In my view, the parties' arguments raise two principal questions for this Court to determine: whether the IAD unreasonably interpreted its statutory jurisdiction to hear an appeal under *IRPA* subsection 63(1), and whether the IAD unreasonably applied the law to the specific facts of this case.

A. *Did the IAD Unreasonably Interpret its Statutory Jurisdiction to Hear an Appeal under IRPA subsection 63(1)?*

[44] The applicant's submissions mainly focused on the IAD's interpretation of its appeal jurisdiction under *IRPA* subsection 63(1) in the specific light of other provisions in the *IRPA* and the *IRPR*. Although the submissions were in substance concerned with the correctness of the IAD's reasoning, I will apply the approach to reasonableness review described in *Vavilov* and *Canada Post*, acknowledging that the technical nature of the interpretation issues does not always lend itself to a linear or step-wise analysis of whether the IAD considered the text, context and purpose of the provisions.

(1) Two Specific Issues Concerning Subsection 63(1) of the *IRPA*

[45] Two specific issues in the IAD's decision concerned the phrases "filed in the prescribed manner" and "a decision not to issue" in *IRPA* subsection 63(1), which are underlined in paragraph 6 above.

[46] The first issue raised the impact of *IRPA* subsection 40(3) on the interpretation of subsection 63(1), albeit through certain technical provisions in the *IRPR*.

[47] Ignoring the *IRPR* provisions, the question was whether an application for permanent residence that is not permitted under subsection 40(3) is, for that reason alone, not "filed in the prescribed manner" under subsection 63(1).

[48] On a more technical level, the IAD concluded that if a foreign national is barred from applying for permanent residence under *IRPA* subsection 40(3), the sponsor's filing of a sponsorship application was not in accordance with the administrative filing requirements in *IRPR* subsection 10(1). As a result, the IAD held that *IRPR* subsection 10(6) applied, and that an application that was not made in accordance with *IRPR* subsection 10(1) was not an application "filed in the prescribed manner" for the purposes of *IRPA* subsection 63(1).

[49] The parties both submitted that *IRPR* subsection 10(1) was the source of the administrative requirements to file an application to sponsor "in the prescribed manner" in subsection 63(1).

[50] The filing requirements in *IRPR* subsections 10(1) are matters of form and content for filing: see *Gill*, at para 19. In my view, the IAD erred in law when it concluded that the administrative requirements prescribed in *IRPR* paragraphs 10(1)(*a*) to (*d*) were not met because the appeal concerned an application to which *IRPA* subsection 40(3) applied. The language of paragraphs 10(1)(*a*) to (*d*) simply cannot bear that interpretation. Consequently, it was also an error to find that subsection 10(6) applied.

[51] These errors concern the form and content requirements for filing appeal materials. In my view, the errors are not sufficient to set aside the IAD's decision in this case, given the rest of the IAD's decision and my conclusions on its reasonableness below: *Vavilov*, at para 100. In addition, to return the matter for redetermination of the administrative filing issue by the IAD

would not likely yield a different result, particularly given the intervening decision of this Court in *Gill*: *Vavilov*, at paras 112 and 142.

[52] The next issue concerned the phrase “decision not to issue” in subsection 63(1). The IAD stated that the visa officer’s decision was “clearly not a decision on the merits” and that it was more likely than not that the decision was “therefore not a decision to refuse to issue” the permanent resident visa. The IAD concluded that it only had jurisdiction on an appeal under subsection 63(1) if the decision not to issue a permanent resident visa was a decision on the “merits” of the application for that visa.

[53] The IAD’s reasons expressly considered the words “a decision not to issue” in *IRPA* subsection 63(1). Neither party submitted that any binding authority constrained the IAD’s interpretation. Neither party referred to any specific context or purpose of subsection 63(1) related to that phrase.

[54] In my view, it was open to the IAD on the text of *IRPA* subsection 63(1) to interpret the phrase “a decision not to issue” as it did. That phrase, and subsection 63(1) generally, can reasonably bear the distinction adopted by the IAD between a decision on the merits of an application, and a decision to refuse or not process an application because the applicant is not permitted to apply under subsection 40(3). The IAD’s decision on this issue was not unreasonable.

[55] Having addressed these two initial issues, I turn to the principal issue raised by the parties' submissions.

(2) The IAD's Appeal Jurisdiction under Subsection 63(1) in light of Subsections 40(3) and 64(3) of the *IRPA*

[56] The parties made submissions about the impact of subsections 15(1), 40(3) and subsection 64(3) of the *IRPA* on the appeal jurisdiction of the IAD in *IRPA* subsection 63(1). It is not this Court's role to determine whether the IAD was correct in its interpretation or to provide the correct interpretation. The task is to determine whether the IAD's decision was reasonable, applying the standards established in *Canada Post* and the other appellate cases that bind this Court.

[57] The IAD found that the officer was not authorized to examine the application for permanent residence under subsection 15(1) because the application was not made in accordance with subsection 40(3). In effect, the IAD held that there was no right to appeal from the refusal of an application for permanent residence that was barred by statute from being made in the first place, and that to recognize such appeal jurisdiction would subvert the intentions of Parliament in enacting subsection 40(3).

[58] In my view, it was open to the IAD to interpret sections 15, 40 and 63 as it did. The IAD's reasons demonstrate that it was alive to and analyzed its jurisdiction in subsection 63(1) with the language in that provision, the language and broader context of other provisions in the *IRPA*, and Parliament's purpose in enacting subsection 40(3). Its approach and interpretation of

how the provisions work together was not unreasonable. I note that the IAD came to the same conclusion as Simpson J. did in *Gill* a few weeks later.

[59] With respect to *IRPA* subsection 64(3) as a textual or contextual consideration affecting the scope of the IAD's jurisdiction under subsection 63(1), there are three key points. The first is that the IAD expressly recognized the applicant's position that the IAD had jurisdiction to hear an appeal by virtue of subsection 64(3) which was not altered by the language of subsection 40(3). I observe that although the applicant's written submissions to the IAD did mention subsection 64(3), the submissions on that provision were not prominent or central to his position at that time.

[60] The second point is to acknowledge that the IAD's reasons did not expressly analyze subsection 64(3) alone, or in conjunction with 40(3). However, the IAD was not required to do so for its decision to be reasonable: see *Canada Post*, at para 52. It depends on the circumstances – which leads to the third point.

[61] The IAD's failure to analyze subsection 64(3) squarely can be readily explained from its own reasoning. On the IAD's interpretation, subsection 40(3) precluded an argument about jurisdiction to appeal arising from the combination of subsections 63(1) and 64(3); that is, if the application was not permitted in the first place owing to subsection 40(3), there could be nothing to appeal and consequently, the language in subsection 64(3) did not affect the scope of the IAD's appeal jurisdiction. In my view, it was open to the IAD to adopt that interpretation of the effect of subsection 40(3).

[62] Accordingly, the failure of the IAD to analyze subsection 64(3) expressly in this case was not fatal to the reasonableness of its interpretation of subsection 63(1): see *Mason*, at paras 31-33, 41 and 46; *Canada Post*, at para 52; *Vavilov*, at paras 127-128.

[63] Finally, the parties traded submissions in this Court on the purposes and intentions of Parliament in enacting both subsections 40(3) and 64(3) and how those provisions affect the IAD's appeal jurisdiction. Neither party made any submissions about the specific purposes of subsection 63(1).

[64] As is clear from the discussions of the IAD's reasons above, the IAD considered the purpose of subsection 40(3) and how it impacted the IAD's appeal jurisdiction, through the express language in that provision that precludes a person found inadmissible for misrepresentation from even applying for permanent residence. The IAD also expressly recognized the applicant's position that nothing in subsection 40(3) precluded the proposed appeal.

[65] While the applicant asserted that the purpose of subsection 64(3) was to permit an appeal when an inadmissible spouse may be separated from their spouse, common law partner, or children, neither party submitted that subsection 64(3) would be rendered superfluous or meaningless, or its purpose entirely frustrated, if an applicant who is inadmissible due to a misrepresentation prior to a current application for permanent residence were not permitted to appeal. Both parties accepted on this application that the IAD would have jurisdiction for an appeal if an officer found a misrepresentation leading to inadmissibility during a review of an

application for permanent residence – in that circumstance, there would be a "decision not to issue" the permanent resident visa under subsection 63(1) and, under subsection 64(3), an appeal would not be precluded by inadmissibility on the basis of misrepresentation if the foreign national met the requirements stated in subsection 64(3).

[66] In all of these circumstances, and considering the language of *IRPA* sections 15, 40, 63 and 64, the applicant has not demonstrated that the IAD's interpretation of its appeal jurisdiction in subsection 63(1) was unreasonable because it failed to analyze or give effect to subsection 64(3) in its reasons. The IAD sufficiently considered the text, context and purposes of the IRPA provisions in reaching its conclusions.

(3) Conclusion on Issues Affecting the IAD's Appeal Jurisdiction

[67] I conclude that the IAD did not make a reviewable error in its interpretation of its statutory jurisdiction to hear the appeal in this proceeding. Although the IAD's reasons contained imperfections, in the circumstances its errors were not so central or critical to cause me to lose confidence in its decision as a whole: *Vavilov*, at para 100; *Canada Post*, at para 33.

B. ***Did the IAD unreasonably apply the law to the facts?***

[68] The second principal issue in this judicial review application concerns whether the IAD should have found it had jurisdiction for an appeal of the visa officer's decision because of the contents of that decision. The applicant submitted that the letter dated October 22, 2018 expressly stated that the officer had completed the assessment of the application and that the

application was “refused”. The applicant contrasted a decision to refuse the application on one hand, with a decision on the other hand not to decide an application on the merits and to return the application to the person with a refund of the application fee. The officer’s letter also expressly referred to the applicant’s right to appeal.

[69] In my view, the IAD’s decision not to find appeal jurisdiction was reasonable.

[70] First, the IAD found that the officer’s letter could not itself confer legal jurisdiction on the IAD to hear an appeal. That must be correct. The IAD’s jurisdiction to hear an appeal had to originate in the *IRPA* or the *IRPR*.

[71] Second, and critically, the officer’s letter in substance concerned the applicant’s inadmissibility under section 40 and inability to apply for permanent residence under subsection 40(3). The fact that the letter used the word “refused” rather than stating that the officer declined to decide the application, or instead of simply returning the application, does not detract from the nature of the decision in substance. The officer’s substantive decision was that Ms. Olaonipekun could not apply for permanent residence under subsection 40(3).

[72] Third, the applicant pointed to the contents of the officer’s GCMS notes, which do suggest that the officer conducted a thorough review of the file before concluding that section 40 applied. However, ultimately it is the officer’s decision that matters. In this case, the mere scope of the officer’s examination of the applicant’s file does not affect the substance of the officer’s

decision under section 40 and does not affect the existence (or absence) of the IAD's jurisdiction to hear an appeal under subsection 63(1) the *IRPA*.

[73] For these reasons, I cannot conclude that the IAD's decision was untenable on the evidence or that the IAD fundamentally misunderstood or ignored a critical element of the evidence: *Vavilov*, at paras 101 and 125-126. The IAD's decision did not make a reviewable error in applying the law to the facts.

V. Conclusion

[74] The application is therefore dismissed.

[75] At the end of the hearing, the applicant requested until the end of the day to make submissions as to a question for certification under paragraph 74(*d*) of the *IRPA*. The respondent objected, arguing that the Court's Practice Guidelines required advance notice of a proposed question for certification at least 5 days before the hearing. The respondent's counsel submitted that she may have argued the application differently if a question had been proposed in accordance with the Practice Guidelines.

[76] The Court's *Practice Guidelines for Citizenship, Immigration, and Refugee Law Proceedings* dated November 5, 2018 state that parties are expected to make submissions regarding *IRPA* paragraph 74(*d*) in their written submissions and/or orally at the hearing on the merits. It also provides that "[w]here a party intends to propose a certified question, opposing

counsel shall be notified at least five [5] days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question".

[77] Given the nature of this application, and considering the objection of the respondent, I agree that the applicant should not be permitted in this case to propose a question for certification after the completion of the hearing.

JUDGMENT in IMM-6517-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. The Court does not certify a question under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

APPENDIX - IMM-6517-19

LEGISLATIVE PROVISIONS

Immigration and Refugee Protection Act, SC 2001, c 27	
Examination by officer	**Pouvoir de l'agent**
15 (1) An officer is authorized to proceed with an examination if a person makes an application to the officer in accordance with this Act or if an application is made under subsection 11(1.01).	**15 (1)** L'agent peut procéder à un contrôle dans le cadre de toute demande qui lui est faite au titre de la présente loi ou qui est faite au titre du paragraphe 11(1.01).
Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation (a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	**40** (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants : a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
Application	**Application**
40 (2) The following provisions govern subsection (1): (a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced;	40 (2) Les dispositions suivantes s'appliquent au paragraphe (1) : a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;
Inadmissible	**Interdiction de territoire**
40 (3) A foreign national who is inadmissible under this section may not apply for permanent resident status during the period referred to in paragraph (2)(a).	**40 (3)** L'étranger interdit de territoire au titre du présent article ne peut, pendant la période visée à l'alinéa (2)a), présenter de demande pour obtenir le statut de résident permanent.
Right to appeal — visa refusal of family class	**Droit d'appel : visa**
63 (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	**63 (1)** Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

No appeal for inadmissibility	**Restriction du droit d'appel**
64 (3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.	64 (3) N'est pas susceptible d'appel au titre du paragraphe 63(1) le refus fondé sur l'interdiction de territoire pour fausses déclarations, sauf si l'étranger en cause est l'époux ou le conjoint de fait du répondant ou son enfant.
Immigration and Refugee Protection Regulations, SOR/2002-227	
Form and content of application	**Forme et contenu de la demande**
10 (1) Subject to paragraphs 28(b) to (d) and 139(1)(b), an application under these Regulations shall	**10 (1)** Sous réserve des alinéas 28b) à d) et 139(1)b), toute demande au titre du présent règlement :
(a) be made in writing using the form, if any, provided by the Department or, in the case of an application for a declaration of relief under subsection 42.1(1) of the Act, by the Canada Border Services Agency;	**a)** est faite par écrit sur le formulaire fourni, le cas échéant, par le ministère ou, dans le cas d'une demande de déclaration de dispense visée au paragraphe 42.1(1) de la Loi, par l'Agence des services frontaliers du Canada;
(b) be signed by the applicant;	**b)** est signée par le demandeur;
(c) include all information and documents required by these Regulations, as well as any other evidence required by the Act;	**c)** comporte les renseignements et documents exigés par le présent règlement et est accompagnée des autres pièces justificatives exigées par la Loi;
(d) be accompanied by evidence of payment of the applicable fee, if any, set out in these Regulations; and	**d)** est accompagnée d'un récépissé de paiement des droits applicables prévus par le présent règlement;
(e) if there is an accompanying spouse or common-law partner, identify who is the principal applicant and who is the accompanying spouse or common-law partner.	**e)** dans le cas où le demandeur est accompagné d'un époux ou d'un conjoint de fait, indique celui d'entre eux qui agit à titre de demandeur principal et celui qui agit à titre d'époux ou de conjoint de fait accompagnant le demandeur principal.
[…]	[…]
Invalid sponsorship application	**Demande de parrainage non valide**
(6) A sponsorship application that is not made in accordance with subsection (1) is considered not to be an application filed in the prescribed manner for the purposes of subsection 63(1) of the Act.	**(6)** Pour l'application du paragraphe 63(1) de la Loi, la demande de parrainage qui n'est pas faite en conformité avec le paragraphe (1) est réputée non déposée.
Return of application	**Renvoi de la demande**
12 Subject to section 140.4, if the requirements of sections 10 and 11 are not met, the application and all documents submitted in support of it, except the	**12** Sous réserve de l'article 140.4, si les exigences prévues aux articles 10 et 11 ne sont pas remplies, la demande et tous les documents fournis à l'appui de celle-ci, sauf

information referred to in subparagraphs 12.3(b)(i) and (ii), shall be returned to the applicant.	les renseignements visés aux sous-alinéas 12.3b)(i) et (ii), sont retournés au demandeur.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:	IMM-6517-19
STYLE OF CAUSE:	GBENGA WILLIAMS ADEOSUN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 29, 2021
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	OCTOBER 18, 2021

APPEARANCES:

Nicholas Woodward Adrienne Smith	FOR THE APPLICANT
Hillary Adams	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Adrienne Smith Battista Smith Migration Law Group Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada	FOR THE RESPONDENT