Federal Court  Cour fédérale

Date: 20230316

Docket: IMM-1110-22

Citation: 2023 FC 352

Ottawa, Ontario, March 16, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

SOHEIL ADIBI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Soheil Adibi [Applicant] seeks judicial review of the Immigration Appeal Division's [IAD] January 24, 2022 decision [Decision] dismissing his appeal of a removal order for breaching the residency obligations under section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The IAD found that the Applicant's personal circumstances did not

raise sufficient humanitarian and compassionate [H&C] considerations to grant discretionary relief.

[2] The application for judicial review is dismissed.

II. Background

[3] The Applicant, an Iranian citizen, became a permanent resident of Canada in September 2016, when he, his first wife, and their daughter arrived in Canada. They remained in Canada for 22 days before returning to Iran. The Applicant returned to Canada in July 2021.

[4] The Applicant has two younger siblings, a sister and a brother. His parents and siblings reside in Iran.

[5] Following their return to Iran in October 2016, the Applicant's mother developed severe depression as a result of his sister's divorce. As the oldest son and the only person able to comfort his mother, the Applicant remained in Iran to care for her until her mental condition improved in November 2018.

[6] Beginning in 2018, the Applicant began to experience marital problems, ultimately leading to his own depression diagnosis. The Applicant and his then wife agreed to divorce, and to a financial settlement, which was finalized in September 2020. The Applicant claims that due to a lack of financial resources, he was unable to return to Canada.

[7] In October 2020, the Applicant married his current spouse. She continues to reside in Iran with her 12-year-old son, though the Applicant intends on sponsoring them to Canada should he maintain his permanent resident status.

[8] The Applicant held various full-time jobs in Iran during this 5-year period. Following his return to Canada, the Applicant secured another full-time position.

[9] The Applicant also converted to the Christian faith. In Iran, he attended an underground church. Following his return to Canada, he was baptized at an evangelical church, where he also participated in various volunteering initiatives. The Applicant believes that he would face the death penalty if forced to return to Iran because of these actions.

[10] Upon his return to Canada, a Canada Border Services Agency Officer [Officer] issued a departure order against the Applicant. The Officer concluded that the Applicant was inadmissible to Canada for failing to comply with his residency requirement, having only spent 22 days in Canada of the required 730 days over a 5-year reference period.

[11] Before the IAD, the Applicant did not challenge the legal validity of the Officer's finding. Rather, he sought relief on H&C grounds.

III. The Decision

[12] The IAD concluded that the Applicant failed to demonstrate sufficient H&C considerations to warrant relief in light of the following non-exhaustive factors set out in *Ambat v Canada (Citizenship and Immigration)*, 2011 FC 292 at para 27 [*Ambat*]:

> - The extent of non-compliance with the residency obligation;
> - The reasons the Applicant left and remained outside Canada;
> - Whether efforts were made to return to Canada at the first opportunity;
> - The degree of establishment in Canada, initially and at the time of hearing;
> - Family ties to Canada, including the best interests of the child;
> - Hardship and dislocation that would be caused to family members in Canada if the [Applicant] loses status in Canada;
> - Hardship that would be cause to the [Applicant]; and,
> - Whether any other unique or special circumstances that merit special relief.

[13] The IAD noted that that Applicant's failure to meet his residency obligation was significant. Accordingly, he was required to show significant H&C relief to overcome this breach.

[14] The IAD found that the Applicant made a voluntary choice to leave Canada and resume his life in Iran due to employment and expense-related difficulties. He also failed to return to Canada at the first opportunity, even for short periods of time. While the IAD acknowledged both the mother's and Applicant's mental health issues, the IAD concluded that the mother's

condition existed prior to the Applicant's initial departure from Iran, and that his own condition did not prevent him from working full-time. The IAD weighed both factors against granting discretionary relief.

[15] The IAD further found that the Applicant was minimally established in Canada, but possessed strong ties in Iran. While the Applicant had employment, church membership, and some family in Canada, he spent little time in Canada, made minimal efforts to find work, and possessed limited assets. Conversely, many of his family members reside in Iran, including his current wife who owns her own business, and he previously secured full-time employment in Iran.

[16] In assessing the best interests of the Applicant's two children, the IAD concluded that both children would benefit from his presence given their strong relationships. Since the Applicant's daughter resides in Canada and his stepson resides in Iran, the IAD identified the best interests of the children as a neutral factor.

[17] Lastly, the IAD considered the hardship faced by both the Applicant and his family. The IAD accepted that the Applicant would face some hardship in Iran as a Christian convert. In arriving at this conclusion, the IAD placed little weight on a letter from the Applicant's pastor detailing his baptism. The IAD also found that the Applicant has a strong family network to support him, and that he would be able to secure employment upon return. As a whole, the IAD weighed this factor positively.

[18] As for the Applicant's family, the IAD noted that he currently provides his former spouse with child support payments. Additionally, the Applicant would be able to continue to speak and visit with his daughter from Iran. The IAD assigned this factor neutral weight.

IV. Issues and Standard of Review

[19] After considering the parties' submissions, the sole issue is whether the Decision was reasonable. The relevant sub-issues are:

1. Was the IAD's assessment of hardship unreasonable?
2. Was the IAD's assessment of the best interests of the child unreasonable?
3. Was the IAD's finding that the Applicant did not return to Canada at the first opportunity unreasonable?
4. Was the IAD's assessment of establishment unreasonable?

[20] Both parties agree that this Decision is reviewable on the standard of reasonableness. This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

[21] A reasonableness review requires the Court to consider both the outcome of the decision and the underlying rationale to assess whether the decision, as a whole, bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 15, 99). The reviewing court must refrain from reweighing evidence before that decision-maker

(*Vavilov* at para 125). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). The party challenging the decision bears the burden of showing that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *Was the IAD's assessment of hardship unreasonable?*

(1) Applicant's Position

[22] The IAD failed to assess the hardship that the Applicant would face upon return to Iran due to his recent conversion to Christianity (*Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 [*Chieu*]). Namely, the IAD failed to differentiate between sections 25 and 67(1)(c) of *IRPA*, the latter of which requires H&C considerations to be considered "in light of all the circumstances of the case". These circumstances necessarily include the Convention refugee considerations set out in section 96 of *IRPA*.

[23] Additionally, the IAD erred drawing a negative credibility finding and assigning the pastor's letter little weight due to its omission that the Applicant was evangelizing in Canada (*Awuh v Canada (Citizenship and Immigration)*, 2019 FC 1619 at para 7).

[24] Lastly, the IAD erred in concluding that the Applicant would have a strong family network in Iran. This conclusion failed to engage with contradictory evidence surrounding his Christian conversion, including the reaction of, and difficulties faced by, the Applicant's family (*Pamal v Canada (Citizenship and Immigration)*, 2021 FC 1064 at para 3 [*Pamal*]; *Canada*

(Citizenship and Immigration) v Tefera, 2017 FC 204 at para 31 [*Tefera*]). The IAD transcript illustrates that the Applicant explained that "maybe if my mother find out about it, I cannot, you know, forecast what will happen to her."

(2) Respondent's Position

[25] The IAD reasonably considered the hardship the Applicant would face in Iran due to his Christian conversion and weighed this factor in favour of granting discretionary relief. The IAD also correctly noted that its role does not extend to refugee claimant determinations (*Chieu* at paras 84-86).

[26] Second, the Applicant's assertion concerning the pastor's letter confuses credibility findings and findings going to weight. The IAD did not make an adverse credibility finding against the Pastor; however, even if this was the case, the Decision as a whole remains reasonable.

[27] Lastly, the IAD reasonably found that the Applicant would have a strong family network in Iran to alleviate any hardship. The IAD explicitly recognized the treatment of Christian converts in Iran. Further, the Applicant's evidence regarding his family's reaction to his Christian conversion was vague and weak, while his family ties in Iran were unequivocal. The Applicant simply disagrees with the IAD's assessment of the evidence.

(3) Conclusion

[28] I find the Decision, when read as a whole in light of the record, indicates that the IAD reasonably assessed the Applicant's hardship pursuant to paragraph 67(1)(c) of *IRPA*. Other than distinguishing *Chieu* on the basis that it dealt only with section 25 of *IRPA*, the Applicant cites no authority for his assertion that paragraph 67(1)(c) of *IRPA* requires consideration of sections 96 and 97 of *IRPA*.

[29] The IAD correctly concluded that it is not tasked with assessing whether the Applicant is a Convention refugee. The IAD does not have the jurisdiction to arrive at such determination (*Chieu* at para 84). Rather, this is the role of the Refugee Protection Division or a Pre-Removal Risk Assessment officer who would consider whether the Applicant's conversion to Christianity would place him at risk upon removal. Accordingly, while the IAD may not consider sections 96 and 97 factors, it must consider elements related to hardships that affect a foreign national, including adverse country conditions.

[30] In my view, the IAD did exactly that in this case. For instance, the IAD specifically considered the country condition evidence concerning Christian converts in Iran and made clear findings as to the hardship the Applicant would face upon his return to Iran:

> The Appellant said at the hearing that he is a Christian convert and that he faces some hardship if he returns to Iran. The Appellant provided some documentary evidence showing that Christian converts in Iran can face persecution. The Appellant said that he is an Evangelical Christian and that he has a duty to proselytize his faith. The Appellant provided a letter from his pastor confirming that the Appellant was baptized recently.
>
> …
>
> The evidence submitted by the Appellant outlines the problems faced by individuals that convert their religion from Islam in Iran.

> …
>
> I find that the Appellant may experience some hardship if he returns to Iran. I find that this weighs slightly in favor of granting the Appellant discretionary relief.
>
> [Emphasis added.]

[31] I would also note that it is presumed "that a decision maker has weighed and considered all the evidence" and that a decision-maker need not refer to every piece of evidence supporting their conclusions. Only where there is contradictory evidence may a reviewing court intervene (*Tefera* at para 31). This is not the case here, as the Applicant has not advanced evidence contradicting the IAD's conclusion. For these reasons, I am satisfied that the IAD considered the Applicant's hardship based on country conditions when exercising its discretion under paragraph 67(1)(c) of *IRPA*. The IAD referenced the country condition evidence outlining the problems faced by individuals who convert their religion from Islam in Iran.

[32] Second, I disagree that the IAD improperly drew a negative credibility finding against the pastor due to the omission that the Applicant had been evangelizing. Generally speaking, this Court should not interfere unless a credibility finding is based on irrelevant considerations or ignores evidence (*Acikgoz v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 772 at para 37, citing *Gill v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1158 at para 39).

[33] In this case, however, I do not find that the IAD drew a negative credibility finding against the pastor. In assessing the pastor's letter, the IAD explained:

> While the Appellant has provided a letter from his Pastor detailing his baptism, I give this little weight. The Appellant said that he is

> evangelizing in Canada with his friends. The Appellant was asked why the letter from his Pastor made no mention of his evangelizing and he explained that he had not mentioned it yet to his Pastor. I do not find it reasonable that [the Appellant] would have failed mention this to his Pastor.
>
> [Emphasis added.]

[34] I do not view the above passage as an indication that the IAD focused on what the Pastor's letter did not say. The IAD did not ignore the Applicant's testimony that he had been evangelizing in Canada. Rather, the lack of evidence supporting his testimony reduced the weight the IAD placed on the letter. I agree with the Respondent that the Applicant's submissions confuse a negative credibility finding with findings going to weight. This does not amount to a reviewable error. In any event, the IAD noted that a negative decision would not cause the Applicant to be removed from Canada and that he will be eligible for a Pre-Removal Risk Assessment where risks, including those related to Convention refugees, will be assessed.

[35] Finally, the IAD did not err in finding that the Applicant would have strong family ties in Iran notwithstanding his recent Christian conversion. A review of the record does not indicate that the Applicant lacks family support, nor did the IAD repeatedly rely on the availability of family support (*Pamal* at para 23). While the Applicant testified before the IAD that his family members were unaware of his Christian conversion, his testimony was limited to the possibility that it may cause "some problems." Beyond this, the Applicant does not provide any additional evidence that he would face problems or that his family would be unwilling to support him should they discover his conversion. The IAD took issue with this lack of evidence.

[36] The onus is on the Applicant to establish facts on which their claim rests (*Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paras 5, 8 [*Owusu*]). The Applicant failed to do so here. Accordingly, it was open to the IAD to conclude that the Applicant would have a strong family network in Iran, as evidenced by his strong relationships with his mother, wife, and stepson.

[37] I am not persuaded that the IAD conducted an improper hardship analysis based on the totality of the circumstances. Accordingly, I find the IAD's hardship analysis reasonable.

B. *Was the IAD's assessment of the best interests of the child unreasonable?*

(1) Applicant's Position

[38] The IAD failed to carefully examine relevant considerations and make clear findings in light of the evidence concerning the Applicant's daughter's best interests (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 35-36, 39 [*Kanthasamy*]; *Louissaint v Canada (Citizenship and Immigration)*, 2018 FC 1077 at para 17 [*Louissaint*]). Instead, the IAD placed substantial weight on the Applicant's ability to maintain his connection with his daughter through video calls and visits in Iran. As a 7-year-old who recently moved to a new city where she does not speak the language, the Applicant's daughter depends on him for stability and support. She is in the Applicant's care three to four days per week, and the Applicant shares parenting responsibilities with his former spouse. The daughter's psychologist recommended that the Applicant continue to have a "high quality and regular relationship" with her to mitigate the impact of her parent's separation.

[39] Additionally, the IAD failed to go beyond the *status quo* and consider both children's best interests in being reunited with the Applicant in Canada (*Francois v Canada (Citizenship and Immigration)*, 2019 FC 748 at para 15 [*Francois*]). The Applicant testified that the children and his new wife frequently communicate. He also intends to sponsor both his wife and stepson to Canada. Despite this, the IAD undertook an incomplete assessment in only considering the children's options as they relate to the Applicant returning to Iran.

(2) Respondent's Position

[40] The IAD accepted that, due to their close relationship and frequent contact, it would be in the daughter's best interest for the Applicant to remain in Canada. Similarly, the IAD noted that while the Applicant intended to sponsor his current wife and stepson to Canada, it would be in the stepson's immediate best interests for the Applicant to be in Iran. The IAD balanced these two considerations in concluding that the BIOC was a neutral factor. There is no basis for the Court to interfere with this conclusion.

[41] The Applicant did not argue, nor provide evidence, that reuniting with the children in Canada would be in their best interests (*Francois* at para 18; *Wopara v Canada (Citizenship and Immigration)*, 2021 FC 352 at para 19 [*Wopara*]).

(3) Conclusion

[42] I disagree with the Applicant that the IAD failed to carefully consider all of the relevant circumstances surrounding his daughter's best interests.

[43] In assessing whether the IAD's analysis of the child's best interests under paragraph 67(1)(c) of *IRPA* was reasonable, the jurisprudence analyzing this factor in the context of subsection 25(1) of *IRPA* is relevant (*Phan v Canada (Citizenship and Immigration)*, 2019 FC 435 at para 19).

[44] With that said, the IAD must be alert, alive, and sensitive to the best interests of the children (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] SCR 817 at para 75; *Kanthasamy* at para 38). Those interests must be well identified, defined, and examined with a great deal of attention in light of the evidence (*Kanthasamay* at para 39, citing *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at paras 12, 31). The best interests of the children is highly contextual, and must be responsive to each child's age, capacity, needs, and maturity (*Kanthasamay* at para 35). This factor must be given considerable weight, though it is not necessarily determinative (*Louissaint* at para 17; *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at para 2).

[45] While the Applicant relies on *Louissaint*, I find its circumstances distinguishable from the present matter. Here, the IAD accepted the Applicant's testimony that he has a "close relationship" with his daughter. The IAD similarly recognized that, while not her legal guardian, the Applicant participates in her upbringing and has visiting rights three times per week. Although the IAD did not explicitly mention the Applicant's assistance with his daughter's adjustment in Canada, the IAD did conclude that "it would be preferable that he be close to [his daughter] in Canada" (Emphasis added).

[46] In my view, the IAD's Decision was alert, alive, and sensitive to the daughter's specific interests in having the Applicant remain in Canada (*Kanthasamy* at para 39). Nevertheless, the IAD was required to consider the evidence as a whole (*Kanthasamy* at para 39; *Louissaint* at para 25). It was also necessary for the IAD to balance the daughter's interests with those of his stepson, who presently resides in Iran and who is also directly affected by the Decision (*Francois* at para 18). In my view, the IAD did just that. The IAD's assessment did not center around the Applicant's ability to communicate with a child in a long-distance relationship. Rather, the IAD assessed the interests of two children located in two different countries. Accordingly, in my view, the IAD reached a reasonable conclusion based on the evidence.

[47] Similarly, I find that the Applicant's submission that the IAD erred in failing to consider the possibility of both children being reunited with the Applicant in Canada is without merit.

[48] The Applicant cites *Francois* as being analogous to the case at hand. *Francois* involved an applicant who unsuccessfully applied for H&C relief to sponsor a dependent child who lived in Haiti. This Court found the decision unreasonable, as it failed to consider the evidence that it would be in the dependent child's best interests to be reunited with the applicant's other children in Canada. The officer placed undue emphasis on "the ways in which they could continue their long distance relationship if [the dependent] remains in Haiti" (at para 18).

[49] This case is distinguishable from *Francois*. An applicant has the "burden of providing the relevant information, including information regarding the best interests of children" (*Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 at para 24). A decision-maker cannot be

faulted for not being alert, alive, and sensitive to factors that the Applicant failed to raise (*Owusu* at paras 5, 8).

[50] The Applicant has not referred this Court to any evidence submitted before the IAD demonstrating that it would be in the best interests of his children to be reunited with him in Canada (*Wopara* at para 19). The Applicant's testimony surrounding the relationship between his spouse and stepson in Iran and his daughter in Canada does not further this argument. Additionally, unlike *Francois*, the IAD was not provided with any information concerning plans that the Applicant had for reuniting with his children in Canada.

[51] Rather, the IAD accepted the Applicant's sole testimony on the matter, being that the Applicant intended to sponsor his current spouse and stepson to Canada should he be allowed to remain in Canada. Accordingly, I do find the Decision reasonable.

C. *Was the IAD's finding that the Applicant did not return to Canada at the first opportunity unreasonable?*

(1) Applicant's Position

[52] The IAD misapprehended the evidence in concluding that the Applicant voluntarily moved to Canada despite his mother's mental health condition already presenting itself. While the Applicant's mother's condition existed prior to his departure, it deteriorated upon his return to Iran as a result of her daughter's divorce. The mother's affidavit explains that only the Applicant could provide her with necessary comfort.

[53] Similarly, the IAD misapprehended the evidence in concluding that the Applicant could have intermittently returned to Canada after his mother's condition improved. The evidence established that, following his mother's improvement, the Applicant began to experience his own marital and mental health issues. The IAD also failed to consider the subsequent divorce agreement, including the significant financial settlement, or the prospect of imprisonment. His divorced left him with insufficient assets to immediately return to Canada.

(2) Respondent's Position

[54] It is not a reviewable error, nor does the evidence contradict, the IAD's finding that the Applicant's mother was suffering from mental health issues prior to the Applicant's initial departure from Iran. The IAD also expressly considered the Applicant's evidence that he remained in Iran because of his depression. The Applicant simply disagrees with the weight assigned to the evidence.

(3) Conclusion

[55] I disagree with the Applicant that the IAD misapprehended the evidence in concluding the Applicant voluntarily moved to Canada despite his mother's mental health condition. The IAD found that the Applicant's mother was already suffering from mental distress prior to the Applicant's initial arrival in Canada due to her difficult and unhappy marriage. This finding was supported by Applicant's testimony. Nevertheless, the IAD also noted the mother's "severe mental health issues" stemming from her daughter's divorce, and how the Applicant was the only one who could comfort her. Viewed as a whole, I find that the IAD considered the

evidentiary record and general factual matrix in reaching a reasonable conclusion (*Vavilov* at para 126).

[56] Similarly, I disagree that the IAD misapprehended the evidence in concluding that the Applicant could have intermittently returned to Canada to meet his residency obligations. In my view, the Applicant is asking this Court to reweigh the evidence, which is not the role of a reviewing court (*Vavilov* at para 125). Rather, it is within the IAD's discretion to determine what weight should be assigned to each factor (*Ambat* at para 32). The IAD explicitly considered the Applicant's reasons for remaining in Iran during the 5-year period:

> The Appellant explained that his mother's mental health began to improve in 2018 when his sister's art career began to flourish. His sister's success seems to have helped to improve his mother's depression. The Appellant explained that he began to have his own personal issues at this time that prevented him from returning to Canada.
>
> The Appellant explained that his marriage began to fail. His former spouse was jealous with the Appellant's close relationship to his mother. As a result, she began to spend more time with her family.
>
> The Appellant also explained that his wife had an affair with an airline pilot. The Appellant tried to work things out with his former spouse, but they ultimately divorced. The Appellant said that he suffered from depression because of his marriage ending. This prevented him from returning to Canada.
>
> [Emphasis added.]

[57] While the Applicant explained why he could not have returned intermittently, namely the lack of funds due to his divorce settlement as well as his mother's and his own mental health issues, the IAD was of the view that this explanation did not reasonably account for his failure to return to Canada (*Eftekharzadeh v Canada (Public Safety and Emergency Preparedness)*, 2021

FC 1000 at para 48). The evidence before the IAD provided little explanation as to how he could not have returned to Canada to fulfill his residency obligations after his mother's condition improved. The IAD considered the Applicant's depression stemming from his marital issues, including his full-time work during this period, and found that these circumstances did not reasonably account for his failure to return to Canada. In light of further evidence to the contrary, the IAD reasonably found that the Applicant's explanation did not establish that he could not return to Canada intermittently (*Vavilov* at paras 125-28).

D. *Was the IAD's assessment of establishment unreasonable?*

(1) Applicant's Position

[58] The IAD failed to consider the full context of the Applicant's situation (*Wong v Canada (Citizenship and Immigration)*, 2021 FC 1192 at paras 37, 40 [*Wong*]). The evidence demonstrated that the Applicant intended to settle in Canada, but was temporarily unable to because of a series of personal duties, including caring for his mother and managing his marital issues. Accordingly, the IAD's conclusions are unjustifiable and unintelligible (*Vavilov* at para 15).

(2) Respondent's Position

[59] The Applicant is asking the Court to reweigh evidence, which is not the function of judicial review.

(3) Conclusion

[60] I am not persuaded by the Applicant's submissions that the IAD failed to consider the entirety of the Applicant's situation (*Wong* at paras 37, 40).

[61] The Applicant asserts that this case is similar to *Wong*, where Justice Ahmed concluded that the IAD failed to account for the full context of the applicant's situation, and instead placed undue emphasis on the applicant's reduced time in Canada (at paras 37-43). Justice Ahmed found that while the applicant had only resided in Canada for 104 days out of the required 730 days to care for her ailing sister and mother in China, she had advanced evidence of her motivation to establish herself in Canada.

[62] The present matter is distinguishable from *Wong*. While similarly acknowledging that the Applicant had only spent 22 days in Canada, the IAD moved beyond this figure in concluding that the Applicant provided no evidence of his efforts to establish himself in Canada during the 5-year reference period. For instance, the IAD found that the Applicant had few assets in Canada and had yet to file any taxes in Canada, though he planned on doing so. The IAD also acknowledged that the Applicant originally returned to Iran due to the high cost of living in Canada.

[63] Further, the IAD considered the circumstances surrounding both the Applicant's initial establishment as well as his establishment at the time of the hearing (*Ambat* at para 27). Namely, while the Applicant's efforts to secure employment upon his initial arrival in Canada were minimal, the IAD also acknowledged that the Applicant became employed following his return to Canada. The IAD further noted that Applicant's former spouse and daughter both reside in

Canada. Lastly, the IAD recognized that the Applicant is also a member of a local church, where he participates in various volunteer activities.

[64] The IAD also considered the Applicant's ties to Iran (*Wong* at para 38). The IAD found these ties significant, as the Applicant's current spouse, stepson, siblings, and parents reside in Iran. Further, the Applicant was previously employed on a full-time basis in Iran, and his wife owns a business in Iran.

[65] I find that the IAD considered the entirety of the Applicant's circumstances in weighing this factor against granting the Applicant discretionary relief. The IAD's decision surrounding the Applicant's establishment in Canada does not lack justification, transparency, or intelligibility (*Vavilov* at para 99). I agree with the Respondent that the Applicant is seeking the Court to reweigh the evidence, which is not the function of judicial review.

VI. Conclusion

[66] For all these reasons, the application for judicial review is dismissed.

[67] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-1110-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SOHEIL ADIBI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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