Federal Court  Cour fédérale

Date: 20250116

Docket: IMM-1696-24

Citation: 2025 FC 89

Ottawa, Ontario, January 16, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

ARAM ABDULMAJID MOHAMMED SAAED UJAM,
ALI HUSSEIN ALI UJAM,
SUKAINA HUSSEIN ALI UJAM,
AREEJ HUSSEIN ALI UJAM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision of the Immigration Appeal Division ("IAD"), which found that they did not meet the residency requirement to qualify for permanent resident status, and that there were not sufficient humanitarian and compassionate (H&C) grounds to grant them exceptional relief.

I. Background

[2] The Applicants are a family from Iraq who became permanent residents of Canada in November 2017, under the New Brunswick Provincial Nominee Program. The Principal Applicant ("PA") is Aram Abdulmajid Mohammed Saaed Ujam, and the Associate Applicants are her three children: Ali Hussein Ali Ujam, Sukaina Hussein Ali Ujam and Areej Hussein Ali Ujam. The PA's husband, Mr. Ujam, was not part of the underlying decision, as he had returned to Canada prior to the expiration of his permanent resident card [PR card].

[3] The Applicants left Canada and returned to Iraq eight days after completing their landing and before they had received their PR cards. At this time, Ali was 21 years old, Areej was 12 years old and Sukaina was 10 years old. They state that they were compelled to return to Iraq to sell their property to raise the funds required to start a business and their new lives in Canada. They also needed these funds to support Ali's studies as he was enrolled in a dentistry program in Iraq.

[4] The Applicants state that there were various reasons they were unable to return to Canada until October 6, 2023. These include travel restrictions during the COVID-19 pandemic and their inability to secure the documents necessary to return to Canada without valid permanent resident cards.

[5] In March 2023, the Applicants were refused Permanent Resident Travel Documents ("PRTD") to facilitate their return to Canada. In April 2023, the Applicants received letters from IRCC which indicated that the Applicants had not complied with the requirements of the

residency obligation under subsection 28(2)of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The letters stated that the Applicants had not been physically present in Canada for 730 days during the five-year period from March 24, 2018 to March 24, 2023, as required by the *IRPA*.

[6] The Applicants appealed this decision to the IAD. The IAD found that the H&C considerations were not sufficient to warrant special relief in the Applicants' circumstances. The IAD dismissed the appeal and issued the Applicants a departure order.

[7] The IAD noted that Mr. Ujam came to Canada under the New Brunswick PNP program in 2017 but returned to Iraq after a short stay. He did not receive his PR card before he left. The Applicants came to Canada separately, in November 2017, and stayed for 7 days. They did not stay long enough to receive their PR cards, but somehow obtained Mr. Ujam's card and brought it back to Iraq when they returned.

[8] The Applicants claimed they had to return to Iraq because Mr. Ujam had to sell two properties there before he could establish his business in New Brunswick. He was operating a gym in Iraq, and the funds from that business supported the family and enabled Ali to continue his studies in dentistry school in Iraq. They said that the unstable situation in Iraq made it impossible to obtain a fair market price for the properties in 2018 and 2019. In 2020, the onset of the COVID-19 pandemic prevented the family from travelling. They argued that their return was delayed further because they had to obtain official documents that would permit them to re-enter Canada, a process they initiated in March 2023.

[9] The IAD observed that Mr. Ujam had returned to Canada in September 2022 and found work. He was therefore not part of this claim. The Applicants were initially denied PR travel documents, but subsequently obtained PR cards and they returned to Canada in October 2023, approximately one month prior to the IAD hearing.

[10] The law required the Applicants to demonstrate their presence in Canada for 730 days during the previous five-year period: subsection 28(2) of *IRPA*. The IAD found that the Applicants had zero days in Canada during the relevant five-year period. As a result, their H&C claim needed to be especially compelling in order to overcome their statutory non-compliance.

[11] The IAD applied the factors for examining H&C relief in the context of residency for PR status, and made several findings: the Applicant's reasons for leaving Canada and staying abroad were not compelling; they did not return to Canada at the earliest opportunity; they had a minimal degree of establishment in Canada; they had some family ties in Canada, which warranted some positive weight; their arguments about the hardships they would face in Iraq were diminished by the fact that they voluntarily returned and stayed there from 2017 to 2023; and finally, the best interests of the children were to be with their parents. Based on this analysis, the IAD concluded there were insufficient grounds to warrant granting the Applicants' H&C claim.

[12] The Applicants seek judicial review of the IAD's decision.

II. Issues and Standard of Review

[13] The issue in this case is whether the IAD's decision is unreasonable. The Applicants argue that the decision should be quashed for three reasons:

i. the IAD erred in its analysis of the youngest daughter Sukaina's best interests;

ii. the IAD erred in its consideration of family ties;

iii. the IAD erred in its consideration of hardship the Applicants would face on returning to Iraq.

[14] These questions are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[15] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2). A decision should only be set aside if there are "shortcomings or flaws… [that] are sufficiently central or significant to render the decision unreasonable." (*Vavilov* at para 100). The onus lies on the Applicants to demonstrate that the decision is unreasonable.

III. Analysis

[16] The Applicants challenge the three aspects of the IAD's decision, as set out above. They have not challenged the other findings made by the IAD regarding the remaining H&C factors.

[17] The Applicants argue that the IAD's treatment of Sukaina's best interests lacked empathy and failed to consider her suffering when she was separated from her father. They say that the IAD contradicted itself when it found that it was in Sukaina's best interest to remain in Canada with her father, and then went on to find that it was also in her best interests to return to Iraq with her mother and siblings.

[18] I am not persuaded that the IAD's analysis of Sukaina's best interests is unreasonable. After noting that Sukaina was 16 years old at the time of the hearing and thus dependent on her parents, the IAD acknowledged that she had recently enrolled in school in Canada. The IAD accepted that she had been emotionally affected by the separation from her father, citing testimony that she had isolated herself and was depressed during that time. The IAD found that it was in her best interests to remain with both of her parents.

[19] The IAD noted that Mr. Ujam had indicated that if the Applicants lost their permanent residence, it would not be possible for him to remain separated from his family. Based on this, the IAD stated "(i)t is more likely than not that he will follow the [Applicants] if they have to leave." The Applicants submit this is unreasonable, pointing to other testimony from Mr. Ujam in which he indicated that he did not intend to leave Canada.

[20] It is not my role to re-weigh the evidence. The Applicants do not deny that Mr. Ujam had testified about the distress and hardship he experienced while separated from his family, nor that he testified he would find it unbearable to be separated from them if they had to return to Iraq. The fact that he also stated that he wanted to remain in Canada may be true, but does not

undermine the IAD's conclusion about the likely result of a negative decision on the Applicants' H&C claim. There is no legal or practical impediment preventing Mr. Ujam from returning to Iraq if his family went there, and it is not evident how his choice to remain in Canada (if that is what he decides to do) can nourish the hardship that would support the Applicants' H&C claim. Mr. Ujam has only been in Canada since 2022, and has other family members and property in Iraq.

[21] Based on this, I am not persuaded that the IAD's analysis of Sukaina's best interests lacked empathy, or that the IAD made contradictory findings. The IAD's primary finding was that it was in Sukaina's best interest to remain with both of her parents, and I can find no basis to disturb that conclusion.

[22] Turning to the family ties, I have already rejected the Applicants' main argument about the likelihood that Mr. Ujam would return to Iraq if their appeal failed. To repeat, there is no evidence of any impediment to his return to Iraq, and so staying in Canada or returning to Iraq would be entirely his choice. The IAD noted the distress that Mr. Ujam and the Applicants had experienced as a result of their separation when Mr. Ujam returned to Canada. It also noted that the PA had a daughter and two grandchildren living in Iraq, as well as other immediate family members. Mr. Ujam also has immediate family living there. The IAD accepted that the Applicants had some relatives in Canada, but there was little evidence describing the nature of their relationship. The IAD gave some positive weight to the family ties in Canada in the overall H&C assessment, and this finding is reasonable in light of the evidence.

[23] Finally, the Applicants argue that the IAD failed to consider the hardship they would face in Iraq, because of the unstable security situation there, and the daily harassment that women and girls are subjected to in that country. The IAD acknowledged that Iraq has endured a period of instability and that it is less secure than Canada. However, the IAD noted that despite their knowledge of the situation there, the Applicants had voluntarily returned to Iraq in 2017 and remained there until 2023. The IAD found that this diminished the Applicants' hardship arguments, since they had voluntarily returned to Iraq and had remained there without any evidence that they were personally targeted during that period.

[24] The Applicants submit that the IAD failed to give adequate weight to their testimony about the daily harassment that women and girls face in Iraq, or to the evidence of the dangerous security situation that prevails there. I am not persuaded. It is not a reviewing court's role to re-weigh the evidence. In this case, the IAD acknowledged the security situation in Iraq, but it could not ignore the fact that the Applicants had left the security of Canada to return there.

[25] The IAD's finding that their claim of hardship did not weigh heavily in favour of granting them extraordinary relief is reasonable, in light of the evidence in the record. The Applicants have recently lived in Iraq, have immediate family living there and continue to own properties there. They are familiar with the situation in Iraq and would be able to adapt to returning there without significant difficulty. I can find no basis to question the IAD's finding on the hardship issue.

[26] Examining the decision as a whole, I find that the IAD applied the proper legal test, took into account the key facts before it, and explained its reasoning in a detailed and thorough decision. Having found that the Applicants had zero days in Canada during the relevant five-year period, the IAD reasonably concluded that their H&C claim would have to be quite compelling to warrant granting them relief. Based on its review of the evidence and submissions, the IAD was not satisfied that the Applicants had demonstrated that H&C relief should be granted to them. The decision is reasonable, when measured against the framework set out in *Vavilov*.

[27] The application for judicial review is dismissed.

[28] There is no question of general importance for certification.

JUDGMENT in IMM-1696-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

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

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Komal Pervez	FOR THE APPLICANT
Kevin Doyle	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Zarei Law Professional Corporation Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT