

Federal Court



Cour fédérale

Date: 20190321

Docket: IMM-4572-18

Citation: 2019 FC 353

[CERTIFIED ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Montréal, Quebec, March 21, 2019

PRESENT: Mr. Justice Grammond

BETWEEN:

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Applicant

and

NAZAR NAJARIAN

Respondent

JUDGMENT AND REASONS

[1] The Minister is seeking judicial review of the decision of the Immigration Appeal Division [IAD] granting Mr. Najarian's application on humanitarian and compassionate grounds [H&C]. I allow the Minister's application because the decision is not based on a reasonable analysis of the evidence.

[2] Mr. Najarian, a citizen of Lebanon who obtained permanent residence in Canada in 2009, became inadmissible for failing to comply with the requirement to reside in Canada under section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. Mr. Najarian asked the IAD to review the decision and, in the event that the IAD decided against him, asked it to waive this requirement on humanitarian and compassionate grounds.

[3] The IAD concluded that Mr. Najarian was not present in Canada for a minimum of 730 days during the relevant five-year period. However, the IAD found it appropriate to grant an H&C exemption.

[4] The Minister argues that the IAD's decision is unreasonable because it would be contrary to the evidence indicating that Mr. Najarian tried to simulate his presence in Canada and made false statements in this regard. It follows, according to the Minister, that the IAD should have given considerable negative weight to this factor.

[5] I agree with the Minister that the decision is not based on a reasonable analysis of the evidence. Since I am referring the case back to the IAD for reconsideration, I will say as little as possible. I do not intend to comment on the questions of fact that are at the heart of the issue. I intend to preserve the decision-making freedom of the IAD member who will hear the case.

[6] The case law of this Court establishes that making false statements or participating in a simulated residence scheme are negative elements that the IAD must take into account in assessing the H&C factors: *Canada (Citizenship and Immigration) v Liu*, 2016 FC 460 at

paragraph 29; *Fouda v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1176 at paragraph 54.

[7] At the hearing before the IAD, the Minister presented extensive evidence to demonstrate that Mr. Najarian tried to simulate his presence in Canada. The IAD dismissed this evidence for two reasons: no criminal charges were laid against Mr. Najarian following investigations involving a consultant who provided services to him, and this consultant provided only accounting and tax services to Mr. Najarian.

[8] However, the fact that no charges have been laid does not mean that Mr. Najarian did not try to simulate his presence in Canada. In this regard, it should be recalled that the burden of proof is not the same in civil and criminal matters. In addition, the IAD does not seem to have understood that the preparation of false tax returns is a central feature of schemes to simulate presence.

[9] It is impossible for me to say whether the IAD would have reached the same conclusions, had it given due consideration to the evidence. I must therefore send the case back for a new hearing.

[10] The application for judicial review is therefore allowed, and the matter is returned to the IAD for reconsideration.

[11] No question of general importance is certified.

JUDGMENT in IMM-4572-18

THE COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The case is returned to the IAD for reconsideration;
3. No question of general importance is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4572-18

STYLE OF CAUSE: THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS v NAZAR
NAJARIAN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 21, 2019

JUDGMENT AND REASONS: GRAMMOND J.

DATED: MARCH 21, 2019

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