

Federal Court



Cour fédérale

**Date: 20191105**

**Docket: IMM-2070-19**

**Citation: 2019 FC 1383**

**Montréal Quebec, November 5<sup>th</sup>, 2019**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**MAHMOOD EL NOURI**

**Applicant**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] Mr. Mahmood El Nouri seeks the judicial review of a March 12, 2019 decision by the Immigration Appeal Division [IAD], which determined that there were not sufficient humanitarian and compassionate considerations to allow the appeal and thus maintained the departure order issued against him by the Minister's delegate on February 27, 2017.

[2] For reasons set out below, this judicial review will be dismissed.

## II. CONTEXT

[3] In 1992, Mr. El Nouri, Lebanese citizen, secured Canadian Permanent Resident status the first time, as a dependant on his father's application. However, the family chose not to stay in Canada, and lost their status. On July 5, 2007, Mr. El Nouri secured Canadian permanent residence status a second time, again as a dependant of his father. Between 2007 and 2012, Mr. El Nouri was physically present in Canada for the minimum of 730 days out of the 5-year reference period, but he never established himself in Canada, having testified before the IAD that he moved in Dubai to work in 2006.

[4] On February 3, 2017, Mr. El Nouri requested admission to Canada, was interviewed at the port of entry, and confirmed that he had been in Canada for some 178 days during the five-year reference period spanning from February 3, 2012 to February 3, 2017. This is considerably short of the minimum 730 days required in Section 28 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [The Act]. Mr. El Nouri signed a Form outlining humanitarian and compassionate reasons and confirmed, *inter alia*, that he did not remain in Canada during the reference period because of difficulties in finding employment due to a lack of Canadian experience, that he had been preparing to establish a business in Canada, and that he had never worked in Canada. A departure order was issued against Mr. El Nouri for failure to fulfill his statutory residency obligations.

[5] In 2017, after the departure order was issued, Mr. El Nouri remained in Canada and started to work.

### III. IAD DECISION

[6] Before the IAD, Mr. El Nouri did not contest the legality of the departure order nor the fact that he had failed to meet the statutory residency requirements stated at section 28 of the Act. He submitted that the IAD should exercise its discretion under paragraph 67(1)(c) of the Act and that, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warranted special relief in light of all the circumstances of the case.

[7] In support of his appeal, Mr. El Nouri filed: (1) confirmation of a completed Hearing Needs form, confirming his plan to call a number of witnesses; (2) his Loss of Permanent Residency – Humanitarian and compassionate reasons; (3) a copy of his Québec health insurance and Canadian permanent residence cards; (4) copies of the Canadian passports of some of his family members; (5) a signed amendment to a lease that added him as lessee; (6) his CRA tax return for 2017; (7) his Revenu Québec Tax return for 2017; (8) his 2018 payslips; (9) a business review; (10) a second business review; and (11) product updates, including a letter from the Bay.

[8] Mr. El Nouri testified at the hearing, and confirmed that he grew up in Saudi Arabia and, in 2006, moved to Dubai to work where he found better opportunities and could make much more money. He also indicated that, as the eldest son of the family, he had to support his family.

[9] The IAD, in reaching its conclusion, outlined a non-exhaustive list of factors and considered three in particular: (1) time spent in Canada, establishment, reasons for leaving and efforts to come back to Canada; (2) ties with the family in Canada; and (3) difficulties and hardship if removed.

[10] The IAD noted that Mr. El Nouri had a good beginning of an establishment, but concluded that he had left Canada for personal choices. The IAD did not accept Mr. El Nouri's argument that he was waiting for the right moment to return to Canada and fully establish himself in Canada, as ten years had already passed since he obtained permanent resident status. The IAD recognised the possibility that Mr. El Nouri might have been involved in the family business during his time away, as he has been involved since his return, but concluded that he had failed to show how his presence in Dubai was necessary to support his family and that there were no alternatives. These aspects detrimentally impacted his appeal before the IAD.

[11] The IAD then noted that Mr. El Nouri had spent most of his adult life separated from his family and that his ties to Canada through his family, although positive, remained insufficient to tip the scale in his favour.

[12] Finally, the IAD noted that his recent establishment were positive factors but carried less weight as they took form after the issuance of the departure order weight, and that the difficulty Mr. El Nouri would suffer as a result of having to leave Canada were insufficient to warrant special relief.

[13] The IAD thus dismissed Mr. El Nouri's appeal concluding that he had failed to establish sufficiently important humanitarian and compassionate considerations that would overcome the significant breach of his residency obligations.

#### IV. POSITION OF THE PARTIES

[14] In the affidavit he filed before this Court, Mr. El Nouri testified namely that he had not worked or lived in Dubai since 2011, and he conveyed details of his work for the family business.

[15] Mr. El Nouri submits that the decision is unreasonable because (1) the IAD failed to consider a principle of natural justice and procedural fairness in that it failed to consider and give enough weight to the cultural norms and values of a Lebanese Muslim family wherein the eldest son bears the responsibility for carrying on and furthering a family business for the financial good of all family members; (2) the IAD failed to give appropriate weight to the fact that he tried to establish himself in Canada progressively, before the issuance of the departure order on February 3, 2017, and that he has become fully established since February 3, 2017; and (3) the

IAD was mistaken about his whereabouts when he was outside of Canada and also about the purpose of his travel to the Middle East since he became a permanent resident.

[16] Mr. El Nouri raises the fact that he was not represented by counsel at the hearing, which caused him prejudice in outlining history.

[17] The Minister responds that the Court shall only intervene if the decision does not fall within the range of possible, acceptable outcomes which are defensible in respect to the facts and law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

[18] The Minister argues that the IAD considered all the factors and that its findings were open to the IAD given the evidence that was adduced, and given Mr. El Nouri's testimony at the hearing.

[19] The Minister adds that the IAD considered and addressed the evidence and that Mr. El Nouri's disagreement with the reasons does not make them unreasonable.

[20] Finally, the Minister submits that Mr. El Nouri cannot argue about procedural fairness simply because he chose to be unrepresented. The Minister also adds that that an H & C application is not designed to eliminate all hardship.

## V. DISCUSSION

[21] Both parties agree that the standard of review applicable in this case is reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*]). The tasks of the Court centre on inquiring about “the existence of justification, transparency and intelligibility within the decision-making process” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). The Court is also concerned about whether the decision falls “within a range of possible, acceptable outcomes which are defensible in respect of the fact and law” (*Dunsmuir* at para 47). The question, therefore, is not whether the Court would have rendered the same decision, but whether the conclusion reached by the IAD is sustained by the record.

[22] I must point out that the affidavit Mr. El Nouri filed before this Court contains new evidence that, in some regards contradicts his prior testimony, and in other, was not before the IAD. The Court cannot consider documents or information that were not before the IAD, save for some special circumstances that are not present in this case.

[23] Before the IAD, Mr. El Nouri unequivocally stated that he moved to Dubai in 2006 to work, that the work opportunities there were much better because the city is, a hub like “New York”, and that he could work for multinationals and make tax-free dollars. He did refer to the support he provided to his father and to his family as the eldest son, but provided no details as to why this support had to be provided from Dubai rather than from Canada, and provided no information on the nature and extent of his support, nor of his work for the family company.

Finally, Mr. El Nouri did not adduce any evidence before the IAD attesting that he tried to establish himself progressively before 2017.

[24] In relation to the evidence that was before the IAD, I am convinced its decision is reasonable as it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[25] Finally, I agree with the statement in *Kleckner v Canada (Attorney General)*, 2016 FC 1206 at para 26 that “the rule of law does not require the assistance of, or the representation by, legal counsel even where rights and obligations are at stake.” Similar to the case in *Balasingam v Canada (Citizenship and Immigration)*, 2012 FC 1368 at para 51. I find that “there is nothing before me to suggest that the Applicant was not able to present his best case to the IAD. And even if he now thinks that legal representation might have assisted to make a better case, his choice was freely made, and he cannot now say that it led to procedural unfairness.”



**JUDGMENT in IMM-2070-19**

**THIS COURT'S JUDGMENT is that:**

- 1) The Application for judicial review is dismissed;
- 2) No question is certified.

"Martine St-Louis"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2070-19

**STYLE OF CAUSE:** MAHMOOD EL NOURI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** MONTRÉAL, QUÉBEC

**DATE OF HEARING:** OCTOBER 31, 2019

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** NOVEMBER 5, 2019

**APPEARANCES:**

Barbara J. Leiter

FOR THE APPLICANT

Edith Savard

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Leiter Rahme Avocats Inc.  
Montréal, Québec

FOR THE APPLICANT

Attorney General of Canada  
Montréal (Québec)

FOR THE RESPONDENT