Federal Court  Cour fédérale

Date: 20200819

Docket: IMM-6077-19

Citation: 2020 FC 836

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, August 19, 2020

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SOFIANE HADJADJ and CHAHINEZ AOUNI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board.

[2] In its decision, the IAD dismissed the appeal against a decision of an immigration officer, who determined that the applicants were inadmissible to Canada on the basis that they had failed to meet the residency obligation for permanent residents set out in section 28 of the IRPA.

[3] After reading and considering the record as a whole, the Court finds that the applicants have failed to oppose the inadmissibility order following their failure to comply with the length of residence required to meet the conditions of stay.

[4] The applicants argued against the IAD's finding of a lack of humanitarian and compassionate [H&C] considerations. The IAD has reasonably demonstrated, based on the recent judgment of the Supreme Court of Canada (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65), that the H&C factors were not significant enough to find that special relief should be granted to the applicants.

[5] Permanent residence (to establish that a person is a resident) requires residence in Canada for 730 days in each five-year period, pursuant to section 28 of the Act.

[6] In addition, according to section 28, without this specified 730-day residency period, it requires “a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination”.

[7] If the residency obligation has not been met and without an H&C finding, a removal order may be issued against persons who are inadmissible to Canada under section 41 of IRPA.

[8] The decision of the IAD, to which the applicants appealed, was reasonable in light of the statutory provisions and the Supreme Court's jurisprudence (see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 58 and 62).

[9] The applicants were in Canada for 341 and 366 days respectively in the five-year period prior to the IAD's reasons, despite the need to demonstrate that they were present in Canada for at least 730 of the 1,826 days for the purposes of the finding against them.

[10] The applicants returned to Algeria in July 2011 with their children. The children attended school in Algeria, where the male applicant practised medicine from April 2012 to December 2015.

[11] Also, while in Canada, the female applicant did not establish herself in a significant way in accordance with the objectives of the Act. The IAD's remarks in this regard, based on the evidence, demonstrate that its finding was reasonable.

[12] The Court notes that the male applicant declared bankruptcy in 2011 as a result of the non-payment of accumulated debts.

[13] In addition, the applicants received child tax benefits without being entitled to receive them. Thus, for all of the reasons listed, the applicants' degree of establishment in Canada was low.

[14] The interests of the children were appropriately weighed according to the relevant case law (see *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817). The IAD took into consideration the ages of the three Canadian children (two minors and one adult) and their backgrounds, bearing in mind that the family is very close-knit.

[15] Also, the criteria of *Canada (Citizenship and Immigration) v Kaur Deol*, 2009 FC 990, were considered by the Court, which has noted that the IAD gave reasonable consideration to the applicants' past life, lived in their country of origin.

[16] The credibility of the applicants was lacking, even after the applicants admitted their guilt, pleaded guilty and were convicted on criminal charges of misrepresentation.

[17] The Court notes that the applicants were not credible with respect to their previous travel documents or even copies of those documents. This is an important factor despite the fact that the applicants' remorse was taken into account by the IAD.

[18] The IAD had a duty to consider factors in its assessment of H&C considerations. This was done by the IAD in a reasonable manner (see, regarding findings of the applicants'

admissions, *Canada (Citizenship and Immigration) v Liu*, 2016 FC 460, and also *Canada (Public Safety and Emergency Preparedness) v Abdallah*, 2013 FC 1053).

[19] Without H&C grounds, based on the need for special relief, the right of appeal on its own cannot provide access to a stay of removal. The Court notes that the IAD, in its decision at paragraphs 18–23, recognized the challenges faced by the applicants (see also paras 37 and 38 of the IAD decision).

[20] There are no considerations that would warrant a stay under subsection 68(1) of the IRPA.

[21] For all these reasons, the Court finds that the IAD made a decision that was reasonable in its entirety. The Court therefore dismisses the application for judicial review.

JUDGMENT in IMM-6077-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. There is no question of importance to certify. The style of cause has been amended to correct the given name of the applicant, CHAHINEZ AOUNI.

"Michel M.J. Shore"
Judge

Certified true translation
This 25th day of August 2020

Margarita Gorbounova, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6077-19
STYLE OF CAUSE:	SOFIANE HADJADJ ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MATTER HEARD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO, AND MONTRÉAL, QUEBEC
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