Federal Court  Cour fédérale

Date: 20220211

Docket: IMM-917-21

Citation: 2022 FC 185

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 11, 2022

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

PEDRO ANTONIO ALVAREZ

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Pedro Antonio Alvarez, is a permanent resident of Canada and a citizen of El Salvador. He is seeking judicial review of a decision rendered on January 25, 2021, by a member of the Immigration Division [ID] of the Immigration and Refugee Board of Canada [the Decision], in which the ID issued a deportation order against him. The Decision followed an

investigation conducted by the Canadian immigration authorities pursuant to subsection 44(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] with respect to sexual assault complaints filed against Mr. Alvarez in the United States in 2005 by two alleged victims who were minors. In the Decision, the ID determined that Mr. Alvarez was doubly inadmissible to Canada for serious criminality within the meaning of paragraph 36(1)(c) of the IRPA. More specifically, the ID determined, on a balance of probabilities, that Mr. Alvarez committed two offences outside Canada that, if committed in Canada, would constitute an offence punishable by a maximum term of imprisonment of at least 10 years.

[2] Mr. Alvarez vigorously denies having perpetrated the sexual assaults of which he is accused by the complainants. Indeed, he claims to have been falsely accused by the two complainants in 2005. In the application for judicial review in which he challenges the ID's Decision, Mr. Alvarez argues that the Decision is unreasonable because it is not supported by the evidence that was before the ID, and it did not take into account the many inconsistencies in the complainants' statements. He also contends that the ID breached the rules of procedural fairness by approaching his file with bias and a closed mind. Mr. Alvarez therefore asks the Court to set aside the Decision and return the matter to the ID so that a different member may conduct an investigation and make a new evaluation of his case in accordance with the Court's reasons.

[3] Having considered the evidence before the ID and the applicable law, I can find no basis for overturning the ID's Decision. In its extensive, detailed reasons spanning more than 110 paragraphs, the ID clearly explained, with reference to evidence submitted by the Minister of Public Safety and Emergency Preparedness [the Minister] and Mr. Alvarez's testimony, its

finding of serious criminality with respect to Mr. Alvarez. The Decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the member. Furthermore, in all respects, the member met the procedural fairness requirements in dealing with Mr. Alvarez's application and did not exhibit any reprehensible form of bias. Therefore, I must dismiss Mr. Alvarez's application for judicial review.

II. Background

A. *Facts*

[4] Mr. Alvarez was born on April 19, 1984, in El Salvador. He has been a permanent resident of Canada since January 2011; he currently lives in the city of Granby, Quebec, and is married with five children.

[5] From June 2004 to January 2005, Mr. Alvarez resided in the State of Texas in the United States. In February 2005, for reasons independent of the sexual assault complaints filed against him, Mr. Alvarez was deported to El Salvador by the American authorities.

[6] In January and March 2005, two minor girls, J.G. and Y.H., who are cousins, filed complaints to the effect that Mr. Alvarez sexually assaulted them while he was living in Texas. Mr. Alvarez was a friend of members of J.G.'s and Y.H.'s family. On May 11, 2005, while Mr. Alvarez was in El Salvador, the Texan authorities issued two warrants for his arrest in connection with the sexual assault complaints. The allegations and the background relating to the

alleged sexual assaults are compiled within the investigation reports prepared by the Canadian immigration authorities under section 44 of the IRPA.

[7] The first report, completed on February 28, 2020, related to an assault committed against J.G. According to the report, on or about January 16, 2005, Mr. Alvarez (then 20 years old) and J.G. (then 13 years old) found themselves together in a hallway, and then in a bathroom of the home of a member of J.G.'s family. Mr. Alvarez implied that he wished to have sex with J.G., but they were interrupted by a knock at the bathroom door. J.G. stated that Mr. Alvarez had asked her how old she was at their first meeting in December 2004 and that she would have attempted to prevent Mr. Alvarez from having sex with her if nobody had knocked at the bathroom door.

[8] The second report, dated July 17, 2019, related to assaults committee against Y.H. Over a period of several months in 2004, Mr. Alvarez allegedly engaged in acts of a sexual nature with Y.H., then 16 years old, without her consent. According to the report, their first meeting took place in the summer of 2004, during which Mr. Alvarez grabbed Y.H.'s hands to prevent her from freeing herself. Mr. Alvarez and Y.H. continued to engage in sexual activity after that (about five times), but the evidence submitted by the Minister suggests that Y.H. was not a fully consensual partner.

[9] The complaints made by J.G. and Y.H. never resulted in formal charges against Mr. Alvarez, a finding of guilt or a conviction. Similarly, because Mr. Alvarez never returned to

the United States following his deportation, the arrest warrants issued against him were never executed by the American authorities.

[10] Following his deportation to El Salvador, Mr. Alvarez rebuilt his life in Canada. The American authorities informed the Canadian authorities of Mr. Alvarez's presence in Canada and the arrest warrants issued against him. Mr. Alvarez was arrested by the Canada Border Services Agency [CBSA] in July 2019, at his residence in Granby.

B. *The ID's Decision*

[11] In the Decision, the ID had to determine whether, within the meaning of paragraph 36(1)(c) of the IRPA and on a balance of probabilities, Mr. Alvarez had committed an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years. The ID did not have to determine whether Mr. Alvarez would be found guilty of an offence in the foreign jurisdiction; it only had to determine whether an offence had been committed.

[12] The ID began by analyzing the legislative provisions and case law relating to inadmissibility in Canadian law, and then assessed the credibility of Mr. Alvarez (who testified before the member). Furthermore, the ID noted that the Minister had submitted several pieces of evidence in support of his allegations, while Mr. Alvarez had submitted none. In the ID's opinion, two factors undermined Mr. Alvarez's credibility: first, the contact Mr. Alvarez had had with the two girls during the period in question; and second, Mr. Alvarez's knowledge of the American police investigation in early 2005.

[13] Therefore, the ID determined that Mr. Alvarez's credibility was questionable, undermined in particular by implausibilities and contradictions with the evidence in the record. For example, Mr. Alvarez's testimony regarding his connection with J.G. and Y.H. was vague, while the evidence is clear that Mr. Alvarez knew the girls, had met them during the period in question and had visited the homes of their families several times, including at parties. The ID found, on a balance of probabilities, that Mr. Alvarez visited members of both families during the period in question, and thus that he was in contact with the girls.

[14] Mr. Alvarez also claimed never to have heard of the complaints against him prior to his arrest by the CBSA in 2019. He argued that he had never spoken with the Texan police investigator responsible for the case, adding that the latter could not have called him as he did not have a cell phone at the time. Conversely, the investigator stated in his report that he had made several attempts to reach Mr. Alvarez and that he had even spoken to him on February 8, 2005, in the course of his investigation. The ID accepted the police investigator's version, as it was part of a carefully conducted and documented police investigation, and Mr. Alvarez was unable to explain the contradictions between his evidence and the evidence from the police investigation.

[15] Having drawn a negative inference regarding Mr. Alvarez's credibility, the ID went on to analyze J.G.'s assault allegation.

[16] Mr. Alvarez denies having attempted to have sex with J.G. in the bathroom on or about January 16, 2005. Mr. Alvarez submits that J.G. was motivated by vengeance, as she was upset

that he was paying more attention to her cousin, Y.H. The ID was not persuaded by Mr. Alvarez's explanation, finding the detailed chronological description provided by J.G. in her written statements more credible. The ID noted that the contradictions and implausibilities between Mr. Alvarez's testimony and the evidence from the American police investigation appeared to be the result not so much of forgetfulness or a defective memory as of the latter's desire to hide the truth. The ID found, on a balance of probabilities, that the events of January 16, 2005, did indeed occur as reported in the police evidence submitted.

[17] Having determined that there was indeed an attempt to have sex with J.G., the ID considered whether this act constituted a felony in Texas. On the basis of the indictment and the arrest warrant issued against Mr. Alvarez, the ID found, on a balance of probabilities, that this attempt to have sex with a minor girl constituted a felony in Texas.

[18] It therefore remained for the ID to determine whether there existed, in Canadian law, an equivalent to the felony committed in Texas by Mr. Alvarez against J.G., and whether this equivalent was punishable in Canada by a maximum term of imprisonment of at least 10 years. In the United States, the offence of which Mr. Alvarez is accused is considered a case of aggravated sexual assault because it involved a child who was under the age of 14 years at the time. Mr. Alvarez therefore allegedly violated section 22.021(a)(2) of the *Texas Penal Code*. In Canada, the equivalent would be section 151 of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*], the offence of sexual interference with a person under the age of 16 years. This act is an offence punishable by a maximum term of imprisonment of 14 years.

[19] In conducting the criminal equivalency exercise, the ID opted for the third approach developed in *Hill v Canada (Minister of Employment and Immigration)*, [1987] FCJ No 47, 73 NR 315 [*Hill*], which provides that the ID must conduct a documentary review of the statutes and the evidence presented in the case to determine whether they are sufficient to establish that the essential elements of the offence in Canada were proven in the foreign proceedings. The ID concluded that the essential elements of section 151 of the *Criminal Code* were satisfied, and that equivalence therefore existed between the Canadian and American offences. According to the ID, the evidence establishes on a balance of probabilities that Mr. Alvarez, for a sexual purpose, directly touched a part of J.G.'s body while she was under the age of 16 years.

[20] The ID therefore concluded that Mr. Alvarez was inadmissible for serious criminality under paragraph 36(1)(c) of the IRPA because of the sexual assault he committed against J.G. in January 2005.

[21] The ID then analyzed the sexual assault complaint involving Y.H. The ID again noted that Mr. Alvarez's testimony was riddled with contradictions with the evidence submitted by the Minister. In the ID's view, the evidence establishes that Mr. Alvarez did know Y.H. during the summer of 2004—which Mr. Alvarez denies—and that he went to her home several times to engage in sexual activity with her. The ID did not accept Mr. Alvarez's explanation to the effect that Y.H. was also seeking revenge against him. The ID instead concluded, on a balance of probabilities, that the alleged acts did take place. It also determined, based on the evidence, that these acts constitute felonies in Texas.

[22] Again, the next step for the ID was to determine whether there existed in Canadian law an equivalent to the felonies committed by Mr. Alvarez in Texas, and whether this equivalent was punishable by a maximum term of imprisonment of at least 10 years in Canada. In Texas, the felony of which Mr. Alvarez was accused with respect to Y.H. constitutes a sexual assault under section 22.011(a)(2) of the *Texas Penal Code*. In Canada, this act would be considered sexual assault within the meaning of subsection 271(1) of the *Criminal Code*. The ID noted that, at the time, the legal age of consent to sexual activity in Texas was 17 years. In Canada, in 2004, the legal age of consent was only 14 years. In both countries, minor sexual partners must nevertheless consent to sexual activity. In this case, in the ID's view and based on the evidence received, Y.H.'s consent was not voluntary.

[23] In conducting the equivalency exercise between the Canadian and American offences, the ID again opted for the third approach developed in *Hill*, which provides that the ID must conduct a documentary review of the statutes and the evidence presented in the case to establish whether they are sufficient to establish that the essential elements of the offence in Canada were proven in the foreign proceedings. On the basis of the evidence and on a balance of probabilities, the ID is of the view that the acts committed by Mr. Alvarez with Y.H. constituted sexual assault in both countries.

[24] The ID concluded that Mr. Alvarez was also inadmissible for serious criminality under paragraph 36(1)(c) of the IRPA because of the sexual assault that he committed against Y.H.

[25] At the same time, the ID issued a deportation order against Mr. Alvarez.

C. *The standard of review*

[26] It is well established that reasonableness is the standard of review applicable to a determination that somebody is inadmissible to Canada for serious criminality and the establishment by the ID of an equivalency under section 36 of the IRPA (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 946 at para 14; *Randhawa v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 905 at para 19; *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at para 21).

[27] The fact that the applicable standard of review is that of reasonableness has recently been affirmed by the Supreme Court of Canada [SCC] in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In that decision, the majority established a revised framework for determining the standard of review applicable to the merits of administrative decisions, declaring that there was a presumption that reasonableness is the applicable standard for such decisions, unless the legislator has expressed a different intent or the rule of law requires a different standard (*Vavilov* at paras 10, 17). I am satisfied that neither of these two exceptions applies in the present case, and that there is no basis for derogating from the presumption that reasonableness is the standard of review applicable to the Decision in this case.

[28] Regarding the actual content of the reasonableness standard, the Vavilov framework does not represent a marked departure from the Supreme Court's previous approach, as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], and its progeny. This was based on the "hallmarks of reasonableness": justifiability, transparency, and intelligibility (*Vavilov* at

para 99). The reviewing court must consider "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome", to determine whether the decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 83, 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at paras 2, 31).

[29] The revised framework in *Vavilov* requires the reviewing court to take a "reasons first" approach to judicial review (*Canada Post* at para 26). Where a decision maker has provided reasons, the reviewing court must begin its inquiry into the reasonableness of the decision "by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion" (*Vavilov* at para 84). The reasons must be read holistically and contextually in light of the record as a whole and with due sensitivity to the administrative regime in which they were given (*Vavilov* at paras 91–94, 97). However, "it is not enough for the outcome of a decision to be *justifiable* . . . the decision must also be *justified*" [emphasis in the original] (*Vavilov*, at para 86).

[30] Before a decision can be set aside on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). An assessment of the reasonableness of a decision must be robust, but it must remain sensitive to and respectful of the administrative decision maker (*Vavilov* at paras 12–13). Reasonableness review is anchored in the principle of judicial restraint and in a respect for the distinct role and specialized knowledge of administrative decision makers

(*Vavilov* at paras 13, 75, 93). In other words, the approach to be followed by the reviewing court is one of deference, especially with respect to findings of fact and the weighing of evidence. Absent exceptional circumstances, the reviewing court will not interfere with an administrative decision maker's factual findings (*Vavilov* at paras 125–126).

[31] Turning to the issues of procedural fairness (which includes apprehension of bias), the approach to be taken has not changed following *Vavilov* (*Vavilov* at para 23). It has typically been held that correctness is the applicable standard of review for determining whether a decision maker has complied with the duty of procedural fairness and the principles of fundamental justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[32] However, the Federal Court of Appeal has affirmed in several decisions that questions of procedural fairness are not truly decided according to any particular standard of review. Rather, it is a legal question to be answered by the reviewing court, and the court must be satisfied that the procedure was fair having regard to all of the circumstances (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR] at para 54). The Court must, among other things, take into account the five contextual factors making up the non-exhaustive list set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] (*Vavilov* at para 77).

[33] Therefore, the ultimate question raised when procedural fairness is the object of an application for judicial review and breaches of fundamental justice or bias are alleged is whether, taking into account the particular context and circumstances at issue, the process followed by the administrative decision maker was fair and offered the affected parties a right to be heard as well as a full and fair opportunity to know and respond to the case against them (*CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54).

III. Analysis

A. *The ID has not committed reviewable errors in its analysis of the evidence*

[34] First, Mr. Alvarez argues that the Decision is unreasonable because it is unsupported by the evidence that was before the ID and that the member ignored the many inconsistencies in the statements of the two complainants. Mr. Alvarez is not challenging the way in which the ID assessed the equivalency of the Canadian and Texan offences. Instead, he is challenging the ID's weighing of the evidence submitted by the Minister. Mr. Alvarez submits that no objective evidence exists of the sexual assaults he is alleged to have committed. In his view, the only factors relied on by the ID to satisfy itself, on a balance of probabilities, that he indeed committed the sexual assaults are the statements of J.G. and Y.H., their relatives and the investigator in charge of the file. Mr. Alvarez submits that the ID merely disregarded his testimony, without carefully questioning the truth and consistency of the statements entered into evidence by the Minister. According to Mr. Alvarez, the member failed to comb through the written evidence submitted by the Minister and raise the many contradictions present in the statements of the two complainants and their family members in particular.

[35] Given the test that the ID had to apply, I am not persuaded by Mr. Alvarez's claims.

[36] It is useful, at the outset, to reproduce the relevant provisions of the IRPA. These are paragraphs 36(1)(c) and 36(3)(d) of the Act. They read as follows:

Serious criminality	**Grande criminalité**
36(1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36 (1)** Emportent interdiction de territoire pour grande criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	**a)** être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;
(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or	**b)** être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.	**c)** commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.
. . .	. . .
Application	**Application**

(3) The following provisions govern subsections (1) and (2):

(3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2) :

(a) an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily;

a) l'infraction punissable par mise en accusation ou par procédure sommaire est assimilée à l'infraction punissable par mise en accusation, indépendamment du mode de poursuite effectivement retenu;

(b) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a record suspension has been ordered and has not been revoked or ceased to have effect under the Criminal Records Act, or in respect of which there has been a final determination of an acquittal;

b) la déclaration de culpabilité n'emporte pas interdiction de territoire en cas de verdict d'acquittement rendu en dernier ressort ou en cas de suspension du casier — sauf cas de révocation ou de nullité — au titre de la Loi sur le casier judiciaire;

(c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;

c) les faits visés aux alinéas (1)b) ou c) et (2)b) ou c) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées;

(d) a determination of whether a permanent resident has committed an act described in paragraph (1)(c) must be based on a balance of probabilities; and

d) la preuve du fait visé à l'alinéa (1)c) est, s'agissant du résident permanent, fondée sur la prépondérance des probabilités;

. . .

. . .

[37] Paragraph 36(1)(c) therefore applies to situations in which, even in the absence of a conviction, a person has committed an act that constitutes an offence covered by the provision. The object of the analysis required by this provision is not a conviction outside Canada or even a charge (as is the case for paragraphs 36(1)(a) and (b)), but rather the commission of an act. As noted by the member in the Decision, paragraph 36(1)(c) has two requirements. First, the alleged act must be "an offence" in the place where it was committed. Second, the act must constitute an offence that, if it were committed in Canada, would be punishable by a maximum term of imprisonment of at least 10 years. And, according to paragraph 36(3)(d), a finding of inadmissibility for serious criminality under paragraph 36(1)(c), in the case of a permanent resident, requires the determination of whether the permanent resident has committed an act described in paragraph 1(c) to be based on a balance of probabilities. The parties are not challenging the application of the balance of probabilities standard in this case, so the ID had to determine whether Mr. Alvarez had sexually assaulted a child under the age of 14 years, J.G., and a child under the age of 17 years, Y.H.

[38] The inquiry involves a determination of the equivalency of the two offences. The essential elements of the offences must be compared in order to determine whether they correspond. The balance or probabilities standard requires that the evidence be clear, convincing and cogent. However, there is no objective test for determining whether evidence is clear, convincing and cogent; the trier of fact must decide this based on the circumstances of the case, having scrutinized the evidence with care (*FH v McDougall*, 2008 SCC 53 at paras 45–46).

[39] Having reviewed the Decision, I am of the view that this is what the member did in her Decision. In a comprehensive set of reasons, the member provided a rigorous and detailed analysis of Mr. Alvarez's testimony, which she herself heard and saw. She then assessed the testimony in the context of the documentary evidence submitted to her by the Minister, which was essentially drawn from the police investigation conducted by the American authorities. The member noted, among other things, the fact that Mr. Alvarez denied having communicated with the police investigator, when the latter stated the contrary in his report and notes. She also observed several contradictions between the testimony of Mr. Alvarez, who minimized the frequency of his encounters with the girls, and the documentary evidence demonstrating relations with Y.H. dating back to March 2004. The member also felt that Mr. Alvarez had not been very candid in his description of his relationship with Y.H.'s father and his social contacts with the families of J.G. and Y.H. In light of the evidence analyzed, the member determined that Mr. Alvarez had committed the acts identified in the arrest warrants issued by the Texas police, that these acts constituted offences, and that these were equivalent to offences in Canada. The member performed a rigorous criminal equivalency analysis. I therefore find that it was not unreasonable for the member to prefer the version of the facts presented by the documentary evidence over that presented by Mr. Alvarez's testimony, and that her analysis of the offences was justified, transparent and intelligible.

[40] I also note, as did the ID in its decision, that Mr. Alvarez did not submit any evidence, and that his position in this case rests entirely on his own testimony before the ID. Stacked up against this testimony, the ID had before her the police reports, the investigator's notes and statements made by the victims and others more contemporaneously with the events, and these

multiple pieces of evidence submitted by the Minister often contradicted Mr. Alvarez's testimony. For the reasons set out in her Decision, the ID gave more weight to the documentary evidence and the statements it contained, and she found that Mr. Alvarez lacked credibility because of the many contradictions and instances of vagueness in his own testimony.

[41] In his written and oral submissions, Mr. Alvarez is in fact asking this Court to reweigh the evidence that was before the ID. Mr. Alvarez devotes much of his submissions to picking through the complainants' statements to demonstrate that they are inconsistent and that they are an insufficient basis for a factual finding, on a balance of probabilities, that he assaulted the two cousins. A fundamental aspect of judicial review in Canadian law is that the reviewing court must refrain from reassessing the evidence and must treat the findings of an administrative decision maker with deference (*Vavilov* at para 125). This is one of the principal differences between a judicial review and an appeal, a distinction that appears to have escaped Mr. Alvarez (*Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 20).

[42] The standard of reasonableness requires the reviewing court to pay "[r]espectful attention to the decision maker's demonstrated expertise" and specialized knowledge, as reflected in their reasons (*Vavilov* at para 93). It is anchored in the principle of judicial restraint. The presumption of reasonableness is "grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at para 33; *Dunsmuir* at paras 48–49). Under a reasonableness review, when a question of mixed fact and law falls squarely within the expertise of a decision maker, the reviewing court's role is

not to impose an approach of its own choosing (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 57). Of course, the deference owed to the administrative decision maker is not without limits, and the Court cannot ignore situations in which a decision maker has rendered a decision that does not appear to be based on the evidence before it (*Vavilov* at paras 125–126). This is clearly not the case here.

[43] In the end, Mr. Alvarez's submissions simply express his disagreement with the ID's Decision and assessment of the evidence. On judicial review, the role of the Court is not to reweigh the evidence on the record.

[44] That said, I am well aware that the ID's decision has a significant impact on Mr. Alvarez, considering that he has been a permanent resident of Canada since 2011 and is the father of a family of five children living in Quebec. I also realize that the ID's decision may leave Mr. Alvarez with the impression that he is at risk of being deported from Canada for criminal allegations and accusations that are more than 15 years old, which did not result in convictions and were not proven in a court of justice. However, I must point out that paragraph 36(1)(c) of the IRPA is clear: it stipulates that the simple commission of certain criminal acts can result in inadmissibility for serious criminality, if the commission of such acts is established on a balance of probabilities before the ID, regardless of whether there has been a conviction or even a charge. This may seem unfair to Mr. Alvarez, but that is what Parliament has expressly stipulated in the IRPA.

[45] In Mr. Alvarez's case, the ID's Decision is justified by extensive and detailed reasons, and it adequately explains why the member found, on a balance of probabilities, that Mr. Alvarez had committed the felonies of which he was accused. I want to emphasize that the member did not take her role lightly, far from it, and that her reasons show that she performed a rigorous and detailed analysis of the evidence before her that was fully compliant with the Act and the applicable case law. In this context, and given the standard of reasonableness that must be applied by the Court in this application for judicial review, there is no basis for this Court's intervention in the ID's Decision.

B. ***The bias issue***

[46] On the issue of bias, the arguments put forward by Mr. Alvarez seem to be limited to a restatement of his arguments criticizing the ID for having poorly assessed the evidence on the record and his credibility. In short, Mr. Alvarez is accusing the member of bias, since he is of the view that she closed her eyes to the defects in the complainants' evidence and drew unfounded inference from it. According to Mr. Alvarez, the negative findings against him indicate that the member was predisposed to a finding of inadmissibility for serious criminality and deportation from Canada, and that she was not at all open to being persuaded otherwise.

[47] I do not find Mr. Alvarez's submissions regarding bias convincing.

[48] The test for reasonable apprehension of bias is well established, and the threshold is high. This test was articulated in *Baker*, in which the SCC reiterated that, to determine whether a reasonable apprehension of bias exists, one must ask "what would an informed person, viewing

the matter realistically and practically—and having thought the matter through—conclude", and whether that person would think that it is more likely than not that the decision maker, "whether consciously or unconsciously, would not decide fairly" (*Baker* at para 46). As the Supreme Court also stated in *Committee for Justice & Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369 [*Committee for Justice*], "the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information" (*Committee for Justice* at p 394). A reasonable apprehension of bias therefore cannot rest "on mere suspicion, pure conjecture, insinuations or mere impressions of an applicant or his counsel [and] must be supported by material evidence demonstrating conduct that derogates from the standard" (*Arthur v Canada (Canada (Attorney General)*, 2001 FCA 223 at para 8).

[49] An allegation of bias can therefore not be raised lightly and requires the support of material evidence. Here, I can identify none. Naturally, I understand that Mr. Alvarez may strongly disagree with the Decision rendered by the ID, but a disagreement about the weighing of the evidence is an insufficient basis for an accusation of bias. In addition, Mr. Alvarez's broad allegations of bias against the member simply do not stand up to analysis. On the contrary, the ID's reasons demonstrate the open-mindedness of the member, who asked Mr. Alvarez many questions during his testimony, provided him with every opportunity to explain his version of the facts and did not hesitate to call in the interpreter when she was not sure that Mr. Alvarez had been able to express himself as he wished. Allegations of bias cannot rest on mere impressions of applicants or their counsel; they must be supported by material evidence demonstrating conduct

that derogates from the standard. Mr. Alvarez did not submit any evidence of this type with respect to the approach taken by the member and her analyses in his file.

[50] An allegation of bias is serious, and this Court's threshold for such a finding is high (*Shahein v Canada (Citizenship and Immigration)*, 2015 FC 987 at para 21). Indeed, "an allegation of reasonable apprehension of bias calls into question not simply the personal integrity of the judge, but the integrity of the entire administration of justice" (*R v S (RD)*, [1997] 3 SCR 484 at para 113). In the case of Mr. Alvarez, I simply do not see any sign of bias in the member's behaviour or comments.

IV. Conclusion

[51] For the reasons stated above, Mr. Alvarez's application for judicial review is dismissed. On a reasonableness standard, it is sufficient that the reasons detailed in the Decision demonstrate that the conclusion is based on an internally coherent and rational chain of analysis and that it is justified in relation to the facts and law that constrain the decision maker. That is the case here. Furthermore, in all respects, the ID met the procedural fairness requirements in dealing with Mr. Alvarez's application and did not exhibit any reprehensible form of bias. Therefore, the Decision is not vitiated by any error that would warrant the Court's intervention.

[52] The parties have not proposed a question of general importance for me to certify. I agree that there is none in this case.

JUDGMENT in IMM-917-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.

2. No question of general importance is certified.

"Denis Gascon"
Judge

Certified true translation
Daniela Guglietta

FEDERAL COURT

SOLICITORS OF RECORD

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