Federal Court  Cour fédérale

Date: 20220310

Docket: IMM-3834-20

Citation: 2022 FC 329

Ottawa, Ontario, March 10, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ZHENG RONG YANG

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Yang, seeks judicial review of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board, dated August 4, 2020, dismissing his appeal of an exclusion order rendered by the Immigration Division [ID] on September 5, 2019. The Immigration Division had found Mr. Yang to be inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the application is dismissed. The decision of the IAD, which found that there were insufficient humanitarian and compassionate grounds to grant discretionary relief against the finding of inadmissibility, bears all the hallmarks of a reasonable decision. The IAD's decision is comprehensive and reflects a thoughtful consideration of all the relevant factors. The IAD's reasons for finding that there were insufficient grounds to grant discretionary relief apply to both whether the appeal should be allowed and whether a stay of removal should be granted.

I. Background

[3] Mr. Yang, a Chinese citizen, landed in Canada along with his wife and eldest son as permanent residents in June 2005. Mr. Yang's second son was born in Canada a few months after their arrival. The family returned to China in November 2005 and resided there until 2013.

[4] In August 2008, the family retained the services of an unlicensed immigration consultant, Xun (Sunny) Wang, and his company, New Can Consultants Ltd. [New Can], for the purpose of the renewal of their permanent residence [PR] cards. Their PR card renewal applications are dated January 28, 2010, and were submitted around that time.

[5] Mr. Yang and his family subsequently came to the attention of the Canada Border Services Agency [CBSA] in the course of its investigation of large-scale immigration and tax fraud committed by Xun Wang and New Can. Documents were seized from New Can that revealed misrepresentations made by Mr. Yang and his family on their 2010 PR card applications, including understating days of absence from Canada, declaring that he worked for

Young Dynasty Enterprises Ltd., [Young Dynasty], a Canadian company, and using the same addresses as other New Can clients.

A. *The Section 44 Report on Inadmissibility*

[6] A CBSA officer prepared a report pursuant to subsection 44(1) of the Act and referred the file to the ID for an admissibility hearing. The section 44 report concluded that Mr. Yang had misrepresented a material fact that may have induced an error in the administration of the Act, notably with respect to the residency obligation for permanent residents.

[7] In his response to the section 44 report, Mr. Yang stated that the family experienced difficulty caring for their second son, who was born prematurely, and returned to China in November 2005 to benefit from family support. Mr. Yang explained that they had hoped to return to Canada, but remained in China to care for their ailing parents. They returned to Canada for short visits and ultimately moved back to Canada in 2013.

[8] Mr. Yang recounted that Xun Wang told him he could report Canadian income as an overseas employee of Young Dynasty. Mr. Yang would pay a lump sum of money, which Xun Wang would return to him in the guise of income from a Canadian company. Mr. Yang stated that although he knew Young Dynasty had been set up for immigration purposes, he thought it was a legal means of meeting his residency requirement.

[9] Mr. Yang recounted that unbeknownst to him or his wife, Xun Wang applied to renew their PR cards with information that understated their absences from Canada and inserted stamps

into their passports to support the fabricated dates, rather than applying—as Mr. Yang had anticipated—on the basis of income gained as an overseas employee of a Canadian company. Mr. Yang claims that he signed the PR card renewal application without reviewing it and was unaware of its content.

II. The Immigration Division Decision of September 5, 2019

[10] Mr. Yang and the Minister of Public Safety and Emergency Preparedness [the Minister] submitted an Agreed Statement of Facts to the ID. Mr. Yang and his family admitted that their PR card renewal application understated their absences from Canada and that their passports contained divergent stamps.

[11] The Agreed Statement of Facts also acknowledged the employment scheme with New Can.

[12] The ID found Mr. Yang, his wife and his eldest son to be inadmissible for misrepresentation pursuant to paragraph 40(1)(a) of the Act and issued exclusion orders against them.

III. The Decision of the Immigration Appeal Division under Review

[13] The IAD held a two-day hearing. At the conclusion of the hearing, the parties submitted a joint recommendation proposing that the IAD grant discretionary relief with respect to

Mr. Yang's older son. The IAD agreed and granted the son's appeal at the conclusion of the hearing. Separate reasons were issued.

[14] On August 4, 2020, the IAD issued its decisions regarding Mr. Yang and his wife, Ms. Huang. In separate reasons, the IAD allowed the appeal with respect to Ms. Huang, finding that, although her misrepresentation was serious and she showed little remorse, other factors in her favour (such as the best interests of the children, family and community support, and the hardship she would face if removed) were sufficient by "the slimmest of margins" to warrant discretionary relief.

[15] The IAD's decision with respect to Mr. Yang is set out in some detail given that Mr. Yang argues that the IAD made several errors.

[16] The IAD confirmed the legal validity of the ID's finding that he was inadmissible to Canada due to misrepresentation. The IAD considered Mr. Yang's misrepresentations within the broader scheme of New Can's fraud, and outlined the evidence of misrepresentation found in New Can's records.

[17] The IAD referred to the Agreed Statement of Facts submitted to the ID, which, among other things, acknowledged the scheme with New Can whereby Mr. Yang would give New Can money and New Can would in turn make payments to Mr. Yang in China as employment income from Young Dynasty, a Canadian company. The Agreed Statement of Facts also acknowledged

that rather than relying on the overseas employment on the PR card application, the application understated the family's days of absence from Canada.

[18] The IAD also noted Mr. Yang's testimony at the hearing, which included his acknowledgment of misstating his addresses in Canada, misstating his work history for Young Dynasty, and misstating his absences from Canada, including identifying many of the absences as business trips.

[19] The IAD acknowledged that Mr. Yang testified that he had signed but had not read the family's PR card applications, which included the false information regarding their absences from Canada, and that he only became aware of this when contacted by CBSA.

[20] The IAD noted that paragraph 40(1)(a) applies to both direct and indirect misrepresentation and that the jurisprudence confirms that misrepresentations made by a third party on behalf of an applicant are indirect misrepresentations. The IAD found that Mr. Yang did not fall within the narrow exception with respect to indirect misrepresentation because his testimony and the documentary evidence showed that he was aware of and had participated in misleading immigration officials about his residency.

[21] The IAD concluded that Mr. Yang's own misrepresentation had induced an error in the administration of the Act, given that he was permitted to remain in Canada as a permanent resident (after his return in 2013) based on his declared days of residence in Canada, his Canadian addresses, and his employment history.

[22] The IAD then considered whether discretionary relief—a stay of removal or allowing the appeal—was warranted. The IAD set out the relevant factors as established in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 [the *Ribic* factors], which are considered in determining if discretionary relief should be granted. The IAD structured its decision accordingly.

[23] With respect to the seriousness of the misrepresentation, the IAD found that Mr. Yang's misrepresentation was egregious and weighed heavily against the granting of discretionary relief. The IAD noted Mr. Yang's participation in New Can's large-scale, long-term fraud, which had eroded public confidence in Canada's immigration system.

[24] The IAD rejected Mr. Yang's submission that this type of misrepresentation (understating days of absence from Canada on a PR card application) is not significant as it is not a "core misrepresentation." The IAD noted that the jurisprudence has established that even if the issuance of a PR card is not dependent on meeting the PR residency obligation, it is nonetheless appropriate to consider residency in Canada on a PR card application.

[25] The IAD noted that its role is to determine whether the misrepresentation occurred and whether sufficient considerations exist to grant relief. To do so, the IAD examines the circumstances surrounding the misrepresentation, the nature, gravity and pattern of the misrepresentation, and the impact of the misrepresentation on the administration of the Act. The IAD stated, "A misstatement of days is not a lesser form of misrepresentation. It is either misrepresentation or not." The IAD noted that the issue on the appeal was whether the

misrepresentation was serious and how much weight to attach to this in the context of the humanitarian and compassionate [H&C] considerations.

[26] The IAD found that Mr. Yang was an active participant in the Young Dynasty employment scheme, noting that he signed documents to link himself as an employee of the fraudulent company, he paid significant amounts of money to New Can for this scheme and testified that he was aware that he would not be working for Young Dynasty. In addition, Mr. Yang listed much of his travel outside Canada as business trips. The IAD also found that Mr. Yang's testimony about his knowledge of this misrepresentation was evasive, argumentative and contradictory. The IAD added that Mr. Yang was aware that he would not meet the residency requirements and misstated his employment and his days within Canada.

[27] The IAD further noted that this misrepresentation "was carry [*sic*] through citizenship applications, his wife's crossing of the border and discussions with CBSA, and a series of emails and meetings between the Appellant [and] his wife and New Can employees, to continue the deception, with a clear intent to negatively impact the administration of the IRPA and the responsibilities of PRs to meet their residency requirements."

[28] The IAD found that Mr. Yang's remorse did not weigh in favour of relief. The IAD acknowledged each family member's heartfelt testimony of their regret and anxiety about their uncertain future, but found that Mr. Yang's remorse arose from the consequences of being caught and the consequences of his misrepresentation to his family and himself, rather than from the commission of the misrepresentation itself. The IAD found that Mr. Yang did not

demonstrate an awareness of the depth and egregiousness of his actions and did not indicate any significant remorse for the misrepresentations.

[29] The IAD found that the family's establishment, length of time in Canada, and family and community support favoured granting relief.

[30] The IAD also found that the potential impact on Mr. Yang's family, if he were to be removed from Canada, favoured granting relief. The IAD noted Mr. Yang's and his wife's testimony that their future plans and financial stability would be seriously jeopardized and that their children would suffer significant emotional and other hardship. The IAD acknowledged their testimony about the deterioration in Mr. Yang's mental health since the investigation of the misrepresentation began and accepted that he would likely experience psychological distress if separated from his family.

[31] The IAD found that the hardship of removal on Mr. Yang was not a factor in favour of granting relief. The IAD noted that the family has significant financial resources that would be of assistance should Mr. Yang be removed; the IAD further noted that Mr. Yang would have a place to live and has family in China, including his mother and mother-in-law. In addition, his wife and sons would have the option of returning to China or visiting. The IAD also noted the lack of evidence that Mr. Yang would have difficulty obtaining employment in China.

[32] The IAD found that the best interests of the children [BIOC] favoured granting relief.

[33] Among other considerations, the IAD noted that its decision on all three appeals (of Mr. Yang, his wife, and older son) would especially affect the younger son. The IAD found that he would suffer some hardship if he returned to China, including learning Mandarin and adapting to a new school system. The IAD also noted that as a Canadian citizen, he could choose to return to Canada later.

[34] The IAD acknowledged the hardship of possible family separation and noted the various options for them, given that Mr. Yang could be removed from Canada and the older son and Ms. Huang could remain in Canada or return to China. The IAD noted that the family is loving, caring and supportive of each other, and that their decisions will have an impact on the younger son.

[35] With respect to the older son, the IAD accepted that returning to China would negatively affect his plans to attend university, but since he is 18 years old (and a permanent resident), it would be a matter of personal and family choice whether to remain in Canada.

[36] In conclusion, the IAD found that the factors in favour of granting relief—including the best interests of the children and the degree of establishment—were insufficient to overcome the factors that did not support relief, including the seriousness of the misrepresentation and Mr. Yang's limited remorse. The IAD concluded, "there are insufficient humanitarian and compassionate considerations in support which warrant special relief."

IV. The Applicant's Position

[37] Mr. Yang submits that the IAD's decision is unreasonable and procedurally unfair.

[38] Mr. Yang argues that the IAD made several errors, any one of which would justify granting his application.

[39] First, Mr. Yang takes issue with the IAD's analysis and findings on each relevant factor—in particular, the seriousness of his misrepresentation, his degree of remorse, and the best interests of the children.

[40] With respect to the seriousness of his misrepresentation, Mr. Yang argues, among other things, that the IAD misinterpreted the provisions of the Act and failed to note the distinction between the obligations on a permanent resident as opposed to a foreign national. He submits that a permanent resident, who did not gain entry to Canada due to misrepresentation, should not face the serious consequences of misrepresentation in the context of a renewal of their permanent resident card. He submits that this is a disproportionate outcome. He also submits that a foreign national has a higher duty of candour than a permanent resident.

[41] Second, he argues that the IAD ignored the psychologist's report regarding Mr. Yang's severe depression and anxiety, which is relevant to the IAD's consideration and assessment of the hardship of removal.

[42] Third, he argues that the IAD erred by not explaining how it weighed and balanced the positive and negative factors and how it reached the overall conclusion that special relief was not warranted, given that, in his view, the IAD identified only one negative factor.

[43] Fourth, he argues that the IAD erred by not considering whether a stay of removal should be granted and explaining why it was not, despite his specific request for the IAD to consider this option. He characterizes this as a breach of procedural fairness.

V. The Respondent's Position

[44] The Respondent submits that the IAD considered and weighed all the relevant factors and reasonably concluded that the factors in favour of granting special relief did not overcome those against granting relief, notably the seriousness of the misrepresentation. The Respondent submits that Mr. Yang seeks a reweighing of the factors, which is not the role of the Court.

[45] The Respondent further argues that the IAD considered whether to grant the appeal and whether to grant a stay of removal, noting that both types of special relief require that the IAD find sufficient H&C considerations, and the IAD did not make such a finding.

VI. The Issues

[46] The key issue is whether the IAD's decision is reasonable. This entails consideration of the following issues, as raised by Mr. Yang:

- Whether the IAD's assessment of the seriousness of the misrepresentation is reasonable;

- Whether the IAD's assessment of Mr. Yang's degree of remorse is reasonable;
- Whether the IAD's analysis of the best interests of the children is reasonable;
- Whether the IAD failed to consider the psychological report with respect to Mr. Yang;
- Whether the IAD's overall assessment is reasonable, including whether it failed to explain the ultimate balancing of the various factors weighing for and against relief; and
- Whether the IAD erred by not considering whether to grant a stay of removal and not explaining why it was not granted.

VII. Standard of Review

[47] The standard of review of the discretionary decision of the IAD is reasonableness: *Liu v Canada (Citizenship and Immigration)*, 2019 FC 184 at para 19; *Islam v Canada (Citizenship and Immigration)*, 2018 FC 80 at para 7.

[48] Discretionary decisions are generally owed deference, given the expertise and experience of the decision-maker.

[49] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85, 102, 105–07 [*Vavilov*]). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91). A decision should not be set aside unless it contains "sufficiently serious shortcomings … such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[50] Although Mr. Yang argues that the IAD's alleged failure to address whether a stay of removal should be granted is a breach of procedural fairness, this issue is more appropriately considered in the context of the reasonableness of the decision.

[51] In *Newfoundland and* Labrador *Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, the Supreme Court of Canada established that the inadequacy of the reasons is not a stand-alone ground of judicial review. These principles are adopted in *Vavilov*, which confirms that reasonableness is the presumptive standard of review. As a result, I have considered whether the IAD's consideration of the remedy of a stay is reasonable.

VIII. The Statutory Provisions

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	**a)** directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
66 After considering the appeal of a decision, the Immigration Appeal Division shall	**66** Il est statué sur l'appel comme il suit :
(a) allow the appeal in accordance with section 67;	**a)** il y fait droit conformément à l'article 67;

(b) stay the removal order in accordance with section 68; or
(c) dismiss the appeal in accordance with section 69.

b) il est sursis à la mesure de renvoi conformément à l'article 68;
c) il est rejeté conformément à l'article 69.

67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

(a) the decision appealed is wrong in law or fact or mixed law and fact;
(b) a principle of natural justice has not been observed; or
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

67 (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :

a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;
b) il y a eu manquement à un principe de justice naturelle;
c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

(2) If the Immigration Appeal Division allows the appeal, it shall set aside the original decision and substitute a determination that, in its opinion, should have been made, including the making of a removal order, or refer the matter to the appropriate decision-maker for reconsideration.

(2) La décision attaquée est cassée; y est substituée celle, accompagnée, le cas échéant, d'une mesure de renvoi, qui aurait dû être rendue, ou l'affaire est renvoyée devant l'instance compétente.

68 (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly

68 (1) Il est sursis à la mesure de renvoi sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des

affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

[52] In exercising its discretion under paragraph 67(1)(c) to allow an appeal or under subsection 68(1) to grant a stay of removal based on H&C considerations and in "light of all the circumstances of the case," the IAD must consider the *Ribic* factors. The *Ribic* factors in the context of a misrepresentation include: the seriousness of the misrepresentation; the applicant's remorse; the length of time spent in Canada and the degree to which the applicant is established in Canada; the applicant's family in Canada and the impact on the family that removal would cause; the best interests of a child directly affected by the decision; support available to the applicant in the family and the community; and, the degree of hardship that would be caused to the applicant by removal from Canada (*Canada (Citizenship and Immigration) v Li*, 2017 FC 805 at paras 21–22).

IX. The IAD's Decision Is Reasonable

[53] The IAD's decision bears all the hallmarks of reasonableness. The IAD considered all the relevant facts, did not ignore or misconstrue any evidence or misunderstand the law, considered all the relevant factors with respect to whether discretionary relief should be granted, and balanced the positive against the negative to reach an overall conclusion. The reasons demonstrate that the IAD grappled with the impact of its decision on Mr. Yang and each family member and applied a compassionate lens, yet reasonably concluded that the H&C considerations were not sufficient to overcome Mr. Yang's "egregious" misrepresentation.

[54] Mr. Yang's challenges to the decision amount to microscopically searching for some error in the assessment of all the relevant *Ribic* factors, and to seeking a reweighing of the evidence and a rebalancing of the positive and negative factors. There is no error in the IAD's consideration of the factors and the Court's role is not to reweigh the evidence or the factors.

[55] Mr. Yang's arguments about the interpretation and application of the provisions of the Act that apply to permanent residents overlook that the Act requires all applicants to be truthful and that the integrity of the Act and Canada's immigration system depends on that candour and honesty.

A. *The IAD Reasonably Assessed the Seriousness of the Misrepresentation*

[56] Mr. Yang submits that the IAD erred in basing its findings about the seriousness of his misrepresentation on alleged conduct that he did not concede in the Agreed Statement of Facts submitted to the ID. He argues that the ID's finding of misrepresentation was limited to his admission that the PR card application understated the days of absence from Canada. He notes that he did not contest the finding of misrepresentation on appeal, as it was limited to the understatement of his absences. He argues that the IAD considered additional information that he was not given an opportunity to respond to, such as the use of incorrect addresses on other applications, to find that his misrepresentation was serious.

[57] Mr. Yang has not pointed to any authority to support his contention that in its assessment of the seriousness of a misrepresentation the IAD is restricted to the admissions in Mr. Yang's affidavit or in the Agreed Statement of Facts provided to the ID.

[58] As the Respondent notes, the role of the IAD differs from that of the ID. Mr. Yang's admission of misrepresentation at the ID resulted in the finding that he was inadmissible and the issuance of the exclusion order. The ID did not need to examine the seriousness of the misrepresentation. The role of the IAD is to determine whether, "in light of all the circumstances of the case," sufficient humanitarian and compassionate factors warrant special relief from the finding of inadmissibility. As noted, the determination is guided by the *Ribic* factors, which include consideration of the seriousness of the misrepresentation.

[59] The IAD was entitled to rely on Mr. Yang's testimony as well as all of the documentary evidence regarding Mr. Yang's participation and knowledge of the misrepresentation in assessing its seriousness.

[60] The record before the IAD was extensive. The record included the section 44 inadmissibility report, which is detailed and describes the misrepresentation about the days of absence from Canada as well as the address fraud and the New Can/Young Dynasty employment scheme, noting that Mr. Yang misrepresented his employment status on his application for the PR card and in other documents. The section 44 report also notes that the documentary evidence seized by CBSA includes correspondence between Xun Wang and Mr. Yang showing his complicity in the "scheme to misrepresent." The section 44 report also addresses Mr. Yang's argument that because the family still had two years remaining before they were required to renew their PR cards, they could have met the residency requirement after returning to Canada. The report concludes, after considering H&C submissions, that Mr. Yang and his wife were fully aware that they were misrepresenting material facts relevant to their residency obligations.

[61] Mr. Yang was well aware of the contents of the section 44 report. His suggestion that the IAD should have provided a further opportunity for him to address this evidence, which is part of the record, is without merit.

[62] The Agreed Statement of Facts provided to the ID was also on the record before the IAD. It was not limited to only Mr. Yang's and Ms. Huang's admission that the PR card renewal applications understated their days of absence from Canada. The statement also describes that they hired New Can to renew their PR cards, that their PR cards were not expiring for two years, that New Can advised Mr. Yang that he could create Canadian income based on New Can paying Mr. Yang as an employee in exchange for a fixed sum of money, and that instead of relying on this employment scheme as the basis for the renewal of their PR cards, New Can inserted divergent stamps on their passports without their knowledge. The statement adds that Mr. Yang and Ms. Huang "take responsibility for hiring Mr. Wang and for not knowing Mr. Wang making [*sic*] misrepresentation to CIC through due diligence."

[63] The IAD's findings also rely on Mr. Yang's testimony at the two-day hearing. The IAD noted that his testimony was evasive, argumentative and contradictory, including about his participation in the Young Dynasty employment scheme and his submission that he did not know that his PR card application would be based on misstated absences from Canada instead of the employment scheme.

[64] Mr. Yang argues that the IAD focussed on the large-scale fraud committed by Xun Wang and New Can, which influenced its evaluation of the seriousness of the misrepresentation. He

argues that his indirect misrepresentation through Xun Wang should be considered less blameworthy than a direct misrepresentation. I disagree.

[65] The IAD focussed on Mr. Yang's misrepresentation and reasonably concluded that it was serious despite being facilitated by and committed on the advice of Xun Wang and despite the fact that Mr. Yang did not review the content of his PR card application. The IAD noted that Mr. Yang's circumstances were only a "tiny part of a larger scheme."

[66] Permanent residents must submit correct information in applications to renew their proof of status: *Cao v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 260 at para 17 [*Cao*]. Whether a misrepresentation is deliberate or innocent is only one consideration in assessing its seriousness; however, an intentional or reckless disregard to the false information being provided is reasonably considered to be serious: *Gao v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1238 at para 21 [*Gao*].

[67] Mr. Yang also argues that the IAD misunderstood the distinction between the requirements for a renewal of a PR card, which is simply proof of PR, and the requirements for obtaining the status of permanent residence. Mr. Yang submits that he did not gain his status as a permanent resident due to any misrepresentation. He argues that the IAD failed to address his argument that this misrepresentation was a "non-core misrepresentation," which should have been taken into account in assessing its seriousness, and that removal would be a disproportionate outcome. I disagree.

[68] The IAD did not ignore this argument. The IAD addressed the jurisprudence relied on by Mr. Yang regarding his characterization of a "non-core" misrepresentation (*Khan v Canada (Citizenship and Immigration)*, 2012 FC 1471 [*Khan*]). As the IAD noted, a misrepresentation is a misrepresentation. The IAD's role is to assess the seriousness of the misrepresentation to determine if special relief is warranted. This is what they did.

[69] Mr. Yang again relies on *Khan* in support of his argument that the IAD does not understand the Act and erred by failing to appreciate the distinction between proof of PR status and status as a permanent resident, which was not affected by his misrepresentation. He argues that he could have avoided the consequences of the misrepresentation if he had done nothing—i.e., if he had not sought to renew his PR card two years before its expiry with the assistance of New Can.

[70] In *Khan*, Justice Zinn noted, at para 1, that a PR card "does not create or maintain one's status as a permanent resident—it merely serves as proof of that status," and that a permanent resident remains so even without the PR card. This is not in dispute. Moreover, in the present case, the IAD clearly understood that a PR card application was at issue—not an application for status as a permanent resident.

[71] In *Khan*, Justice Zinn did not suggest that there was a lesser duty to be truthful on a PR card application. Justice Zinn explained the requirements to obtain a PR card, which are set out at section 59 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, and noted that these are distinct from the residency requirements to maintain PR status. Section 59 requires,

among other things, that the applicant comply with sections 56, 57 and 58(4). Section 56 sets out the necessary information to be provided and section 57 specifically states that an applicant must make and sign the application on their own behalf. *Khan* does not establish an excuse for permanent residents from the requirement to submit—on their own behalf—a complete and truthful application to renew their proof of PR status.

[72] Although it should go without saying that truthfulness is required, section 16 of the Act says so and applies to all persons and all applications under the Act; it does not make a distinction between permanent residents and foreign nationals. Section 16 provides:

16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[Emphasis added.]

[73] Mr. Yang also relies on *Canada (Citizenship and Immigration) v Yu*, 2019 FC 1088 at para 11 [*Yu*], to support his argument that the IAD, in assessing the H&C factors, should have considered that his misrepresentation was only with respect to the renewal of his PR card, rather than to obtain status as a permanent resident.

[74] In *Yu*, at para 11, Justice Diner stated:

> [11] The case law establishes that the seriousness of the misrepresentation and whether it had any bearing on the acquisition of status is a relevant H&C factor (*Duquitan v Canada*

> *(Citizenship and Immigration)*, 2015 FC 769, para 10; *Qureshi v Canada (Citizenship and Immigration)*, 2012 FC 238 at paras 19-21).
>
> [Emphasis added.]

[75] Mr. Yang seeks to distil a proposition from *Yu* that is contrary to the established principles in the jurisprudence. Justice Diner's statement in *Yu* does not establish that the seriousness of the misrepresentation is only a relevant factor where it has a bearing on the acquisition of status. Clearly, both would be relevant factors where the misrepresentation was made on an application for status—which reflect the facts in *Yu*.

[76] As noted, Mr. Yang admitted the misrepresentation to the ID and submitted an Agreed Statement of Facts that acknowledged more than just the understatement of days of absence from Canada. But, even if the only misrepresentation relied on by the ID to find Mr. Yang inadmissible is the understatement of days of absence on the PR card application, this is misrepresentation for the purpose of paragraph 40(1)(a) of the Act, notwithstanding that the issuance of a PR card is not itself dependent on meeting the residency obligation: *Geng v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1155 at paras 24–28; *Lin v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 862 at para 15. Moreover, the ID's finding is not the subject of this judicial review.

[77] The IAD's factual findings are entitled to deference: *Bielecki v Canada (Citizenship and Immigration)*, 2008 FC 442 at para 32; *Bains v Canada (Citizenship and Immigration)*, 2018 FC 740 at para 15. The IAD did not err in considering all the evidence before it. Rather, it would

have been an error for the IAD not to consider relevant evidence in assessing the seriousness of the misrepresentation as one of the relevant *Ribic* factors.

[78] Mr. Yang more generally argues that the Act does not or should not hold permanent residents to the same standard of truth and candour as foreign nationals seeking to enter Canada.

[79] Mr. Yang disputes the Respondent's reliance on *Cao*, which is one of many cases that notes the requirement to provide correct information. In *Cao*, as with Mr. Yang, the applicant signed a blank PR card renewal application that had been completed by an immigration consultant with incorrect information about the applicant's employment and dates of absence from Canada. Justice Heneghan upheld the exclusion order and finding of misrepresentation, noting, among other things, that the applicant "was required to submit correct information" (para 17).

[80] Mr. Yang argues that the Court erred in *Cao* by citing section 11 of the Act—which applies only to foreign nationals—to find that a permanent resident has a duty to provide correct information. I disagree. This not an appeal of *Cao*. Moreover, the general statement that the applicant had the burden to support his PR card renewal application with correct information is a fundamental principle reflected in the Act more broadly and repeatedly noted in the jurisprudence.

[81] For example, in *Gao*, which addressed the misrepresentation of another client of New Can, Justice Diner stated at para 16:

> [16] This Court has stated that the purpose of paragraph 40(1)(a) of IRPA "is to deter misrepresentation and maintain the integrity of the immigration process" (*Sayedi v Canada (Citizenship and Immigration)*, 2012 FC 420 at para 24). Further, an applicant's duty of candour "is an overriding principle" of IRPA (*Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169 at para 70). The IAD can, however, exercise its discretion to allow an appeal of inadmissibility for misrepresentation if it is satisfied that, taking into account the best interests of a child directly affected by the decision, there are sufficient H&C considerations to warrant special relief in light of all the circumstances of the case (IRPA, paragraph 67(1)(c)).

[82] Justice Diner reiterated the same principles in *Li v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1235, with respect to yet another New Can client found to have misrepresented information in their PR card renewal (see para 15).

[83] In *Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327, Justice Zinn explained the purpose of paragraph 40(1)(a) and rejected the applicant's argument that her misrepresentation was not material to her application for permanent resident status. While the facts differed, as the applicant's misrepresentation arose in the context of seeking status, the fundamental principles stated do not make a distinction between permanent residents and foreign nationals. Justice Zinn noted at paras 25–26:

> [25] It has been held that the purpose of paragraph 40(1) (a) is to ensure that applicants provide complete, honest and truthful information and to deter misrepresentation: *Bodine v Canada (Minister of Citizenship and Immigration)*, 2008 FC 848 at para 44; and *Kobrosli v Canada (Minister of Citizenship and Immigration)*, 2012 FC 757 at paras 46-48. It has further been held that full disclosure is fundamental to the proper and fair administration of the immigration scheme: *Khan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 512 at para 25; and *Oloumi* at para 23.

> [26] A misrepresentation need not be decisive or determinative to be material; it must only be important enough to affect the process: See *Sayedi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 420 at paras 26-27. I agree with the respondent that a failure (innocent or otherwise) to supply a "truthful, complete and correct" application is material because it prevents the reviewing officer from assessing all of the applicant's personal facts and to verify all of the information concerning an applicant to determine whether he or she is properly admissible to Canada.

[84] In the oft cited *Sayedi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 420 at para 24, Justice Tremblay-Lamer noted that paragraph 40(1)(a) is to be given a broad interpretation to promote its underlying purpose. Justice Tremblay-Lamer added, at para 26, that "to be material, a misrepresentation need not be decisive or determinative. It will be material if it is important enough to affect the process."

[85] To suggest that a permanent resident has a diminished duty to provide full, accurate and truthful information on a PR card renewal application is inconsistent with the objectives of the Act.

[86] In Mr. Yang's case, his misrepresentation—both with respect to absences from Canada and false employment—foreclosed an opportunity for the immigration authorities to investigate Mr. Yang's compliance with his residency obligation, which would affect the process and could induce an error in the administration of the Act.

[87] As noted above, the IAD's role was to assess whether there were sufficient humanitarian and compassionate considerations to warrant special relief "in light of all the circumstances of

the case," which entails consideration of all *Ribic* factors, beginning with the seriousness of the misrepresentation. The IAD's assessment of the seriousness of the misrepresentation reasonably considered all the relevant evidence. The IAD's determination that Mr. Yang's misrepresentation was serious is well supported by the evidence about his participation in the misrepresentation, including submitting a PR card application without reading the information contained in it, despite the family's concern about their lengthy absences from Canada and Mr. Yang's awareness that the employment scheme was not legitimate given that he never did any work or took any business trips for Young Dynasty.

B. *The IAD Reasonably Assessed the Best Interests of the Children*

[88] Mr. Yang argues that the IAD erred in its assessment of the best interests of his children. He submits that the IAD abdicated its responsibility by finding that it was up to the family to decide what was in the best interests of their children. He further submits that the IAD failed to consider the impact on the children of growing up without their father and minimized the impact of family separation by focussing on mitigating factors. He argues that the IAD ignored his testimony that his wife and sons could not return to China with him for health, educational and financial reasons.

[89] Mr. Yang appears to argue that greater weight should have been placed on the BIOC factor, although the IAD clearly considered the BIOC to be a factor in favour of granting relief. As previously noted, the role of the Court is not to reweigh the evidence or the factors. The BIOC, although an important factor, is not determinative of whether special relief is warranted.

[90] The IAD's decision demonstrates that it was alert, alive and sensitive to the best interests of the children and considered their interests individually and as a family under different scenarios. The IAD did not focus on any mitigating factors. The IAD considered the BIOC in the context of the hardship to the family and as a separate, important factor. The reasons demonstrate that the IAD analyzed both the possibility that the children would remain in Canada without their father and that the children would return to China with him. The IAD acknowledged the hardships likely to be caused by both scenarios.

[91] The IAD's conclusion that this factor weighed in favour of granting relief reflects the assessment that in either case, the best interests of the children would be better served if Mr. Yang were to remain in Canada.

[92] The IAD did not abdicate its responsibility by stating the obvious; parents have a role in meeting the best interests of their children and in this case, given that one son is a Canadian citizen and the other is a permanent resident, the family have options for their children to remain in Canada or to go to China to live or to visit.

C. *The IAD Reasonably Assessed Mr. Yang's Degree of Remorse*

[93] Mr. Yang submits that the IAD's finding regarding his degree of remorse is unintelligible, as it is unclear whether the IAD treated this as a negative or a neutral factor. He also submits that his testimony was honest and heartfelt, and that it was unreasonable for the IAD to find that he regretted only the consequences of his actions.

[94] Mr. Yang's argument is another example of searching for some error in a thorough and balanced decision. The IAD's finding that his remorse was more about the consequences than his actions is justified based on a review of the transcript of his testimony.

[95] There is nothing unclear or inconsistent in the IAD's finding that Mr. Yang's remorse "does not weigh in favour of the granting of special or discretionary relief" and in the conclusion that the factors not in support include the "limited remorse expressed." Clearly, remorse was not a factor in favour of granting special relief.

D. *The IAD Did Not Err in Failing to Mention the Psychologist's Report*

[96] Mr. Yang submits that the IAD's assessment of the hardship he would face is unreasonable because the IAD ignored the psychologist's findings, which addressed, among other things, how his removal would affect his mental health.

[97] Although the IAD did not specifically mention the psychologist's report, it is presumed to have considered all of the evidence in the absence of indication to the contrary: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 16, [1999] 1 FC 53. There is no such indication to the contrary. The IAD specifically noted the testimony about the anxiety and mental anguish that each family member experienced since the discovery of the misrepresentation and the possible consequences. The IAD also noted that Mr. Yang began seeking mental health support upon becoming aware of the ramifications of his actions. In assessing the impact of Mr. Yang's removal on his family, the IAD acknowledged that the family members testified about the mental health challenges faced by Mr. Yang. More

generally, the IAD noted that Mr. Yang was likely to experience emotional and psychological distress if separated from his family.

[98] Mr. Yang noted that "depression can be deadly"; however, the psychologist's report does not raise such alarm bells. The psychologist stated that her clinical impression was that Mr. Yang was likely suffering from significant depression and anxiety arising from his uncertain immigration status, and that a return to China presented considerable emotional risk factors. However, the psychologist noted that she had provided Mr. Yang with strategies to assist him. The IAD's acknowledgment of the impact of removal on Mr. Yang's mental health is not inconsistent with this report.

[99] Mr. Yang's claim that the IAD focussed on his capacity to adapt in China rather than the hardship he would face is not borne out in the reasons. The IAD considered that Mr. Yang would have a place to live in China, that he had family there, and that there was no evidence he would encounter difficulty finding employment—all of which are supported by the evidence. The IAD did not otherwise comment on his capacity to adapt.

E. *The IAD Did Not Fail to Explain the Overall Balancing of Factors*

[100] Mr. Yang submits that the IAD failed to explain how it balanced the factors in favour of and against granting relief, and why the negative factors outweighed the positive. He argues that given that the IAD only found one negative factor—the seriousness of the misrepresentation—the conclusion was not justified or intelligible. He submits that the IAD was required to explain the weight attached to each factor and how the factors were balanced. He also submits that the

IAD placed undue emphasis on the seriousness of the misrepresentation and was simply not open to finding that special relief on a humanitarian and compassionate basis could be warranted.

[101] Contrary to Mr. Yang's submission, the IAD did not set out to punish him or his family and did not foreclose the possibility of granting special relief. Mr. Yang's circumstances are not analogous to those in *Li v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 451, which he relies on, where Justice Shore found, on the facts of that case, that there was an element of punishment underlying the IAD's decision. The IAD was not focussed on punishing Mr. Yang, as revealed from the detailed reasons on each factor. Of note, the IAD granted his wife's appeal, despite finding relief to be warranted by the "slimmest of margins"; the IAD did not foreclose the possibility of special relief.

[102] I note that in *Li*, Justice Shore relied on the same fundamental principles in determining the reasonableness of the IAD's decision as I have applied. Justice Shore noted, at para 26, that the IAD has extensive discretion to consider and weigh the factors in accordance with the particular circumstances, granting special relief is exceptional, and "considerable deference is owed to the factual findings of the IAD."

[103] The IAD sufficiently explained its conclusion that the positive factors did not outweigh the negative factors. The determination of whether special relief is warranted is based on a global assessment of all relevant factors. The IAD could find several positive factors—as it did in this case—yet still conclude that the relief is not warranted. There is no rigid formula and no points are assigned to each factor. The weight given to each factor or consideration is within the IAD's

discretion and it is not the role of the Court to reweigh. The IAD's conclusion, read with the reasons as a whole, explains why the IAD found that special relief was not warranted.

X. The IAD Did Not Fail to Consider the Alternative of Granting a Stay of Removal Pursuant to Section 68

[104] Mr. Yang argues that the IAD failed to consider and explain why the alternative relief of a stay of removal pursuant to section 68—which he specifically requested—was not granted.

[105] As noted above, I disagree with Mr. Yang's characterization of this issue as a breach of procedural fairness. However, whether this issue is considered as an issue of procedural fairness or an issue regarding the reasonableness of the decision, I find that the IAD did not fail to consider whether a stay should be granted and the reasons convey why a stay was not granted.

[106] The IAD's reasons convey that it considered both options. The IAD's overall conclusion—that there were insufficient H&C considerations to grant "special relief"—applies equally to both options. Granting a stay requires a finding of sufficient H&C considerations, as does allowing an appeal. The same criteria, comprehensively addressed by the IAD, apply to allowing the appeal or granting a stay of removal.

[107] Mr. Yang suggests that a different standard or lesser level of H&C considerations could justify a stay even where the same considerations may not justify allowing the appeal. Mr. Yang has not cited any jurisprudence for his view that the criteria to warrant a stay of removal differ from the criteria to allow an appeal.

[108] The Court notes that in *Eftekharzadeh v Canada (Public Safety and Emergency Preparedness*), 2021 FC 1000 [*Eftekharzadeh*], Justice Ahmed found that the IAD's failure to consider a stay of removal was not an error given that the applicant had not requested a stay, but added that the IAD could have granted a stay without a specific request. Justice Ahmed commented at para 31, "I further accept that, in light of the IAD decision cited by the Applicants, the threshold for granting a stay may be lower than for granting an appeal." I regard this as an *obiter* statement as it had no bearing on the decision. In addition, there is no analysis of this issue and no reference to any jurisprudence; the reference to another IAD decision has no precedential value.

[109] The Court also notes that in *Zhang v Canada (Citizenship and Immigration)*, 2020 FC 927, Justice Annis considered the interpretation of sections 67 and 68 and their history, and noted that some of the *Ribic* factors, which had also applied before the 2001 amendments to the Act, had been incorporated into the wording of the provisions. The issue of a different standard for granting equitable relief by way of allowing an appeal as opposed to granting a stay of removal was raised in the context of the specific facts of the case, involving consideration of the seriousness of the applicant's criminality and the prospect of rehabilitation, which is sometimes a basis for a stay of removal to monitor the progress of rehabilitation.

[110] Justice Annis stated:

> [93] The scheme of sections 67(1)(c) and 68(1) therefore, becomes clear. Parliament intended that appellants <u>first demonstrate</u> their entitlement to special equitable relief in accordance with the same reasoning applying to section 25(1) of the Act. Upon meeting this requirement, the appeal or stay will be granted only if warranted as meeting the factors of the second

> component. It consists of all the public safety and security factors that are comprised in "all the circumstances of the case". The dictionary definition of "warrant" is not ambiguous. It is the French equivalent: "justify or necessitate (a certain course of action)" (Google's English dictionary provided by Oxford Languages, online: <www.google.com>). Equitable relief may be granted only if first proven, and second, if the safety and security factors do not prohibit it, in which case the two classes of factors must be assessed against each other.
>
> [94] The foregoing interpretation is supported by the absurd consequences that follow if the equitable case is not first demonstrated as a threshold to proceed under either sections 67(1)(c) and 68(1). It is not reasonable that Parliament intended that an appellant convicted of serious criminality could succeed on the appeal, or a request for a stay of removal, if the Board was not first convinced that an equitable case had been proven.
>
> [Emphasis in original.]

[111] Justice Annis concluded—in the context of criminality as the basis for inadmissibility and public safety as a factor in the consideration of granting special relief—that given the identical wording of the two provisions and the factors that guide whether exceptional equitable relief is warranted, the IAD must first be satisfied that H&C factors warrant the relief, and then it would determine whether to allow the appeal or grant a stay (see paras 88–103). Justice Annis concluded that if there are insufficient H&C grounds, no relief is warranted.

[112] In *Zhang*, Justice Annis certified several questions, including "[c]an appellants succeed under either section 67(1)(c) or 68(1) if unable to first establish a positive H&C claim on the same basis as a claim made pursuant to section 25(1) [of] the IRPA?" It does not appear that any appeal was launched and as a result, we do not have the guidance of the Court of Appeal on this question, which is similar to the question raised by Mr. Yang.

[113] Mr. Yang relies on *Lewis v Canada (Minister of Citizenship and Immigration*), 1999 CanLII 8564 (FC) at para 14, [1999] FCJ No 1227 (QL)[*Lewis*]. *Lewis* was also followed in *Li v Canada (Citizenship and Immigration),* 2015 FC 998, at paras 25–26, and *Mcintyre v Canada (Citizenship and Immigration),* 2016 FC 1351, at paras 41–45. All three cases found that where a stay is requested, the applicant is entitled to know why a stay is not granted.

[114] In the present case, Mr. Yang does know why the stay was not granted. His argument that the IAD did not consider facts that would support granting a stay of removal, despite the IAD's clear conclusion that the misrepresentation was egregious and that the H&C considerations, all of which were addressed, did not overcome that finding, is illogical.

[115] Both paragraph 67(1)(c), which gives the IAD the discretion to allow an appeal, and subsection 68(1), which gives the IAD the discretion to stay a removal order, require the very same criteria—that the IAD "must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant relief in light of all the circumstances of the case."

[116] The identical wording of the provisions does not support an interpretation that the considerations differ depending on the relief. In my view, the IAD is required to be satisfied that special relief is warranted, and if it is, the IAD may either allow the appeal or grant a stay of removal. If the IAD is not satisfied, then no special relief at all is warranted.

[117] Moreover, the reasons convey that the IAD did consider both types of special relief. Under the heading "Humanitarian and Compassionate Considerations," the IAD stated at paragraph 27 that it "may stay the execution of a removal order or allow an appeal from a removal order if an Appellant is successful in establishing a case for discretionary relief. The factors to be considered by the IAD when exercising its discretion are myriad and specific to the individual but, in the context of misrepresentation, include the following…". The IAD then set out the relevant *Ribic* factors, all of which it considered and addressed in its reasons. I view the IAD's approach to special relief and its recitation and consideration of the relevant factors as addressing both the option of a stay and the option of allowing the appeal.

[118] I acknowledge that the IAD did not specifically refer to subsection 68(1) in its overall conclusion, but it also did not refer to paragraph 67(1)(c). The IAD referred, more broadly, to "special relief," which encompasses the special relief referred to in both sections 67 and 68.

XI. Proposed Certified Questions

[119] Mr. Yang proposes the following four questions which he submits are serious and of general importance:

1. Is it reasonable for the IAD to treat the withholding of days absent from Canada in a PR card renewal application under subsection 59(1) of the Act in the same way as a core misrepresentation made to acquire or maintain permanent resident status?
2. Under the legislative framework of the Act, does a permanent resident owe the same strict duty of candour as a foreign national in disclosing potential inadmissibility to Canadian immigration authorities?
3. When a request has been made to the IAD to consider granting a stay of the removal order under section 66 of the Act, is it reasonable or procedurally fair to assume that if the IAD dismissed the appeal of the removal order, it must also mean that the stay request of the removal order is denied for the same reasons?

4. Does the remedy of a stay under sections 66–68 of the Act require a lower threshold to satisfy special relief, and if so, is it unreasonable or procedurally unfair for the IAD to not provide reasons to deny an express request made to the IAD for a stay?

[120] The Respondent opposes the certification of questions 1 and 2 on the basis that they do not meet the test for certification. The Respondent did not make submissions on questions 3 and 4.

[121] A question will only be certified if it is a serious question of general importance which will be dispositive of an appeal: *Canada (Minister of Citizenship and Immigration) v Qiu*, 2017 FCA 84 at para 4, citing *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 11 and *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at para 28).

[122] In *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, the Federal Court of Appeal reiterated and explained the criteria for the Court to certify a question, at para 46:

> [46] This Court recently reiterated in *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para. 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211 at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186 at paras. 15, 35).

[123] I find that the first two questions arise from Mr. Yang's argument that the IAD found his misrepresentation to be serious and egregious because the IAD misunderstood the Act and the distinction between permanent residents and foreign nationals and misunderstood that a permanent resident is not obliged to renew their permanent resident card, as this is only an administrative requirement. The issue in this judicial review is whether the decision of the IAD to refuse to grant special relief on H&C grounds is reasonable. This entails the consideration of many factors, including the seriousness of the misrepresentation. The IAD's decision clearly conveys that it understood that Mr. Yang was a permanent resident, not a foreign national, and assessed the seriousness of the misrepresentation in its proper context and with regard to all the relevant evidence. Moreover, the jurisprudence of this Court establishes that a misrepresentation of days of absence from Canada in a PR card renewal is a misrepresentation, as is a failure to read the application form prepared by another before submitting it.

[124] Question 1 does not meet the test for certification as, among other reasons, it would not be dispositive of an appeal.

[125] Question 2 has an obvious answer given the requirements of the Act to be truthful. In the present case, Mr. Yang conceded his misrepresentation and, in his testimony, he admitted that he was not truthful in his application and acknowledged other inaccuracies. As a result, the determination of this question would not be dispositive of an appeal. Moreover, the case law is replete with statements about the purpose of paragraph 40(1)(a) and the importance of being truthful.

[126] As noted at the hearing, Mr. Yang made several submissions regarding his interpretation of the Act and the distinction between the obligations of foreign nationals and those of permanent residents, which raise policy issues best addressed by the Minister.

[127] With respect to questions 3 and 4, Mr. Yang notes, in post-hearing submissions, that the Court declined to certify similar questions in *Eftekharzadeh* and as a result, the law is unsettled. I do not agree that the questions proposed in *Eftekharzadeh* were similar. As noted above, the issue in that case was whether the IAD was required to consider a stay where that relief had not been requested. The proposed questions were not about a different or lower threshold to satisfy the requirements for special relief.

[128] Questions 3 and 4 raise the issue of the obligation of the IAD to specifically address the alternative relief of a stay of removal pursuant to subsection 68(1).

[129] I would reformulate the proposed questions as follows:

- Is there a higher or different standard pursuant to paragraph 67(1)(c) than pursuant to subsection 68(1) for the IAD to be satisfied that sufficient H&C considerations warrant special relief in light of all the circumstances? In other words, can the IAD find that H&C considerations are sufficient to warrant a stay of removal, but not sufficient to warrant allowing an appeal?
- In addition, is the IAD required to specifically state in its conclusion that both options have been considered?

[130] Given my finding that the IAD must be satisfied that “sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances”—either to

allow an appeal or to grant a stay—the determination of this question could be dispositive of an appeal and, in my view, meet the test for certification.

JUDGMENT in IMM-3834-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The following questions are proposed for certification:

    - Is there a higher or different standard pursuant to paragraph 67(1)(c) of the *Immigration and Refugee Protection Act* [the Act] than pursuant to subsection 68(1) of the Act for the Immigration Appeal Division [IAD] to be satisfied that sufficient humanitarian and compassionate [H&C] considerations warrant special relief in light of all the circumstances? In other words, can the IAD find that H&C considerations are sufficient to warrant a stay of removal, but not sufficient to warrant allowing an appeal?

    - In addition, is the IAD required to specifically state in its conclusion that both options have been considered?

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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