Federal Court  Cour fédérale

Date: 20221207

Docket: IMM-6789-21

Citation: 2022 FC 1687

Ottawa, Ontario, December 7, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

FIAZ AHMAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] As a permanent resident of Canada, Fiaz Ahmad was required to spend 730 days of each five-year period in Canada: *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], s 28. He fell 309 days short of that obligation in the five-year period prior to September 18, 2020, when he applied to return to Canada. Recognizing this shortfall, he appealed to the Immigration Appeal Division [IAD] seeking relief on humanitarian and

compassionate [H&C] grounds. He now seeks judicial review of the IAD's dismissal of his appeal, arguing that he was denied procedural fairness and that the IAD's decision was unreasonable.

[2] For the reasons below, I conclude there was no denial of procedural fairness and that the decision was reasonable. It was not unfair for the IAD to observe that Mr. Ahmad proposed to call a large number of witnesses and ask whether that number might be reduced to avoid repetition. Nor has Mr. Ahmad shown that the IAD displayed an unfair predisposition or bias against him. Further, while the IAD member did make some unwarranted findings, I cannot conclude that these were sufficiently central to the decision to render it unreasonable.

[3] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[4] Mr. Ahmad's application for judicial review raises the following issues:

A. Was there a denial of procedural fairness?

B. Is the IAD's decision unreasonable on its merits?

[5] When reviewing issues of procedural fairness, the Court must assess whether the procedure was fair having regard to all of the circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Fayazi v Canada (Citizenship and Immigration)*, 2021 FC 1019 at para 17. While this assessment is often referred to as being

conducted on the correctness standard, strictly speaking, no standard of review is being applied: *Canadian Pacific* at paras 54–55.

[6] With respect to the merits of the decision, the IAD is entitled to deference and the Court will only interfere if the decision is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Fayazi* at para 18. The role of the Court is not to rehear Mr. Ahmad's case, make its own determinations regarding the H&C factors, or to reassess the evidence and draw its own conclusions: *Vavilov* at paras 75, 83, 125. It is simply to determine whether the IAD's decision was a reasonable one, that is, an internally coherent and rational one, which is justified in relation to the facts and law that constrain the decision maker, and shows the qualities of transparency, intelligibility, and justification: *Vavilov* at paras 15, 99–101.

III. Analysis

A. *There was no denial of procedural fairness*

(1) Context of the proceeding

[7] Mr. Ahmad married a Canadian citizen in 1999. At the time, he was working as a member of cabin crew with Pakistan International Airlines. The couple had four children between 2000 and 2006, all born in Canada. Mr. Ahmad's spouse sponsored him for permanent residence, originally in 2003 and again in 2006, and he became a permanent resident of Canada in February 2009 after a successful appeal to the IAD. He continued to work for Pakistan International Airlines, and although he says he wanted to relocate to Canada in 2010, this did not

occur. His relationship with his then spouse broke down around 2011, in circumstances that included her making serious complaints to police, which resulted in restraining orders and in criminal charges that were all later dropped or resulted in acquittals. In 2013, he applied for a leave of absence from the airline in order to settle in Canada. Unfortunately, the difficulties in his relationship with his then spouse continued, with further accusations and criminal allegations, of which he was again acquitted. Canadian divorce proceedings commenced in 2013, although they were not finalized by the time of the hearing of the appeal before the IAD. Mr. Ahmad also had difficulty finding employment in Canada. He returned to Pakistan, and to Pakistan International Airlines, in August 2016.

[8] Mr. Ahmad applied for a permanent resident travel document from Lahore on September 18, 2020. The application form published by Immigration, Refugees and Citizenship Canada [IRCC] requires the applicant to address their compliance with the residency obligation in section 28 of the *IRPA* by listing all periods they spent in Canada during the past five years. Mr. Ahmad set these out, listing a total of 421 days. This included an eleven-month period of almost continuous residence between September 2015 and August 2016, followed by 22 visits of between three and ten days between January 2017 and May 2020.

[9] The application form states that if the total number of days spent in Canada is less than 730, the applicant should set out any H&C grounds that would justify the retention of permanent resident status, including the best interests of a child who may be directly affected. Mr. Ahmad completed this section of the form, stating his wish to be reunited with his four Canadian children. He said that his parents had advised him to leave Canada so they could help him

navigate a respectable exit from his marriage, as he and his spouse had initiated divorce proceedings. He also stated that he was only waiting in Pakistan to get early retirement from his position as a flight attendant. He stressed the importance of providing normalcy for his children, and requested a multiple entry visa given his parents' age and the need for trips to wind up and collect his wages from his employer.

[10] On February 16, 2021, an IRCC officer wrote to Mr. Ahmad indicating that he did not meet the residency obligation, and that they were not satisfied the H&C considerations presented justified the retention of his permanent resident status.

[11] Mr. Ahmad filed an appeal with the IAD pursuant to subsection 63(4) of the *IRPA*. In his notice of appeal, he indicated his wish to return to Canada to appear at his hearing, and he received a visa permitting him to do so, arriving in Canada in July 2021.

(2) Mr. Ahmad was not unfairly denied the opportunity to call witnesses

[12] Mr. Ahmad represented himself at the IAD hearing. In advance of the hearing, he filed an amended list of six witnesses he intended to call, consisting of five relatives and a friend. Two of these proposed witnesses, his brother and the friend, also filed affidavits. A third, his brother's sister-in-law, filed a letter of support. Mr. Ahmad also filed other documents, including letters from his daughter and his two younger sons.

[13] At the conclusion of Mr. Ahmad's testimony at the hearing, the IAD member asked him about his list of witnesses, noting that six was "lots of witnesses." The member indicated that

after a break, he would review the witnesses since counsel for the Minister might accept the information without hearing their testimony, and that some of the witnesses' evidence might simply be repetitive. He encouraged Mr. Ahmad to think about the witness list over the break and ensured that Mr. Ahmad understood.

[14] After the break, Mr. Ahmad said that he had thought about it, and said that he felt the only two people who could testify were his nephew and his friend, since the others would have said the same things he had already spoken about. The member asked Mr. Ahmad which witness he wished to start with, and the evidence continued with the evidence of the friend.

[15] Mr. Ahmad argues the IAD unfairly and inappropriately "exercised influence" on him as an unrepresented applicant to have him reduce the number of witnesses he would call. I cannot agree. It was not unfair for the IAD, in the interests of hearing efficiency, to review Mr. Ahmad's witness list with him to determine whether all of the witnesses were necessary or whether the evidence of some might be duplicative or unnecessary. Having considered the matter, Mr. Ahmad agreed that the evidence of four of the witnesses would simply repeat what he had said. I agree with Mr. Ahmad that the IAD member had the obligation to ensure the hearing was fair, particularly with an unrepresented applicant: *Law v Canada (Citizenship and Immigration)*, 2007 FC 1006 at paras 16–19. However, fairness does not require that an applicant be permitted to call multiple redundant witnesses to give repetitive evidence. Mr. Ahmad recognized that some of the witnesses on his list fell in this category, and reasonably concluded that only some of them needed to testify. Mr. Ahmad was not deprived of the opportunity to fairly and fully present his case: *Law* at para 19.

[16] Mr. Ahmad also argues the IAD resiled from a "promise" to go over the evidence of each witness so the Minister's counsel could indicate whether they accepted the information in their testimony. He argues it was unfair for the IAD not to have then ensured that the evidence of each proposed witness was canvassed and the Minister's view solicited. I cannot agree. The IAD raised two potential questions with respect to the witnesses: first, that their evidence might be accepted by the Minister without the need for them to testify; and second, that their evidence might be repetitive. When Mr. Ahmad returned after the break and agreed that some of the witnesses would be repetitive in light of his own evidence, I do not believe the duty of fairness required the IAD to nonetheless solicit a summary of that repetitive evidence and see whether the Minister agreed to it.

[17] Nor do I take anything from the member's repetition of "a lots, a lot of witnesses, lots of witnesses" in his remarks before the break. Despite Mr. Ahmad's contrary submission, having reviewed the recording of the hearing, it sounds to me that the member was simply correcting his phrasing, rather than unduly emphasizing the number of witnesses. In any event, as noted, the member was entitled to raise a question about the necessity of all of the witnesses, and the fairness of a hearing is not so fragile that it will be broken by any emphasis on a number or the word "lots."

[18] Mr. Ahmad further argues that the unfairness arising from limiting the number of witnesses was particularly pronounced given the IAD's conclusions about his brother's evidence. The IAD found that the brother's affidavit contained "false information" about his address and that he "seems to be unaware that the appellant is divorced." Mr. Ahmad argues these findings

were unreasonable and that they were the result of the unfairness in not having the brother testify.

[19] I agree with Mr. Ahmad that the IAD's actions and conclusions raise concerns in the circumstances. In the discussion about which witnesses Mr. Ahmad would call, the IAD member referred to the brother as "the one who lives here part time." By doing so, the member appears to be indicating to Mr. Ahmad that he understood and accepted the evidence to be that the brother lived in Canada at least part of the time. The IAD raised no issues with the fact the brother gave a Canadian address in his affidavit, or that he described himself as a "resident of Canada," itself apparently a reference to his status as a permanent resident given that the same language is used to describe Mr. Ahmad. Nonetheless, without any questions to either Mr. Ahmad or his brother on this issue, the IAD effectively found that the brother had submitted false information in an affidavit, a serious finding to make.

[20] The IAD's assertion that the brother seems to be "unaware" Mr. Ahmad was divorced is also difficult to explain. I can only assume it is based on the affidavit's reference to Mr. Ahmad's "Spouse." However, the reference in question was to a statement about the citizenship of the spouse and children and, at the time, Mr. Ahmad's Canadian divorce had not been finalized. There is no reasonable ground to conclude that the brother was unaware of the divorce simply because he used the term "spouse" rather than "ex-spouse" or something similar, particularly without having obtained his evidence.

[21] That said, I cannot conclude that these concerns regarding the IAD's treatment of the brother's evidence created any material procedural unfairness, as they cannot have had any ultimate effect on the issues before the IAD or on its decision. The brother's affidavit did no more than repeat basic facts that were known about Mr. Ahmad (his employment, the citizenship of his family, his residence in Pakistan, and his inability to satisfy the residency obligation), request that any relief available be granted, and state his belief that his brother would complete his residency obligations in the future. None of this had any bearing on the H&C issues Mr. Ahmad presented, which focused primarily on his family and the best interests of his children. The IAD's role was to review the H&C factors, and not potential future establishment or compliance with the residency obligation: *Shaheen v Canada (Citizenship and Immigration)*, 2019 FC 1328 at para 31; *Osagie v Canada (Citizenship and Immigration)*, 2018 FC 978 at para 20. Further, the IAD's comments were made in the context of assessing the best interests of Mr. Ahmad's nephews and after having found that the family presence of the nephews and sister-in-law was not determinative. The IAD's comments about the brother's affidavit, though raising concerns, do not justify interference with its decision.

(3) Mr. Ahmad was not unfairly denied an adjournment to file evidence from his citizenship application

[22] In response to a question from the IAD member about evidence of his presence in Canada between 2013 and 2016, Mr. Ahmad referred to his citizenship application and documents that he submitted with that application in 2017. Mr. Ahmad had not filed those documents with the IAD, apparently believing the IAD would have his citizenship file. The member told Mr. Ahmad he did not have the documents, and the discussion proceeded to Mr. Ahmad referring to other

evidence of his entries and exits. Mr. Ahmad argues that it was unfair for the IAD not to have offered to adjourn the hearing to allow Mr. Ahmad to file the citizenship application documents. He argues that as an unrepresented party, he did not know he could request an adjournment.

[23] There was no procedural unfairness. Despite Mr. Ahmad being unrepresented, as a general matter there is no obligation on the IAD to propose an adjournment and no unfairness in not granting an adjournment that is not requested: see *Yanez Tecuapetla v Canada (Citizenship and Immigration)*, 2012 FC 225 at paras 20–21, 31. I would not want to rule out the possibility that there may be circumstances that cry out for an adjournment even where a party, particularly an unrepresented party, has not requested one: see, *e.g.*, *Audmax Inc v Ontario Human Rights Tribunal*, 2011 ONSC 315 at paras 37–44. However, even accepting this may be the case, I do not see this as being such an instance. The issue on which Mr. Ahmad intended to refer to the citizenship application documents was his presence in Canada between 2013 and 2016. However, there was other evidence that spoke to this issue and, as discussed further below, his presence in Canada at the relevant time was ultimately not a disputed point.

[24] In his written argument, Mr. Ahmad asserts that the citizenship documents could have shown "earlier attempts […] to establish himself in 2013 and onwards," which would have contradicted the IAD's statement that he had "made virtually no attempt to immigrate." I cannot accept this submission for three reasons. First, the IAD's statement appears to relate to the 2009 to 2013 period, since it is followed by the IAD's observation that he "did not establish himself in Canada for a significant time prior to May 2013" [emphasis added]. Second, there was no basis for the IAD to know or expect that the citizenship documents would speak to earlier attempts at

establishment so as to flag the importance of the documents to this issue. Third, earlier attempts at establishment are ultimately not the relevant issue, which is whether H&C considerations justify relief from the residency requirement in the five-year period prior to the examination. I therefore cannot conclude that the duty of fairness required the IAD to propose an adjournment after Mr. Ahmad referred to his citizenship application documents.

(4) Mr. Ahmad has not established bias or a reasonable apprehension thereof

[25] Mr. Ahmad contends that a number of aspects of the IAD's decision point to a "closed mind and negative animus" toward him. However, he does not allege "bias in the classic sense." I agree with the Minister that, to the extent that an applicant alleges they have been denied procedural fairness because a decision maker has a closed mind or has animus toward them, they are effectively alleging bias, and that attempting to distinguish between "bias in the classic sense" and some other sort of bias has no legally useful meaning.

[26] To show an unfairness based on bias, an applicant need only show that there is a reasonable apprehension of bias. To do so, an applicant must show that an "informed person, viewing the matter realistically and practically—and having thought the matter through"—would conclude it is more likely than not that the decision maker, consciously or unconsciously, would not or did not decide fairly: *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at p 394; *Samson v Canada (Attorney General)*, 2021 FCA 212 at para 4.

[27] Mr. Ahmad's arguments about bias rely on a number of statements in the IAD's decision, which he argues show a pervasive animus and an effort to denigrate Mr. Ahmad. This includes

pointing to the member's findings about his brother; a number of negative observations by the member about Mr. Ahmad's relationship with his children and his role as a father; the lack of reference to his original number of witnesses; findings about his presence in Canada between 2013 and 2016; and the absence of positive observations about his character and credibility, which the Minister's counsel had accepted at the conclusion of the hearing.

[28] As I have discussed above, and will discuss further below in assessing the merits of the decision, I agree that some of the member's comments are misplaced, particularly regarding Mr. Ahmad's presence in Canada. However, reviewing the decision as a whole in light of the record, I cannot conclude that an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it is more likely than not that the IAD member would not or did not decide the matter fairly. Rather, as was the case in *Samson*, many of the "examples of alleged bias are merely disagreements with the factual determinations the [member] made or with the conclusions [he] reached": *Samson* at para 4. A decision maker simply making adverse findings against a party—even adverse findings that are not justified on the record—does not mean they are biased against them. While an accumulation of unsubstantiated findings might be indicative of bias, I do not find in the current circumstances that the elements of the process and the decision that Mr. Ahmad relies on demonstrate a reasonable apprehension of bias or unfair predisposition on the part of the IAD member.

[29] I therefore conclude that Mr. Ahmad has not demonstrated that his IAD hearing was procedurally unfair, either due to bias or predisposition on the part of the IAD member, or due to procedural steps taken by the member during the hearing.

B. *The IAD's decision was reasonable*

(1) The IAD's decision

[30] Both this Court and the IAD have frequently affirmed that this Court's decision in *Ambat* fairly summarizes the factors particularly relevant to H&C decisions in the context of an appeal related to a breach of the residency obligation: *Ambat v Canada (Citizenship and Immigration)*, 2011 FC 292 at para 27, citing *Bufete Arce v Canada (Minister of Citizenship and Immigration)*, 2003 CanLII 54304 (CA IRB) and *Kok v Canada (Minister of Citizenship and Immigration)*, 2003 CanLII 87863 (CA IRB). Those factors are described at paragraph 27 of *Ambat* as being, in addition to the best interests of a child directly affected, the following:

> (i) the extent of the non-compliance with the residency obligation;
> (ii) the reasons for the departure and stay abroad;
> (iii) the degree of establishment in Canada, initially and at the time of hearing;
> (iv) family ties to Canada;
> (v) whether attempts to return to Canada were made at the first opportunity;
> (vi) hardship and dislocation to family members in Canada if the appellant is removed from or is refused admission to Canada;
> (vii) hardship to the appellant if removed from or refused admissions to Canada; and
> (viii) whether there are other unique or special circumstances that merit special relief.

[31] The IAD considered these factors, although grouped somewhat differently, structuring its reasons with reference to (i) the extent of non-compliance; (ii) visits and stays abroad, including attempts to return; (iii) establishment in Canada; (iv) potential dislocation of remaining in Pakistan; and (v) family, support in Canada, and the best interests of the children.

[32] The IAD noted that Mr. Ahmad's non-compliance of 309 days out of the 730-day requirement was "significant, even major." The IAD reviewed the evidence with respect to Mr. Ahmad's stated reasons for not complying with the residency requirement, which were his work as a flight attendant, the need to care for his parents in Pakistan, and his desire to get away from the situation with his spouse. The IAD concluded that there was little evidence his presence in Pakistan was necessary for his parents' care, particularly since he worked full time other than during the period he lived in Canada; that work was the main reason for remaining in Pakistan; and that Mr. Ahmad's actions after 2016 did not show an attempt to return to become established in Canada at the first reasonable opportunity.

[33] The IAD found that Mr. Ahmad had virtually no establishment in Canada at the time of the appeal, and that it could not consider the potential for future establishment. It also found that Mr. Ahmad would suffer little dislocation if he continued living in Pakistan as he had lived there for most of his life, was working there until recently, and had continued family contacts.

[34] The IAD concluded that the factors of family, support in Canada, and the best interests of the children weighed in favour of the appeal. Nonetheless, the IAD found that the overall balance of factors did not justify granting H&C relief.

(2) The IAD's statements regarding Mr. Ahmad's time residing in Canada

[35] In my view, Mr. Ahmad's strongest argument regarding the reasonableness of the IAD's decision pertains to the member's comments about Mr. Ahmad's presence in Canada from April 2013 to August 2016.

[36] Mr. Ahmad's presence in Canada in this period was not in dispute before the IAD. Eleven months of the period, from September 19, 2015, to August 18, 2016, formed part of the five-year period at issue for the residency obligation examination. There was no issue before the IAD that Mr. Ahmad was present in Canada for 329 of those 335 days, making up the large majority of his 421 days of residence. The IAD itself used this 421-day figure as the basis of its decision. Mr. Ahmad's travel history in the relevant five-year period had been reviewed and accepted by an IRCC officer. His stated presence in Canada between 2013 and 2016 was also consistent with the Canada Border Services Agency's travel records and Mr. Ahmad's passport, while his residency between April 2013 and May 2015 had been previously accepted by an immigration officer as part of a residency requirement examination in May 2015, as the IAD recognized. Indeed, the IAD appears to have accepted that Mr. Ahmad lived in Canada from 2013 to 2016, making reference to this fact several times in its decision.

[37] Nonetheless, in its discussion of Mr. Ahmad's visits to and stays abroad, the IAD referred to the May 2013 to August 2016 time period, and observed it was "not satisfied that the appellant lived here for the amount of time he stated, since his daughter contradicts him in her letter." Later, the IAD confirmed that this finding referred to a passage in the daughter's letter stating that her "fondest memories [were] when he lived in Montreal for a couple of months in 2014." The IAD found this statement "revealed instead that he lived here for only a few months in 2014."

[38] The daughter's statement was made in the context of a letter about her relationship with her father, his efforts to remain in contact despite his work obligations, and her hopes for the

future. The letter did not purport to detail Mr. Ahmad's residency in Canada, nor to identify how long he was in Canada during the 2013 to 2016 period. Rather, it identified a particular period of time as being the daughter's "fondest memories." In any event, even if the passage itself might be equivocal, it would have to be read in the context of the evidence as a whole, including the corroborative travel records and prior examinations referred to above. There is no indication the IAD member did this in concluding he was not satisfied Mr. Ahmad lived in Canada for the stated period from 2013 to 2016.

[39] I therefore agree with Mr. Ahmad that there was no basis in the circumstances and on the record for the IAD to find that Mr. Ahmad was not in Canada in the 2013 to 2016 time period, still less to speculate that Mr. Ahmad may have "simulated his residence and received social assistance to which he was not entitled." This finding and speculation were unreasonable.

[40] However, it is not every unreasonable factual finding or observation that renders a decision as a whole unreasonable. As the Supreme Court of Canada teaches, an administrative decision should not be overturned unless any shortcomings or flaws in the decision are "sufficiently central or significant" to render it unreasonable: *Vavilov* at para 100. In the present case, the IAD's unreasonable statements regarding Mr. Ahmad's presence in Canada from 2013 to 2016 do not fall in that category. Rather, as noted above, they were effectively peripheral to the main issue before the IAD, namely whether the H&C considerations in Mr. Ahmad's case justified relief from his shortfall from the residency obligation. The IAD's findings about his residence did not affect its assessment of that shortfall, as the IAD used the 421 days of residence in its analysis. Nor did they ultimately affect the IAD's assessment of Mr. Ahmad's

establishment in Canada or its assessment of the reasons for his absence from Canada. They were, ultimately, peripheral to the core of the IAD's analysis on the central issue.

[41] I appreciate Mr. Ahmad's concern that the statements suggest the IAD had formed a negative impression of Mr. Ahmad and that this impression may have resonated in the IAD's consideration of the overall H&C circumstances. However, as noted, the IAD's assessment of the H&C circumstances reasonably considered the various factors identified in *Ambat*, and was ultimately based on what the evidence said about the reasons for his departure from Canada and stay in Pakistan, his efforts to return, his family ties, dislocation, and the best interests of the children.

[42] I therefore conclude that despite the unreasonableness of the IAD's statements on this issue, they do not render the decision as a whole unreasonable.

(3) The IAD's analysis of Mr. Ahmad's purpose of return to Pakistan

[43] Mr. Ahmad's challenges to the IAD's analysis of the reasons for his departure from Canada and his stay in Pakistan—essentially, the reasons for failing to comply with the residency obligation—are less persuasive. Mr. Ahmad refers to the IAD's observation that his version of the reasons for his return to Pakistan "kept changing." He alleges this was an unsupported credibility finding and, moreover, one that would not have been made if Mr. Ahmad had not been discouraged from calling his brother's sister-in-law as a witness.

[44] I disagree. The IAD's observation was a fair one in the circumstances. Mr. Ahmad's written statement and his supporting documents, including the sister-in-law's statement, primarily referred to his departure in 2016 as being related to the breakdown of his marriage. His testimony added reference to his work for Pakistan International Airlines and a need to support his parents for medical expenses and other needs, although no evidence of these latter needs was proffered. While there may evidently be multiple factors in a permanent resident's decision to depart and remain outside the country, it is within the IAD's purview to consider the nature and timing of the reasons put forward. The IAD's conclusions that Mr. Ahmad had not demonstrated a family care requirement, that "[w]ork was clearly the main reason for his stays in Pakistan," and that Mr. Ahmad's evidence on the issue changed, were open to it on the record. It is not this Court's role to interfere with such conclusions.

(4) The IAD's discussion of the best interests of the children

[45] Nor do I find the IAD's discussion of the best interests of the children unreasonable, despite Mr. Ahmad's contrary arguments. The IAD considered the best interests of his two youngest children (his two eldest being adults), as well as his nephews and his friend's child. The member concluded that their best interests were a factor in favour of allowing the appeal, but noted that this did not outweigh other factors or ultimately justify the granting of H&C relief.

[46] In doing so, the IAD reviewed both the letters of support from the children and Mr. Ahmad's evidence about his desire to rebuild a relationship with them. The IAD noted that Mr. Ahmad's motivation to strengthen his relationship with his children only arose when he had the opportunity to take early retirement from his work in Pakistan. The IAD found it "difficult to

believe" that a motivated father would have waited so long before getting "meaningfully involved" in their lives, but that it had "no choice but to acknowledge this willingness" and that it would positively affect the children's best interests.

[47] Mr. Ahmad challenges these findings, suggesting that the IAD only "grudgingly" accepted his desire to be with his children. He suggests that his significant dedication is shown by the evidence of the number of visits he made to Canada while working for the airline, and his efforts to see his children during those visits, and that it was not for the IAD to judge what constitutes "meaningful" involvement in the children's lives.

[48] In my view, Mr. Ahmad's criticisms do not show the decision to be unreasonable. The IAD was assessing the children's best interests, and the extent to which they would be affected by an adverse decision. As part of this assessment, the IAD could reasonably consider the decisions Mr. Ahmad had made in remaining outside the country during the period from 2016 to 2020 in particular, his role in their lives, and how the children's best interests would be affected by the grant or refusal of H&C relief. While Mr. Ahmad asks that his decisions be viewed in a more favourable light, it is not the Court's role to undertake its own assessment of the evidence or decide whether it considers H&C relief to be justified: *Vavilov* at paras 75, 83, 125.

[49] Mr. Ahmad also criticizes the IAD's statements about the question of custody. The IAD noted that the four children live with their mother, who has custody of them, and observed that Mr. Ahmad "did not appear before the Superior Court when a custody order was made." Mr. Ahmad argues this is an unreasonable finding since the reason he did not appear was that he

was in detention because of the mother's false accusations on the day of the custody hearing. However, there was no evidence of this fact before the IAD, and Mr. Ahmad cannot present new evidence before this Court going to the merits of the decision: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20. The only evidence on the record was Mr. Ahmad's statement saying: "I was unable to present myself at the hearing, and she got […] custody at the hearing. I would not contest that." On this evidence, the IAD's statement that Mr. Ahmad "did not appear" is reasonable. In any case, the details of the custody hearing are of only peripheral relevance to the question of the children's best interests, compared to an assessment of the custody arrangements themselves.

[50] Mr. Ahmad alleges the IAD further erred by saying, with respect to the friend who testified, that "[p]rior to 2021 their last contact dated back to 2015." He argues this again shows the IAD in "belittling mode" and that it refers only to personal contact while ignoring other modes of contact. There is no merit to this contention. The statement in question pertained not to the friend but to the friend's children, whose best interests the IAD was considering for completeness. The finding was supported by the evidence and there was no contrary evidence Mr. Ahmad had any contact with those children during this period that might suggest a stronger relationship such that their best interests would be more significantly affected by the IAD's decision.

[51] I therefore conclude that Mr. Ahmad has not shown the IAD's best interests analysis to be unreasonable.

(5) The IAD did not fail to consider a relevant factor

[52] Mr. Ahmad argues the IAD failed to consider a relevant factor in the H&C assessment, namely his "continuing connections […] to Canada, including to family members here". That factor is identified in a decision of the IAD cited by Mr. Ahmad: *Queiroga v Canada (Citizenship and Immigration)*, 2012 CanLII 61463 (CA IRB) at para 25, citing *Berrada v Canada (Minister of Citizenship and Immigration)*, 2004 CanLII 56688 (CA IRB) at para 6 and *Kok* at para 25.

[53] I disagree. The factors identified by the IAD in *Queiroga* are clearly equivalent to those identified in *Ambat*, although their phrasing may be different. In the present case, the IAD considered Mr. Ahmad's family and support in Canada, finding it to be a positive factor in Mr. Ahmad's appeal. While Mr. Ahmad refers to his list of six witnesses as indicative of his network in Canada, this list consisted of five family members and a friend, whose presence the IAD considered in its assessment. I cannot conclude the IAD erred by failing to consider a relevant factor.

(6) Other issues

[54] Mr. Ahmad challenged a number of other findings or statements by the IAD. A number of these challenges take issue with the particular phrasing used by the IAD. For example, Mr. Ahmad contends that the IAD's use of the phrase "[h]e separated from his wife in August 2011" implies that he was the one who undertook the separation from his wife, rather than it being the result of her unsubstantiated criminal complaints and accusations. He also

contends that referring to the earlier IAD decision allowing his application for permanent residence as “brief” again shows the member’s desire to “belittle” factors that might be viewed as favourable. I see no merit in these criticisms. While the language used by an administrative decision maker is important, and an accumulation of unjustified derogatory or negative references may, in some cases, indicate bias or a lack of compassion, this does not mean that every word in a decision should be microscopically analyzed, looking for negativity where none is reasonably seen.

[55] Finally, Mr. Ahmad argues that although the IAD made various negative references with respect to him, it failed to refer to the positive aspects of the evidence, including the positive evidence regarding his character, such as that of his friend, and the Minister’s statements in closing argument describing Mr. Ahmad as credible, honest, of good character, and hard working. These arguments disclose unreasonableness. The IAD is not required to refer to every piece of evidence. In any event, the IAD did in fact refer to the friend’s evidence, noting that he “spoke highly of the appellant’s qualities and even offered him significant financial support.” The IAD acknowledged that this testimony spoke in favour of the appeal, while noting that the financial support could also have helped Mr. Ahmad settle in Canada long ago. This balancing of positive, neutral, and negative factors is the IAD’s role in making an H&C determination. Contrary to Mr. Ahmad’s submissions, I cannot conclude the IAD unduly or unreasonably weighted the negative factors or failed to acknowledge or weight the positive factors.

IV. Conclusion

[56] There are certainly troublesome aspects of the IAD's decision, including findings that were unjustified on the record. However, the Court can only interfere with an administrative decision where the shortcomings are sufficient to render the decision as a whole unreasonable. In the present case, the IAD's decision as a whole was not unreasonable. Nor was the decision unfair, either due to the hearing process or from a reasonable apprehension of bias on the part of the IAD member.

[57] The application for judicial review is therefore dismissed.

[58] Neither party proposed a question for certification and I agree that no question meeting the requirements for certification arises in the matter.

JUDGMENT IN IMM-6789-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	FIAZ AHMAD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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APPEARANCES:

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