Federal Court Cour fédérale

**Date: 20230727**

**Docket: IMM-2458-22**

**Citation: 2023 FC 1028**

**Toronto, Ontario, July 27, 2023**

**PRESENT: Justice Andrew D. Little**

**BETWEEN:**

**A.R.**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

[1] By decision dated May 21, 2002, the Immigration Division of the Immigration and Refugee Board found the applicant inadmissible to Canada for having committed war crimes or crimes against humanity.

[2] To overcome his inadmissibility to Canada, the applicant applied for permanent residence with an exemption based on humanitarian and compassionate ("H&C") considerations, under

subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*). In the alternative, he requested a temporary resident permit (a "TRP").

[3] In January 2022, a Senior Decision Maker ("SDM") recommended that the applicant be granted a TRP for 10 years, which was authorized and granted.

[4] By decision dated February 7, 2022, the SDM denied the applicant's request for an exemption on H&C grounds and refused his application for permanent residence.

[5] On this judicial review application, the applicant submitted that the SDM's decision dated February 7, 2022, should be set aside as unreasonable under the principles set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[6] For the following reasons, I conclude that the application must be dismissed.

## I. Events Leading to this Application

[7] The applicant was born in Kosovo, in the former Yugoslavia, in 1970. He is a Roma person of Serb ethnicity. He has lived in Canada since 2000, and now resides with his common law partner and their two children. His partner and children are Canadian citizens. He has been steadily employed in Canada and has a good civil record.

[8] In November 1990, the applicant, age 20, was conscripted into the Yugoslav National Army. He served for about a year. From January to June 1991 he trained as a driver of military vehicles. He was then sent to Borovo Selo and Dalj in Croatia to serve in active combat. He also served in Vukovar, Srvas and Osijek where he launched rockets at civilian targets between June and November 1991.

[9] In 1992, the applicant left Yugoslavia for Germany, where he resided until 1999.

[10] After a few months in England, the applicant arrived in Canada at Pearson International Airport on February 17, 2000. On arrival, the applicant claimed refugee protection under the *IRPA*.

[11] In January 2001, the applicant was referred to an inquiry for possible inadmissibility. By decision made on May 21, 2002, the Immigration Division found that the applicant had perpetrated war crimes. On June 4, 2002, the applicant applied for leave and judicial review of the negative decision. However, that application was discontinued in August 2002. On September 18, 2002, the applicant was found ineligible to make a refugee claim under the *IRPA* due to his inadmissibility.

[12] On September 6, 2006, an officer conducted a pre-removal risk assessment ("PRRA") and determined that the applicant would be at risk if removed to Kosovo. The matter was referred to the CBSA for the preparation of a risk assessment under paragraph 172(2)(*b*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *"IRPR"*) related to the

nature and severity of the acts committed by the applicant and the danger he constitutes to the security of Canada.

[13] On October 17, 2008, the applicant applied for permanent residence on H&C grounds while his PPRA was pending. By decision dated September 22, 2014, Citizenship and Immigration Canada (now Immigration, Refugees and Citizenship Canada ("IRCC")) determined that the applicant was inadmissible to Canada by virtue of paragraph 35(1)(*a*) of the *IRPA*. His permanent residence application on H&C grounds was refused because his circumstances did not warrant an exemption under subsection 25(1) of the *IRPA*.

[14] In March 2014, the officer's PRRA determination was reversed, and was rejected by IRCC. In April 2014, the applicant applied for leave and judicial review of the negative PRRA decision. The proceeding was discontinued in 2015 as the respondent consented to a redetermination.

[15] On November 3, 2014, the applicant applied for leave and judicial review of the negative H&C decision. By decision dated October 30, 2015, this Court determined that the officer's decision was unreasonable because it failed to adequately address the evidence relating to the hardship of removal on the applicant personally and on the best interests of his Canadian-born children. The applicant's H&C application had to be reconsidered.

[16] On January 29, 2015, the applicant's application for a TRP was denied. He applied for leave and judicial review of the negative TRP decision on February 19, 2015. In November 2015, the respondent consented to a redetermination.

[17] In September 2021, the three redeterminations – the PRRA, H&C and the TRP applications – were assigned to the SDM.

[18] In January 2022, the SDM recommended that a TRP be authorized for the applicant for a period of 10 years to overcome his inadmissibility temporarily, until the applicant's children are over the age of 18. The SDM was of the opinion that the applicant should not be granted permanent residence due to his past acts as a direct perpetrator of war crimes and given Canada's commitment not to be a safe haven for war criminals. The SDM also believed that the applicant's children should not be disadvantaged by his removal to Kosovo at that time, nor was it in their best interests to be relocated to Kosovo with him.

[19] On January 28, 2022, the Associate Deputy Minister authorized a TRP for 10 years, implemented by a renewable TRP valid for 3 years.

[20] By decision dated February 7, 2022, the SDM denied the applicant's request for an exemption on H&C grounds and refused his application for permanent residence. The SDM's decision was memorialized in a written memorandum that set out the SDM's "reasons related to a request for humanitarian and compassionate consideration to overcome inadmissibility for crimes against humanity". The SDM concluded that in light of the applicant's serious

inadmissibility and his TRP valid for the next 10 years, there were insufficient humanitarian and compassionate considerations to warrant an exemption from his inadmissibility for war crimes and crimes against humanity in respect of his permanent residence application.

## II. Legal Principles

### A. *H&C Applications under IRPA Subsection 25(1)*

[21] Subsection 25(1) of the *IRPA* gives the Minister discretion to exempt foreign nationals from the ordinary requirements of that statute and grant permanent resident status in Canada, if the Minister is of the opinion that such relief is justified by humanitarian and compassionate considerations. Those considerations are to include the best interests of a child ("BIOC") directly affected. The H&C discretion in subsection 25(1) is a flexible and responsive exception to the ordinary operation of the *IRPA*, to mitigate the rigidity of the law in an appropriate case: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909, at para 19.

[22] Humanitarian and compassionate considerations refer to "those facts, established by the evidence, which would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another — so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the [*IRPA*]": *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338, at p.350, as quoted in *Kanthasamy*, at paras 13 and 21. The purpose of the H&C provision is provide equitable relief in those circumstances: *Kanthasamy*, at paras 21-22, 30-33 and 45.

[23] In assessing applications on H&C grounds, an officer must always be alert, alive and sensitive to the best interests of the children. Those interests must be well identified and defined, and examined with a great deal of attention in light of all the evidence. See *Kanthasamy*, at paras 35, 38-40; *Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2003] 2 FC 555 at paras 5, 10; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 FC 358, at paras 12-13, 31; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 75.

[24] A decision under *IRPA* subsection 25(1) will be unreasonable if the interests of children affected by the decision are not sufficiently considered: *Kanthasamy*, at para 39, citing *Baker*, at para 75. While the children's interests must be given substantial weight and be a significant factor in the H&C analysis, but are not necessarily determinative of an application under *IRPA* subsection 25(1): *Kanthasamy*, at para 41; *Hawthorne*, at para 2.

## B. ***TRPs under IRPA subsection 24(1)***

[25] Subsection 24(1) of the *IRPA* provides:

| **Temporary resident permit** | **Permis de séjour temporaire** |
|---|---|
| 24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit | 24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps. |

> which may be cancelled at
> any time.

[26] The objective of section 24 is to "soften the sometimes harsh consequences of the strict application of the IRPA" in cases where there may be compelling or other sufficient reasons to allow a foreign national to enter or remain in Canada despite inadmissibility or non-compliance with the statute: *Munzhurov v Canada (Citizenship and Immigration)*, 2023 FC 657, at para 17; *Thind v Canada (Citizenship and Immigration)*, 2022 FC 1644, at paras 29-30; *Harris v Canada (Citizenship and Immigration)*, 2021 FC 833, at para 22; *Shabdeen v Canada (Citizenship and Immigration)*, 2020 FC 492, at para 14; *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275, at para 22.

## C. ***Standard of Review on this Application***

[27] The standard of review for the SDM's substantive decision is reasonableness: *Khir v Canada (Citizenship and Immigration)*, 2021 FC 160, at para 27; *Hangero v Canada (Citizenship and Immigration)*, 2022 FC 1727, at para 23.

[28] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at

paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

[29] In order to intervene, the Court must conclude that the SDM made an error in the decision that is sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100; *Canada Post*, at para 33; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157, at para 13.

## III. Analysis

[30] The applicant raised three issues:

A. Did the officer fail to be alert, alive or sensitive to the best interests of the children?

B. Did the officer fail to reasonably assess the hardship to the applicant in Kosovo as a Roma or suspected Serb collaborator?

C. Did the officer unreasonably find the applicant inadmissible for paragraph 35(1)(*a*) of the *IRPA*?

[31] I will address them in turn.

### *A. Did the officer fail to be alert, alive or sensitive to the best interests of the children?*

[32] The applicant submitted that the SDM was not alert, alive and sensitive to the children's best interests, despite concluding that it was in their best interests not to be separated from their father (i.e., that he remain in Canada). According to the applicant, the SDM made a reviewable error by failing to provide reasons for denying his request for permanent residence. He asserted that reasons were required on the permanent residence/H&C decision under *IRPA* subsection

25(1) and that those reasons had to "stand on their own", independently and without an assessment of his alternative request for a TRP under subsection 24(1). The applicant also argued that the BIOC analysis was inadequate.

[33] The applicant submitted that the SDM's approach, of granting a TRP until the children were over 18 years old, represented a "dangerous precedent" for the determination of H&C applications, as it would allow any request for consideration of children's best interests in an H&C application to be denied issuing a TRP under subsection 24(1) for the duration of childhood.

[34] The applicant emphasized that this was his last chance for an application for permanent residence with an exemption on H&C grounds, owing to an amendment to subsection 25(1) that now precludes him from filing a further H&C application prior to his ultimate removal: see *Faster Removal of Foreign Criminals Act*, S.C. 2013, c. 16, section 9.

[35] The respondent's position was that the issue before the SDM was whether the H&C factors raised by the applicant (BIOC and the applicant's establishment in Canada) outweighed the applicant's inadmissibility for war crimes and crimes against humanity. According to the respondent, the SDM's approach was not a danger but rather an "elegant solution" – granting a TRP to lessen the hardship on the children until they are adults, at which time the applicant will have a risk assessment (PRRA) before his removal from Canada. The respondent noted that the SDM's reasons did address the positive H&C factors for the applicant, including establishment and the BIOC.

[36] The respondent observed that in previous judicial review proceedings concerning applications for permanent residence, the Court has upheld decisions that did not grant the applicant an exemption from their inadmissibility on H&C grounds (citing *Varela v Canada (Citizenship and Immigration*), 2017 FC 1157, at para 12; *Vaezzadeh v Canada Canada (Citizenship and Immigration*), 2017 FC 845, at paras 23-24; *Betoukoumesou v Canada (Citizenship and Immigration*), 2014 FC 591, at para 41). The Court has also upheld a decision to deny both an H&C application and a TRP owing to inadmissibility for war crimes: *Torok v Canada (Citizenship and Immigration)*, 2022 FC 1799.

[37] The applicant's submissions have not persuaded me that there is a basis for the Court to intervene.

[38] The applicant did not identify anything in the language of the *IRPA*, and specifically in subsection 25(1) or subsection 24(1), that prevented or constrained the SDM from issuing a TRP and denying the application for permanent residency as occurred in this case. The applicant also did not argue that the SDM's approach contradicted or was otherwise constrained by any binding judicial decisions, either generally or that specifically required the SDM to provide separate or "stand-alone" reasons for the H&C decision as the applicant claimed. The applicant did not refer to any guidelines or policy that may have affected or informed the officer's approach.

[39] I do not agree with the applicant's submission that the SDM did not provide reasons for denying the applicant's permanent residence application, with an exemption based on H&C considerations, under *IRPA* subsection 25(1). The entire memorandum dated February 7, 2022,

explained the reasons why that application was denied. The purpose of the 14-page memorandum was clear at the outset: to memorialize the SDM's reasons analyzing whether the applicant's H&C factors would overcome his inadmissibility for crimes against humanity. The memorandum sequentially assessed the nature of his inadmissibility, then the H&C factors raised by the applicant, then the 10-year TRP to address the BIOC and finally reached a conclusion. The SDM's "Conclusion" stated:

> In light of [the applicant]'s serious inadmissibility and the fact that he may continue to reside in Canada as a temporary resident for the next 10 years, I do not find there are sufficient humanitarian and compassionate considerations to warrant exempting from his inadmissibility for war crimes and crimes against humanity in the context of his application for permanent residence. Consequently, his request for an exemption is denied and his application for permanent residence is refused.

[40] In this conclusion, the SDM addressed the issue identified at the outset of the memorandum and raised by the applicant's requests for permanent residence or alternatively a TRP. The SDM weighed the inadmissibility of the applicant with the H&C factors and accounted for the 10-year TRP. The applicant did not challenge the SDM's approach to weighing the various elements, or that the SDM accounted for the existence of the TRP.

[41] The applicant's principal position on the BIOC focused on the impact of the applicant's separation from his spouse and children if he were removed from Canada. His H&C submissions argued that if he were required to leave Canada and return to Kosovo, it would impose social and economic hardship on the family, and would clearly be contrary to the best interests of the children. Specifically, he submitted that if his family were to remain in Canada after his removal, they would suffer the loss of his income, his partner would suffer the loss of his love and

support, and the children, the loss of their father. Alternatively, if the family were to travel with him to Kosovo, they would be exposed to "the same abysmal socioeconomic conditions and risks" that the appellant would face there (including possible unemployment), as well as discrimination "associated with a Roma partner/father and as minorities themselves (his partner is Filipina, his children of mixed Roma/Filipino ethnicity)". The applicant noted that the children were young, dependent on the applicant "in every respect", fully established in Canada without links to Kosovo, would receive a poor education in Kosovo and that his daughter would be particularly vulnerable to the poor conditions there.

[42] The SDM's decision memorandum dated February 7, 2022, had a section entitled "H&C Considerations", in which the SDM assessed the H&C factors raised by the applicant, including the BIOC. Under the subheading "Family and establishment in Canada", the SDM found that the applicant and his partner have two Canadian born children, then aged 10 and 8. The SDM referred to the children's success at school and their letters of support. Based on the evidence provided, the SDM had "no doubt" that the applicant was an "integral part of the well being of his family and young children". The SDM noted the applicant's community involvement, volunteer activities, lack of any criminal record and his clean civil record. The SDM then considered the "Current situation in Kosovo". After a review of the applicant's submissions and reference to country condition evidence, the SDM found that the situation for Roma people in Kosovo had improved significantly since 2005 and that violence against persons who appear to be Roma or who speak Serbian (or are ethnic Serbs) in Kosovo was not occurring. The SDM found that both Serbs and Roma people continued to face discrimination, particularly in

employment. The SDM's concluding paragraph under the H&C subheading stated that, consequently, it was reasonable that the applicant:

> … indicated that if forced to return to Kosovo, he would not bring his wife and children but rather, he would go alone and his wife and children would remain in Canada. In terms of the children's best interests, I find that it would not be desirable for [them] to be separated from their father while they are still young.
>
> [Emphasis added.]

[43] The SDM's memorandum proceeded immediately to a section entitled "Request for a TRP", in which the SDM also addressed the BIOC. The memorandum stated:

> The nature and severity of [the applicant]'s actions as a direct perpetrator of war crimes signifies that his continued presence in Canada goes against our international commitment not to be a safe haven for war criminals. Yet, the best interests of [the applicant]'s children is also an important consideration which weighs in favour of him remaining in Canada – at least in the medium term.
>
> In order to reconcile the competing interests of [the applicant]'s Canadian children and Canada's commitment to not be a safe haven for war criminals, I recommended a TRP be authorized for [the applicant]. The delegated authority agreed to authorize a TRP for [the applicant] for the next 10 years on January 28, 2022. This will allow [the applicant] to remain in Canada while his children are young, but after that time has elapsed, at which time his children will both be over the age of 18 and therefore at a much more independent phase of their lives, he would be expected to leave Canada. At that point in time, [the applicant] would be entitled to a fresh assessment of any risks he may face prior to removal.
>
> [Emphasis added.]

[44] As may be seen, the SDM's analysis recognized the BIOC and gave effect to the applicant's main points about separation from his spouse and children and remaining in Canada. The SDM expressly took steps to address those concerns by recommending the 10-year TRP.

The BIOC was the basis for seeking the TRP. The SDM obtained authorization for the TRP under *IRPA* subsection 24(1) before formalizing the decision on the permanent residence application with an exemption on H&C grounds under subsection 25(1).

[45] Accordingly, I am unable to agree with the applicant that the SDM did not provide reasons for the refusal of the applicant's request for permanent residence with an exemption based on H&C considerations.

[46] To the extent that the applicant's position is that the SDM did not provide adequate reasons for the negative decision on the permanent residence application – insufficient analysis or sparse reasoning as to why the applicant was granted a TRP but not permanent residence – I again do not agree. As already explained, there is a reasoned explanation for the SDM's decision under subsection 25(1) in this case. On judicial review, a decision may be set aside as unreasonable, in the case of alleged inadequate justification, if the Court cannot discern a reasoned explanation for the decision as a whole – which may or may not occur if there is insufficient reasoning provided for an officer's conclusion on specific point or issue: *Alexion Pharmaceuticals Inc*, at paras 13-17, 31; *Vavilov*, at para 97. Without necessarily adopting the applicant's premise that the SDM was required to provide separate or stand-alone reasoning for the decision on subsection 25(1) to the exclusion of subsection 24(1), the SDM's entire memorandum was, at minimum, adequate to provide a reasoned explanation for the decision under subsection 25(1).

[47] In addition, the applicant has not shown that the BIOC analysis in the SDM's memorandum was inadequate, having regard to the evidence and submissions filed on that issue.

[48] I am not persuaded that the SDM's decision in the present case creates a "dangerous precedent", as the applicant alleged. While the TRP was not challenged in this application, neither party suggested that the TRP was not properly issued or that it was not sufficiently linked to the objectives of *IRPA* subsection 24(1). Given the complementary or overlapping purposes of sections 24 and 25, the SDM's recommendation of a 10-year TRP represented a rational and defensible option to reconcile the competing interests identified by the SDM – on one hand that Canada respect its international obligations and not be a safe haven for war criminals while, on the other hand, ensuring that the children's best interests were protected in accordance with the requirements of subsection 25(1) and *Kanthasamy*. It is not for this Court on a judicial review application to determine whether the SDM should have reconciled these interests differently, or made another decision on the merits, under subsections 24(1) and 25(1) of the *IRPA*.

[49] The applicant argued that prior to his eventual removal from Canada (presumably sometime after his 10-year TRP expires), the children would be adversely affected by his pending removal from Canada. I am sympathetic to this possible concern. However, the applicant did request a TRP as an alternative to permanent residence. He did not argue that the SDM ignored any specific evidence or submissions on the issue of the impact of knowing about a pending separation (after both children reach age 18 or after the expiry of a TRP). The impact of granting a TRP (rather than permanent residence) on the children was an alternative scenario that could have been addressed expressly in the applicant's evidence and submissions supporting

his requests under *IRPA* sections 24 and 25. While the applicant argued that his children's statements discussed their fear of separation from him, the SDM made specific reference to those statements in the memorandum and was obviously persuaded by their contents when recommending the 10-year TRP. This application does not permit the Court to re-weigh the content of those statements as to whether the SDM should have granted an exemption under subsection 25(1).

[50] For these reasons, I conclude that the applicant has not demonstrated that the SDM made a reviewable error failing to be appropriately alert, alive and sensitive to the best interests of the applicant's two children.

***B. Did the officer fail to reasonably assess the hardship to the applicant in Kosovo as a Roma or suspected Serb collaborator?***

[51] The applicant's second position challenged the SDM's conclusions on hardship in Kosovo. The SDM concluded that the applicant would suffer discrimination but would not face violence if he returned to Kosovo, which the applicant submitted was not reasonable in light of the expert opinions and evidence. The applicant's written submissions to the Court reproduced extensive excerpts from the evidence he relied upon. The applicant contended that the SDM's conclusion that he would experience discrimination unreasonably diminished the risk of violence to him as a Roma person – that is, as a member of a very vulnerable group in Kosovo. The applicant challenged the SDM's dismissal of reports from 2016 and earlier (back to 2005), noting that those concerns had persisted for many years before the reports and afterwards. The applicant argued that the SDM also failed to analyze the risk of violence or discrimination to the applicant as a suspected collaborator. He contended that the SDM's brief mention of the latter

issue was insufficient to be properly justified, transparent and intelligible. The respondent's position was that the SDM preferred more recent evidence from 2020 that specifically addressed the situation of the Roma in Kosovo and found that there was no evidence of any violence against the Roma community in the applicant's town in Kosovo.

[52] On this issue, I find that the applicant's submissions attempted to re-argue the merits of the hardship submissions he made to the SDM. The applicant did not identify an issue related to the SDM's reasoning process, such as any specific facts that constrained the SDM's decision or that required the SDM to explain in order to reach a conclusion adverse to the applicant. The Court's role on this judicial review application does not include re-assessing or reweighing the evidence. The applicant's submissions did not persuade me that the SDM failed to respect the evidentiary constraints bearing on its decision: *Vavilov*, at paras 83 and 125-126. The conclusions reached were open to the SDM on the record, having regard to the reports relied upon related to possible violence and discrimination against the applicant as a Roma person in Kosovo.

### *C. Did the officer unreasonably find the applicant inadmissible for paragraph 35(1)(a) of the IRPA?*

[53] The applicant's third position argued that the SDM erred in its inadmissibility analysis.

[54] After setting out a detailed timeline of events, the SDM's memorandum dated February 7, 2022, analyzed the nature of the applicant's inadmissibility to Canada. The SDM considered the applicant's submissions to challenge the ID's inadmissibility conclusion. The SDM concluded that the applicant was inadmissible for having committed war crimes and crimes

against humanity as defined in section 35(1)(*a*) of the *IRPA.* The crimes related to operating rocket launchers in 1991.

[55] The SDM also concluded that the applicant did not pose a danger to the security of Canada. His involvement with the army was of relatively short duration and he was a low-level conscript with relatively few options to remove himself from active service. However, as a direct perpetrator of international crimes, his continued presence in Canada went against the spirit of Canada's domestic and international commitments.

[56] The applicant submitted that the SDM erred in the inadmissibility finding, in light of evidence of allegedly poor interpretation at his original admissibility hearing, evidence that the SDM (and the ID before that) did not rely upon, and arguments that he acted under duress.

[57] I am not persuaded by the applicant's submissions on these issues. Having carefully read the SDM's inadmissibility assessment (which spanned approximately seven pages in the SDM's memorandum), the applicant has not identified a reviewable error in that analysis. The SDM correctly disagreed with the applicant's submission that the SDM was not bound by the Immigration Division's inadmissibility finding: *Subramaniam v Canada (Citizenship and Immigration)*, 2020 FCA 202, at paras 33-35. Nonetheless, the SDM reached the same conclusion as did the ID on inadmissibility and considered its nature and severity in detail as part of its overall assessment in the memorandum. The applicant's submissions to this Court seek to re-argue the merits of the inadmissibility finding yet again. Even if there may be a possible "way to read" the evidence to favour the applicant's position on inadmissibility, as the applicant

submitted at the hearing, I am unable to see how the Court could intervene on this issue as a matter of law (particularly given *Subramaniam*) or under judicial review principles: *Vavilov*, at paras 83, 125-126.

## IV. Conclusion

[58] For these reasons, the application must be dismissed.

[59] The applicant requested that the style of cause be amended to contain only his initials, because on return to Kosovo he will suffer discrimination as a Roma and because he will be considered a collaborator. The respondent did not oppose that change to the style of cause. In the circumstances, that request is granted.

[60] Neither party proposed a question for certification prior to the hearing. While the applicant raised the possibility of a certified question at the end of the hearing, the Court has received no word of a proposal since the hearing. No question will be certified for appeal in this case.

**JUDGMENT in IMM-2458-22**

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

1. The application is dismissed.

2. The style of cause is amended so that the applicant is "A.R.".

3. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-2458-22 |
| **STYLE OF CAUSE:** | A.R. v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO (VIDEOCONFERENCE) |
| **DATE OF HEARING:** | FEBRUARY 15, 2023 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | A.D. LITTLE J. |
| **DATED:** | JULY 27, 2023 |

**APPEARANCES:**

| | |
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| John Loncar | FOR THE RESPONDENT |

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