

Federal Court



Cour fédérale

Date: 20130327

Docket: IMM-3135-12

Citation: 2013 FC 318

Ottawa, Ontario, March 27, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ANOUSHEH ABBAS-NEJAD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Immigration Appeal Division (IAD) of the Immigration and Refugee Board found Mr Abdollah Abbas-Nejad, a citizen of Iran, to be medically inadmissible to Canada based on his heart condition. The IAD upheld a visa officer's decision to turn down his application for permanent residence. The officer's decision was based on a medical officer's opinion that Mr Abbas-Nejad might reasonably be expected to cause excessive demand on Canadian health services. The IAD

found that the officer's reliance on the medical opinion was reasonable, and therefore rejected the appeal. Mr Abbas-Nejad and his wife, Ms Fatemeh Jafarian, had been sponsored by his daughter, Ms Anousheh Abbas-Nejad.

[2] Ms Abbas-Nejad was granted leave to seek judicial review of the IAD's decision but, regrettably, her father passed away prior to the hearing.

[3] The Minister argues that the judicial review is now moot. Counsel for Ms Abbas-Nejad argues that there are some issues before the Court that are either not moot, or that I should exercise my discretion to decide certain issues notwithstanding their mootness.

[4] I am satisfied that most of the issues raised on this application for judicial review are moot. The exception is the humanitarian and compassionate analysis (H&C) relating to Mr Abbas-Nejad's wife. I will, therefore, allow this application for judicial review solely in respect of that issue.

[5] The issues are:

1. Is this application for judicial review moot?
2. If so, should I exercise my discretion to decide some or all of the issues notwithstanding that they are moot?

II. The IAD's decision

[6] The IAD hearing took place in August 2011. Mr Abbas-Nejad testified by telephone, and his daughter appeared in person. The Minister supplied written submissions, but did not appear at the hearing.

[7] The IAD, in its written decision, noted its arrangement with the Minister, according to which the Minister will not participate in a hearing before the IAD where the only issues involve H&C considerations. However, the Minister will be invited to make supplementary written submissions if new issues arise at the hearing or the legal validity of the decision on medical inadmissibility is put in issue. Since Ms Abbas-Nejad raised issues relating to the legal validity of the underlying decision finding Mr Abbas-Nejad medically inadmissible, the IAD invited the Minister to make supplementary submissions. The Minister submitted six pages of argument and 58 pages of documentary evidence.

[8] The IAD invited Ms Abbas-Nejad to respond to the Minister's supplementary submissions and she did so.

[9] The IAD concluded that Mr Abbas-Nejad was medically inadmissible to Canada because of his coronary artery disease.

III. Issue One – Is this application for judicial review moot?

[10] Mr Abbas-Nejad passed away in late December 2012. The Minister submits that this application for judicial review is, therefore, moot.

[11] Clearly, the question whether Mr Abbas-Nejad is medically inadmissible to Canada is moot. And there is no suggestion that I should consider that issue notwithstanding that it is moot.

[12] However, Ms Abbas-Nejad argues that I should answer the following questions, notwithstanding the fact that the main issue before me is moot:

- does the agreement between the IAD and the Minister offend principles of fundamental justice or raise a reasonable apprehension of bias?
- where the opinion of a specialist who has examined an applicant for permanent residence does not accord with the opinion of an immigration medical officer, should the latter defer to the former?

[13] In my view, both of these issues are moot. The first raises an issue of natural justice relating to the process by which the IAD reached its decision on medical inadmissibility. The second raises a question about the reasonableness of the IAD's treatment of the evidence. Given that the issue of Mr Abbas-Nejad's medical inadmissibility is itself moot, so too are issues relating to the IAD's process of arriving at its decision and its analysis of the evidence before it.

[14] There remains, however, one issue that was before the IAD and is not now moot. That is the question whether there were H&C factors supporting Ms Jafarian's application for permanent residence. The IAD focussed on the issue of medical inadmissibility and H&C considerations

relating to Mr Abbas-Nejad's application. But it never expressly addressed Ms Jafarian's application. In the present circumstances, that part of the IAD's task takes on special significance. In my view, given the failure of the IAD to deal with it, its negative conclusion cannot be considered reasonable.

IV. Issue Two – Should I exercise my discretion to decide some or all of the issues notwithstanding that they are moot?

[15] Ms Abbas-Nejad submits that I should decide the issues of fairness and reasonableness described above even if they are, strictly speaking, moot. In considering whether to deal with issues that are moot, I must consider whether there remains an adversarial relationship between the parties, whether it is worth expending scarce judicial resources in deciding them, and whether pronouncing on the issues would take the Court outside of its adjudicative function into a legislative role (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342).

[16] These factors suggest that I should decline to decide the moot issues. At this point, Ms Abbas-Nejad no longer has any stake in the outcome of this proceeding (other than in the narrow sense described above). Whether the IAD proceeded fairly or unreasonably in respect of her father's application will have no effect on that application. Further, the issues raised are significant and would require considerable time and effort to decide. In particular, the fairness issue is a novel one, so far as I am aware, and deciding it would require the Court to set a precedent. In my view, it would be preferable to consider that issue in a live case, where the IAD's conduct might have had a real effect on the outcome. Finally, to decide the issues raised here would amount to the Court

issuing declarations on legal questions in the abstract. In my view, the Court should hesitate to do so unless the issues cry out for an answer to guide the resolution of other disputes. That is not the case here. The issues raised may well arise in other cases and that is where they should be decided, not by declaring what the law should be in the context of a moot case.

[17] Therefore, I will not decide the issues presented by Ms Abbas-Nejad.

V. Conclusion and Disposition

[18] For the most part, this case is moot, and the circumstances do not warrant deciding the issues raised. However, the IAD never considered whether Ms Jafarian's circumstances merited relief on humanitarian and compassionate grounds; therefore, I will remit this matter to the IAD to deal with that question. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed in part;
2. The matter is returned to the IAD to deal with the humanitarian and compassionate factors arising in Ms Fatemeh Jafarian’s application for permanent residence.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3135-12

STYLE OF CAUSE: ANOUSHEH ABBAS-NEJAD
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 23, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 27, 2013

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