Federal Court  Cour fédérale

Date: 20241125

Docket: IMM-1527-24

Citation: 2024 FC 1881

Ottawa, Ontario, November 25, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

KAJITHAN SELVARATNAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Selvaratnam [the applicant] is a Sri Lankan national who was granted permanent residency status to Canada in 2017. From that point, he was required to be physically present in Canada for a total of at least 730 days over every five-year period to maintain his status, pursuant to subparagraph 28(2)(a)(i) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. He fell short of this requirement, staying only 202 days in Canada, before requesting a permanent resident travel card in June 2022. The visa officer denied his request in March 2023, a

decision later confirmed by the Immigration Appeal Division [IAD]. He now seeks judicial review of this IAD decision, mainly arguing that humanitarian and compassionate [H&C] grounds justify the retention of his permanent resident status pursuant to paragraph 28(2)(c) of the *IPRA*. For the reasons that follow, this application for judicial review is dismissed.

[2] The sole issue is whether the IAD reasonably determined that there was an insufficient H&C ground to overcome the breach of the applicant's residency obligation. On judicial review, this question must be answered on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [*Mason*]). A decision dealing with H&C considerations is discretionary by its very nature, and attracts a high level of deference from reviewing courts (*Herradi v Canada (Citizenship and Immigration)*, 2020 FC 247 at para 36 [*Herradi*]). This level of deference also applies to the officer's expertise under paragraph 28(2)(c) of the *IRPA* (*Samad v Canada (Citizenship and Immigration)*, 2015 FC 30 at para 20).

[3] The list of factors that the IAD must consider in determining whether there are H&C grounds was developed by Justice Near, as he then was, in *Ambat v Canada (Citizenship and Immigration)*, 2011 FC 292 at paragraph 27 [*Ambat*]: (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 applicant is removed from or is refused

admission to Canada; (vii) hardship to the applicant if removed from or refused admissions to Canada; (viii) whether there are other unique or special circumstances that merit special relief; and (ix) the best interests of a child directly affected by the decision, as applicable. This list is not exhaustive and each factor must be weighed according to the circumstances of each file (*Bermudez Anampa v Canada (Citizenship and Immigration*), 2019 FC 20 at para 24 [*Bermudez*]). Importantly, the weighing of each factor is left to the IAD's discretion (*Nekoie v Canada (Citizenship and Immigration)*, 2012 FC 363 at para 33). Absent exceptional circumstances, which do not arise here, the Court will not reweigh and reassess the evidence presented before the IAD (*Vavilov* at para 125). Parliament has entrusted the IAD, and not the Court, with adjudicating the merits of the claim at issue (see, generally, *Safe Food Matters Inc v Canada (Attorney General)*, 2022 FCA 19 at para 37, and the authorities cited therein).

[4] In my view, the IAD reasonably applied the *Ambat* factors to the applicant's request. A more favourable outcome for the applicant was no doubt available, but the reasons provided by the IAD allow this Court to understand intelligibly the factors that influenced its final decision: "It is not for a judge on judicial review to overturn a decision simply because another assessment of the evidence was possible, or another result could have been reached" (*Oladihinde v Canada (Citizenship and Immigration)*, 2019 FC 1246 at para 17).

[5] This case essentially turns on the applicant's choice to complete his medical studies abroad during the relevant five-year period, which the IAD found did not justify his long absence from Canada. In making this finding, the IAD concluded at paragraph 18 of their reasons that the situation was analogous to a decision to maintain employment abroad, which has been found on

numerous occasions to be inconsistent with the H&C objectives of *IRPA* (see e.g., *Zhang v Canada (Citizenship and Immigration)*, 2019 FC 1536 at para 31; *Bermudez* at para 30). The applicant submits that this finding was unreasonable due to an insufficient explanation of what *IRPA* objectives were undermined by the applicant's medical studies abroad.

[6] This argument cannot succeed. This Court has on several occasions rejected explanations for breaching residency requirements based on studies abroad (*Bermudez* at para 27; *Herradi* at para 45). The point is that the applicant made a conscious choice to continue an activity abroad, even if it jeopardized his ability to meet his residency obligation within Canada. Nothing in his status hinged on the completion of his medial studies. That was entirely his decision. While the applicant may have felt that obtaining this degree would benefit Canada, this is no excuse for breaching his permanent residency conditions.

[7] The applicant tries to distinguish *Bermudez* and *Herradi* on the basis that his medical studies are highly specialized, transferable to Canada, and consistent with *IRPA*'s objectives of promoting the successful integration of permanent residents (see paragraph 3(1)(e)) and protecting public health (see paragraph 3(1)(h)). He contrasts these studies with the legal studies pursued by the applicants in those other cases, which are tied to their local legal systems. Respectfully, this distinction is inapposite. The core issue is the choice to remain abroad to study at the expense of one's obligations under *IRPA*, not the type of study pursued.

[8] To be clear, the Canadian immigration system does not preclude individuals from maintaining employment abroad any more than it precludes continuing one's education.

However, establishing oneself in another country at the expense of doing so in Canada is contrary to the objectives pursued by section 28 of the *IRPA*. For this reason, it was neither unreasonable nor a reviewable error for the IAD to make this analogy.

[9] This application for judicial review is dismissed. Neither party proposed a question for certification, nor does any such question arise here.

JUDGMENT in IMM-1527-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1527-24
STYLE OF CAUSE:	KAJITHAN SELVARATNAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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