

Federal Court



Cour fédérale

Date: 20250425

Docket: IMM-4069-24

Citation: 2025 FC 732

Ottawa, Ontario, April 25, 2025

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

DA XIANG SHEN

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Da Xiang Shen [Mr. Shen], seeks judicial review of the decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada dated February 9, 2024. The IAD dismissed Mr. Shen's appeal of the exclusion order issued by the Immigration Division [ID], which found that Mr. Shen had misrepresented the number of days spent in Canada when he applied for the renewal of his permanent resident card. The IAD found that Mr. Shen engaged in misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration*

and Refugee Protection Act, SC 2001, c 27 [the Act], and also found that there were insufficient humanitarian and compassionate [H&C] considerations to overcome the misrepresentation and to grant special relief.

[2] For the reasons that follow, the Application for Judicial Review [Application] is dismissed. Mr. Shen raises many of the same arguments before this Court that were raised, considered and rejected by the IAD. The decision of the IAD, which found that Mr. Shen engaged in misrepresentation and that there were insufficient humanitarian and compassionate grounds to grant special and discretionary relief against the finding of inadmissibility, is reasonable; the IAD justified its determination of misrepresentation based on the law and the facts and reasonably concluded that special relief was not justified in the circumstances. The IAD did not overlook or misunderstand the relevant facts or considerations.

I. Background

[3] Mr. Shen is a 76-year-old citizen of China who became a permanent resident of Canada in 2003. However, he spent very little time in Canada after becoming a permanent resident.

[4] In 2011 he retained Sunny Wang, an immigration consultant, to renew his permanent resident card. Mr. Shen signed blank forms that Sunny Wang completed and submitted on his behalf. Mr. Shen's permanent resident card was renewed, although Mr. Shen had spent most (and perhaps all) of the previous five years outside of Canada.

[5] Mr. Shen came to the attention of the Canada Border Services Agency [CBSA] in the course of its investigation of the large-scale immigration and tax fraud committed by Sunny Wang. Mr. Shen was referred to the ID for an admissibility hearing.

[6] On August 31, 2022, the ID found that Mr. Shen had misrepresented the number of days he had been outside of Canada on his application in 2011 contrary to paragraph 40(1)(a) of the Act. The ID issued an Exclusion Order (also referred to as a removal order).

[7] Mr. Shen's appeal to the IAD was dismissed on February 9, 2024.

II. The Decision Under Review

[8] The IAD noted that Mr. Shen is married, his wife of 50 years is a permanent resident of Canada, and his two sons, five grandchildren and several relatives live in Canada. The IAD acknowledged that Mr. Shen stated that he lived with one of his sons between 2004 and 2014 while in Canada and then purchased an apartment in Canada in 2014, where he now resides when in Canada. Mr. Shen acknowledged that his establishment in Canada stems from time spent in the last 10 years; there was no evidence of his previous establishment.

[9] The IAD noted that at the hearing, counsel for Mr. Shen indicated that he would not challenge the legal validity of the removal order if counsel for the Minister agreed to allow the appeal on H&C grounds. Given the lack of agreement, Mr. Shen challenged both the validity of the removal order (i.e. based on misrepresentation) and argued that if the IAD found the removal to be valid, his appeal should be allowed on H&C grounds.

[10] The IAD stated that the extensive post-hearing written submissions were received and considered.

[11] The IAD found that the ID's decision to issue the exclusion order is legally valid because Mr. Shen engaged in a material misrepresentation.

[12] The IAD acknowledged the lengthy submissions of counsel for Mr. Shen that relied on *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*]. The IAD addressed Mr. Shen's submissions that paragraph 40(1)(a) is not a "backstop" to the residency obligations set out in section 28. (Mr. Shen adopted the term "backstop" from the Federal Court's decision in *Mason v Canada (Citizenship and Immigration)*, 2019 FC 1251 at para 62, where Justice Grammond stated, "[p]arliament did not intend the inadmissibility provisions [referring to subsection 34(1)] to be a backstop for the failures of the criminal justice system". This term was not used by the Supreme Court of Canada in *Mason*. Mr. Shen appears to use the term to suggest that inadmissibility based on misrepresentation should not be used as a substitute or alternative or catch-all to finding inadmissibility due to breach of residency obligations).

[13] The IAD noted that Mr. Shen's 2011 application to renew his permanent resident card stated that he was out of Canada for 948 days in the relevant period, however, he was away for a much longer period. Although Mr. Shen disputed that he was away for the whole period (referred to as a "total breach"), the IAD noted that there is no dispute that Mr. Shen "significantly" underreported his days out of Canada.

[14] The IAD found that Mr. Shen owed a duty of candour and had engaged in indirect misrepresentation by signing blank forms and providing the forms to Sunny Wang. The IAD found that the misrepresentation was material and foreclosed immigration authorities from investigating whether he had met his residency obligations. The IAD concluded, “[s]ection 40 (1(a) is not a backstop to section 28 as argued by Counsel. I find that *Mason* is not of any assistance to the Appellant in this case”.

[15] The IAD addressed Mr. Shen’s argument that a distinction should be made between misrepresentation made to acquire permanent resident status and a misrepresentation made to renew a permanent resident card, which counsel for Mr. Shen referred to as “core vs non-core” misrepresentation. The IAD also addressed Mr. Shen’s argument that a “non-core misrepresentation” should be regarded as less serious when considering whether there are sufficient H&C considerations to overcome the misrepresentation.

[16] The IAD noted that although Mr. Shen acknowledged that his misrepresentation did not fall in the narrow exception of an innocent misrepresentation, he contended that his application was out of his control after signing the blank form that Sunny Wang then submitted.

[17] The IAD considered Mr. Shen’s submission that if CBSA had investigated and discovered his misrepresentation in 2011, he would not be faced with a five-year ban on returning to Canada, but rather only the two-year ban that applied at that time. The IAD found that the onus was not on CBSA to discover the misrepresentation earlier, but rather the onus was on Mr. Shen to provide accurate information on his application to renew his PR card. The IAD

reiterated that Mr. Shen misrepresented the days spent out of Canada and foreclosed an avenue of investigation by doing so.

[18] The IAD also noted that counsel for Mr. Shen had raised several other issues about the legal validity of the removal order and that those same arguments had been made before the ID and had been argued before the Federal Court and rejected.

[19] The IAD then considered the relevant H&C factors: the seriousness of the misrepresentation, Mr. Shen's remorse, the best interests of any children affected [BIOC], establishment in Canada, and the hardship of removal.

[20] The IAD found that the misrepresentation was serious, as the integrity of the immigration system and the security of Canadians depends on applicants providing accurate information. The IAD found that Mr. Shen had a duty of candour, and in signing blank forms and giving them to Sunny Wang, he committed a serious breach. The IAD noted that the serious breach required Mr. Shen to establish significant H&C factors to allow the appeal.

[21] The IAD found that Mr. Shen was generally remorseful for his actions and had acknowledged that he should have been more careful in retaining Sunny Wang. The IAD concluded that this factor weighed slightly in his favour.

[22] With respect to the BIOC, the IAD noted that Mr. Shen's children are adults, two of his five grandchildren are over 18 and some grandchildren live in Toronto and others in Vancouver.

The IAD noted that Mr. Shen had made a voluntary choice to spend significant amounts of time away from them during their formative years and was also absent for long periods more recently. The IAD found that there was no evidence that Mr. Shen's absence caused any problems for his grandchildren. The IAD concluded that the BIOC was a neutral factor.

[23] The IAD found that although Mr. Shen had spent some time in Canada in the last 10 years, had purchased a home in 2014 and has family and relatives in Canada, his establishment in Canada remains limited. The IAD noted that measuring establishment is a case-by-case assessment and that where a person is retired, establishment is not measured in terms of income or employment. However, the IAD noted that Mr. Shen chose to remain in China for extended periods of time to receive medical treatment, maintains a home there, has significant establishment in China, and demonstrated limited community involvement in Canada. The IAD concluded that Mr. Shen's limited establishment weighed against granting him H&C relief.

[24] The IAD accepted that there would be some hardship resulting from Mr. Shen's removal on him and on his family in Canada, but of the type that was inherent in removal. The IAD acknowledged that Mr. Shen was 76 years of age and in poor health, but found that his submission that he would not likely be fit to be sponsored to Canada in five years when the exclusion order ends was speculative.

[25] The IAD also acknowledged Mr. Shen's submissions regarding the impact on his wife, who is a permanent resident and would be faced with remaining in Canada to retain her status or

returning to China. The IAD found that Mr. Shen's wife had sufficient flexibility to maintain her status while spending some time in China.

[26] The IAD again noted that Mr. Shen owns a home and has lived most of his life in China and had not provided any evidence to suggest that he will face any problems in China. Although he will be separated from family members in Canada, he could maintain contact and they could visit him. The IAD concluded that hardship was a neutral factor in the assessment of H&C considerations.

[27] The IAD gave "little weight" to Mr. Shen's argument that the five-year prohibition on returning to Canada as a consequence of finding misrepresentation should not be imposed as this was a "retroactive impact". The IAD noted that Mr. Shen had a duty of candour to provide truthful information on his application (submitted in 2011) and cannot benefit from the two-year prohibition that applied at that time by arguing that the onus was on CBSA to have discovered his misrepresentation sooner.

[28] In conclusion, the IAD found that the removal order was valid and there were insufficient H&C considerations to warrant "discretionary relief or special relief in light of all the circumstances", noting that the negative factors outweighed the positive factors.

III. The Applicant's Submissions

[29] Mr. Shen argues that the IAD's decision is unreasonable. He submits that the IAD erred in finding misrepresentation and erred in finding that there were insufficient H&C considerations

to justify allowing the appeal, including by relying on inaccurate facts that could have a bearing on the weight attached to the H&C considerations.

[30] Mr. Shen also argues that the IAD breached the duty of procedural fairness by failing to consider whether to grant a stay of his removal pursuant to subsection 68(1) as an alternative to allowing his appeal and by failing to consider whether the misrepresentation finding should result in only a two-year ban on returning to Canada, rather than a five-year ban.

A. *IAD's finding of misrepresentation and confirmation of the removal order is not reasonable*

[31] Mr. Shen argues that the IAD failed to address the legal issues he raised, including regarding the impact of *Mason* on the interpretation of misrepresentation pursuant to subsection 40(1).

[32] Mr. Shen argues that the IAD failed to consider that the Supreme Court of Canada's reasoning in *Mason* regarding paragraph 34(1)(e) of the Act (inadmissibility on security grounds) should apply to the interpretation of section 40. In his post-hearing written submissions to the IAD, he appeared to argue, albeit vaguely, that there should be a *nexus* between a finding of inadmissibility based on misrepresentation and inadmissibility based on failing to meet residency obligations just as the Supreme Court found in *Mason* that there must be a *nexus* between the conduct that is captured by paragraph 34(1)(e) and national security.

[33] In his submissions to the IAD, Mr. Shen argued that based on an analogy to *Mason*, paragraph 40(1)(a) cannot be used as a “backstop” (which as noted above likely means substitute, alternative or catch all) to find inadmissibility. He submits that if a permanent resident has not breached the residency obligations pursuant to section 28, then a misrepresentation finding pursuant to paragraph 40(1)(a) should not be used to find the person inadmissible.

[34] On this Application, Mr. Shen argues that the IAD erred by not addressing this argument, which he characterizes as central, and by simply stating that it had been rejected by the courts. He argues that the principles of justification and transparency required the IAD to “meaningfully account for the central issues and concerns raised by the parties”.

[35] Mr. Shen argues that, at minimum, the IAD was required to determine whether he, as a permanent resident, should be removed from Canada for foreclosing an avenue of investigation about his potential inadmissibility rather than being removed for actual inadmissibility.

[36] Mr. Shen also argues that there is a distinction between permanent residents and foreign nationals and that Parliament intended that permanent residents should only lose status for specific acts of inadmissibility, such as criminality or breach of residency requirements, and not solely for withholding information. He notes that a permanent resident has more at stake than a foreign national who has never entered Canada. He suggests that the test for a permanent resident “may be” that they have to knowingly misrepresent in order to be found inadmissible.

[37] Mr. Shen further asserts that sections 11 and 16 of the Act regarding the duty to be truthful do not apply to permanent residents, nor does section 41.

B. *Innocent mistake should have been considered*

[38] Mr. Shen argues that the IAD erred by suggesting that he had conceded that the innocent misrepresentation exception did not apply. He submits that this should have been considered in the context of the H&C determination. He submits that he had no opportunity to see the forms submitted by Sunny Wang and had no knowledge of the misrepresentation.

C. *The IAD erred in referring to a “total breach”*

[39] Mr. Shen argues that the IAD misunderstood the factual background and the statutory provisions and erred by referring to his “total breach”. Mr. Shen submits that this term signals a determination that he was in breach of all his residency obligations pursuant to section 28, which ignores that section 28 permits consideration of H&C factors. It is not simply a calculation of the days out of Canada, which he also disputes. He argues that this factual error undermines the IAD’s decision.

D. *The IAD’s determination that there were insufficient H&C considerations is unreasonable*

[40] Mr. Shen submits that the IAD’s assessment of the H&C considerations and conclusion that there were insufficient H&C considerations to warrant relief is unreasonable. He submits that the IAD ignored his submissions and relied on inaccurate information. He disputes that he is

seeking a reweighing of the H&C factors; rather, he seeks a proper consideration of the factors based on accurate facts.

[41] Mr. Shen argues that “egregious” errors of fact affected the IAD’s assessment of the seriousness of his breach, his establishment and the BIOC. He relies on *Li v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 358 [Li], where Justice McVeigh found that the IAD’s finding that the applicant had signed a blank form was a serious error of fact that impacted the assessment of credibility and other determinations.

[42] Mr. Shen again argues that in determining the seriousness of the misrepresentation, the IAD failed to consider the distinction between “core” misrepresentation and “non-core” misrepresentation. He submits that his misrepresentation is “non-core” and less serious.

[43] Mr. Shen also argues that the IAD erred in attaching negative weight to his establishment in Canada, based on inaccurate facts.

[44] Mr. Shen submits that the IAD erroneously found that he had been absent from Canada for two years. He submits that he returned to China from late 2021 to early 2023 to be treated with traditional medicine for a back problem and because of familiarity with the language, which was not a period of two years. He also points to his attendance at English language classes to show that he was in Canada for other periods.

[45] Mr. Shen submits that the IAD erred by finding that he was not established in Canada, despite that he is retired, has a home in Canada, has taken English lessons for several years, and has extensive family in Canada. He contends that the IAD ignored that he has been in Canada to learn English, which he states began in 2012, has been engaged with his grandchildren, has purchased a home and is closely connected with his family. He also submits that the IAD ignored his submissions about his son's successful restaurant business, which in Mr. Shen's submission supports his establishment in Canada.

[46] With respect to the BIOC of his grandchildren, Mr. Shen argues that the IAD failed to apply the guidance of the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61[*Kanthasamy*] and overlooked the role of a grandfather in a traditional Chinese family.

[47] Mr. Shen submits that the IAD also failed to consider the objective of and impact on family reunification as an H&C factor. He argues that the IAD failed to consider the impact of his removal on him, his wife, his children and grandchildren. He notes that he has been an integral part of his son's success in Canada, his son sponsored him to Canada originally and that he has been more actively engaged with his grandchildren in recent years. He further submits that the IAD failed to consider the impact of his removal on his wife of 50 years, including that her PR status would be affected if she returned with him to China.

E. *The IAD breached procedural fairness*

[48] Mr. Shen argues that the IAD breached procedural fairness by failing to consider the alternative remedy of a stay of removal pursuant to section 68 of the Act. He submits that H&C and other considerations support this alternative remedy.

[49] Mr. Shen further argues that the IAD breached procedural fairness by failing to consider—in the context of H&C considerations—the unfairness of the consequences of the misrepresentation finding, which bars him from returning to Canada for five years, as opposed to the two-year ban that applied at the time of his misrepresentation.

[50] Mr. Shen also argues that the IAD breached procedural fairness by finding that the five-year ban retroactively applies to his misrepresentation. He submits that his application to renew his permanent resident card was flagged in 2012 for follow up, but CBSA did not pursue any investigation until much later. He relies on *Zeng v Canada (Citizenship and Immigration)*, 2019 FC 1586 [Zeng], which he submits supports the view that the two-year ban should apply where the misrepresentation occurred before 2014.

IV. The Respondent's Submissions

[51] The Respondent submits that the IAD reasonably found that the removal order was valid based on the misrepresentation finding and that there were insufficient H&C factors to allow the appeal.

[52] The Respondent submits that Mr. Shen has raised the same arguments in this Court as he raised before the IAD and which were reasonably rejected.

A. *The misrepresentation finding is reasonable*

[53] The Respondent notes the jurisprudence which addresses the purpose and interpretation of section 40, including that it is given a broad interpretation, applies to direct and indirect misrepresentation, and only a narrow exception exists for an honest and reasonable mistake.

[54] The Respondent submits that Mr. Shen's conduct clearly supports the finding of misrepresentation; Mr. Shen had an obligation to be truthful, he signed a blank form for Sunny Wang and Sunny Wang's untruthful information about Mr. Shen's time in Canada foreclosed investigation of whether Mr. Shen had met his residency obligations.

[55] The Respondent submits that it is undeniable that misrepresenting the number of days in Canada is a material misrepresentation given the residency obligations set out in section 28 to be physically present in Canada for 730 days in the relevant five-year period. The Respondent notes that Mr. Shen's misrepresentation resulted in the renewal of his permanent resident card—despite that he was ineligible (i.e. this would induce an error in the Act).

[56] The Respondent submits that Mr. Shen's misrepresentation was serious, noting the extensive periods of time he spent away from Canada, which may have amounted to the full five years at issue, his awareness that he would not be eligible for renewal of his permanent resident card or status, and by signing blank forms for completion by Sunny Wang.

[57] The Respondent adds that, although Mr. Shen takes issue with the IAD's reference to "total breach", the ID decision cites the CBSA's calculation of Mr. Shen's time out of Canada in the relevant period as 1826 days, which would be the whole five-year period. The Respondent notes that regardless of whether the term "total breach" is used, there is no dispute that Mr. Shen spent far more time out of Canada in the five-year period than declared in his application to renew his permanent resident card.

[58] The Respondent disputes that there is any distinction to be drawn between core and non-core misrepresentation, noting that the same arguments were made in *Yang v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 329 at paras 66-68 [Yang] where the Court noted the well-established principles regarding misrepresentation pursuant to paragraph 40(1)(a), including the duty of candour on applicants and that applicants are responsible for direct and indirect misrepresentation. In *Yang*, the Court rejected any distinction between core and non-core misrepresentation. The Respondent reiterates the Court's confirmation in *Yang* that "a misrepresentation is a misrepresentation".

B. *The IAD did not err by not addressing irrelevant legal arguments*

[59] The Respondent disputes Mr. Shen's reliance on *Mason* to argue that some different or new interpretation should be given to section 40.

[60] The Respondent submits that the decision in *Mason* does not suggest that, by way of analogy, some *nexus* must exist between the residency obligation of section 28 and a finding of

misrepresentation pursuant to section 40; sections 28 and 40 are independent of each other.

Moreover, the principles governing section 40 are well-established.

C. *No innocent misrepresentation*

[61] The Respondent notes that at the IAD hearing, Mr. Shen acknowledged that the narrow innocent misrepresentation did not apply. The Respondent submits that Mr. Shen cannot argue that the IAD erred in not considering the exception, nor can he raise it now. In any event, Mr. Shen would not meet the criteria for innocent misrepresentation which requires that any mistake be both honest and objectively reasonable and that the misrepresented information is beyond the control of the applicant.

D. *The IAD reasonably concluded that the H&C factors did not warrant allowing the appeal*

[62] The Respondent submits that the IAD's assessment of all the relevant H&C considerations, as established in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 at para 14 [*Ribic*], and the overall balancing was reasonable. The Respondent notes that Mr. Shen's arguments replicate his submissions to the IAD.

[63] With respect to establishment, the Respondent submits that Mr. Shen selectively focuses on the short periods of time when he was in Canada, while ignoring the entire 20-year timespan during which he was a permanent resident. The IAD assessed Mr. Shen's establishment in the context of his circumstances, as a 76-year-old retired person, and did not focus on income or employment in Canada.

[64] The Respondent submits that while Mr. Shen spent almost one year in Canada in 2021, this fell into the COVID-19 period with restrictions on travel and is not indicative of establishment.

[65] The Respondent notes that the IAD considered the impact on Mr. Shen's adult children and his grandchildren. The Respondent notes that where a grandparent is not a primary caregiver, the hardship from that separation alone does not render the refusal of H&C relief unreasonable. Mr. Shen simply takes issue with the weight assigned.

[66] The Respondent disputes Mr. Shen's argument that the IAD ignored family reunification or the impact on Mr. Shen's wife. The Respondent points to the heading in the IAD decision "Hardship for the Appellant and his family in Canada" and the IAD's consideration of the fact that Mr. Shen and his wife had voluntarily spent significant time apart in the past and the IAD's specific references to Mr. Shen's wife being able to spend time in China and in Canada and maintain her permanent resident status. The Respondent also notes that Mr. Shen voluntarily spent a significant amount of time away from his family and there was no evidence that this had caused hardship in the past.

E. *The IAD did not err by not addressing relief under section 68*

[67] The Respondent disputes that the IAD erred in not considering a stay of removal. The Respondent notes that identical arguments were made and rejected in *Yang* at paras 104-118.

V. The Issues

[68] The key issue is whether the IAD's decision is reasonable. Although Mr. Shen has raised many arguments, and has miscast some as breaches of procedural fairness, the assessment of the reasonableness of the IAD's decision entails consideration of the following issues:

1. Whether the IAD's finding of misrepresentation is reasonable, which in turn entails consideration of:
 - a. Whether there is a distinction between core and non-core misrepresentation;
 - b. Whether the IAD was required to respond to all legal arguments, including on the impact of *Mason*;
2. Whether the IAD reasonably found that there were insufficient H&C grounds to justify granting relief, which entails consideration of:
 - a. Whether the IAD relied on erroneous facts that would impact the assessment of the H&C considerations;
 - b. Whether the IAD assessed all the relevant H&C factors;
3. Whether the IAD erred in not addressing whether a stay of the removal order was available pursuant to subsection 68(1); and,
4. Whether the IAD erred in not addressing the impact of the five-year ban on returning to Canada; whether the five-year ban applied retroactively to Mr. Shen's misrepresentation; and, whether this should have been considered in the context of the H&C assessment.

VI. The Standard of Review

[69] The standard of review for 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; *Li v Canada (Minister of Public Safety and Emergency Preparedness)*, 2021 FC 358 at para 10 [*Li*]; *Yang* at para 47).

[70] Discretionary decisions are generally owed deference, given the expertise and experience of the decision-maker; regardless, the decision must meet the hallmarks of reasonableness in accordance with the guidance of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[71] 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 (Vavilov at paras 85, 102, 105–107). 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).

[72] Where issues of procedural fairness arise, the Court must determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances; this is akin to a standard of correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The scope of the duty of procedural fairness owed varies depending on the circumstances and is informed by several factors (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 21, 174 DLR (4th) 193).

VII. The Statutory Provisions

[73] The relevant provisions of the Act include sections 16, 40, 41, and 66-68. These provisions are set out in Annex A.

VIII. The IAD's finding of misrepresentation is reasonable

[74] Mr. Shen has made many arguments, several of which are inconsistent with the well-established jurisprudence regarding misrepresentation. The IAD cannot be faulted for not addressing Mr. Shen's legal arguments that are contrary to the law that guides the IAD.

[75] The purpose of section 40 of the Act in deterring misrepresentation and the importance of being truthful as a statutory requirement and a fundamental principle have both been repeatedly highlighted in the jurisprudence.

[76] Section 40 is intended to promote integrity in the immigration system and it has been broadly interpreted (*Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004 at paras 10-11 [Malik]; *He v Canada (Citizenship and Immigration)*, 2022 FC 112 at para 15; *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 15 [Wang]; *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28 [Goburdhun]; *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23 [Oloumi]).

[77] The onus is always on the applicant to ensure the completeness and accuracy of their application (*Oloumi* at para 23; *Wang* at paras 15-16; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 747 at para 51 [Singh]; *Tsang v Canada (Citizenship and Immigration)*, 2024 FC 1941 at para 26 [Tsang]). This principle applies to any type of application pursuant to the Act. Mr. Shen's submission that section 16 does not apply to a permanent resident is simply wrong. Contrary to Mr. Shen's argument, there is no lesser duty to be truthful on an application

by a permanent resident to renew their permanent resident card than for an applicant seeking permanent resident status or establishing their compliance with their permanent residence obligations.

[78] More recently, in *Tsang*, Justice Zinn reviewed the principles in the jurisprudence and reiterated the criteria for a finding of misrepresentation, noting at paras 23-24:

[23] Case law confirms that inadmissibility under paragraph 40(1)(a) requires two elements: (1) a misrepresentation; and (2) the misrepresentation must be material, capable of inducing an error in the administration of the Act: *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441, at para 14; *Ragada v Canada (Citizenship and Immigration)*, 2021 FC 639, at para 18; *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004, at para 11.

[24] Establishing misrepresentation does not require any evidence of *mens rea*, premeditation, or intent: *Punia v. Canada (Citizenship and Immigration)*, 2017 FC 184 at para 51; *Maan v. Canada (Citizenship and Immigration)*, 2020 FC 118 at paras 24-25. Even innocent omissions of material information may constitute misrepresentation leading to inadmissibility: *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15; *Gobordhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971 at para 28.

[79] In *Tsang*, Justice Zinn addressed the purpose of the misrepresentation finding, the consequences and the governing principles at para 26:

[26] Other general principles and legal context surrounding paragraph 40(1)(a) have been comprehensively surveyed by Justice Little in *Singh v. Canada (Citizenship and Immigration)*, 2023 FC 747 [*Singh*] at para 28. The core principles are distilled as follows:

- 1) Section 40 receives broad interpretation to safeguard the integrity of the Canadian immigration system through deterring misrepresentation and ensuring complete, truthful disclosure;

2)The overarching duty of candour under subsection 16(1) of the Act requires complete, honest disclosure when seeking entry to Canada, and the duty guides interpretation of section 40;

3)Applicants bear the onus of ensuring accuracy and completeness of the information they provide, and they cannot deflect responsibility by simply claiming innocence or blaming third parties;

4)Paragraph 40(1)(a) expressly captures both erroneous statements and material omissions;

5)Paragraph 40(1)(a) applies to misrepresentations whether deliberate, negligent, intentional, or unintentional;

6)Applicants are responsible for paragraph 40(1)(a) misrepresentations made directly by them or indirectly through others, including immigration consultants or agents; and

7)Responsibility stemming from paragraph 40(1)(a) attaches even to misrepresentations made without the applicant’s knowledge, including those by third parties.

[80] The principles summarized in *Singh* and reiterated in *Tsang* are not new and have been stated in many cases; for example, Justice Strickland summarized the principles in *Goburdhun* at para 28, *Wang* at paras 15–16, and *Malik* at paras 10-11.

A. *There is no distinction between core and non-core misrepresentation*

[81] There is no distinction between and no characterization of “core” and “non-core” misrepresentation. The Court maintains the view that the seriousness of the misrepresentation is always a relevant factor. The seriousness of the misrepresentation is assessed in the relevant context by the decision-maker, as it has in Mr. Shen’s case, by the IAD.

[82] Mr. Shen raises many of the same arguments considered—and rejected—by this Court in *Yang* at paras 67-71:

[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.

[Emphasis added.]

[83] Mr. Shen argues that the Court has supported his view that there is a distinction between a misrepresentation to acquire status and a misrepresentation to renew a permanent resident card after that status has been granted (i.e. core versus non-core) and relies on *Canada (Citizenship and Immigration) v Yu*, 2019 FC 1088. This argument was also made in *Yang*, where this Court stated at paras 74-75:

[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 in original.]

[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*.

- B. *The IAD was not required to address legal issues that were contrary to the established principles or not applicable*

[84] Mr. Shen argues that the IAD dismissed his legal arguments in one sentence by stating the arguments had been rejected by the courts. He submits this is not reasonable because *Mason* had not been considered in this context by the courts. However, the IAD's comment was not about the *Mason* argument, which the IAD dealt with separately and succinctly.

[85] The IAD noted that counsel for Mr. Shen had raised "a number of issues" about the misrepresentation finding, which had also been argued before the ID and "have been argued before the Federal Court" and rejected [i.e., in other cases]. The IAD's dismissal of these other legal arguments refers to those raised in Mr. Shen's lengthy submissions, including post-hearing submissions of over 40 pages. Mr. Shen raised several of the same arguments before this Court; for example, that there should be a distinction between core and non-core misrepresentation, that permanent residents should be treated differently than foreign nationals for their misrepresentation, and that permanent residents should only be subject to a misrepresentation finding where their misrepresentation is done "knowingly". These arguments overlook the well-established principles regarding misrepresentation pursuant to subsection 40(1), as described above.

[86] Mr. Shen baldly asserts that Parliament did not intend that permanent residents would lose their status (i.e., be inadmissible to Canada) "simply for withholding information about a potential inadmissibility that may or may not lead to a finding of inadmissibility". This assertion ignores the jurisprudence which repeatedly emphasizes the purpose and scope of section 40.

Moreover, Mr. Shen did not withhold information about a “potential” inadmissibility given that he was out of Canada for a significantly long period of time (perhaps the whole five years), which would have also affected his permanent resident status pursuant to section 28, had this been investigated. Mr. Shen knew that he had been absent, yet he retained Sunny Wang to apply to renew his permanent resident card.

[87] The IAD did not err by failing to provide further “responsive justification” regarding these legal arguments that run contrary to established jurisprudence. Nor did the IAD err by failing to provide “responsive justification” to Mr. Shen’s argument that *Mason* should apply to find some *nexus* between sections 40 and 28.

[88] In *Mason*, the Supreme Court of Canada addressed the interpretation of paragraph 34(1)(e) and found that the conduct described—the “act of violence”—must have a *nexus* with national security. The Supreme Court of Canada considered the differences between section 34 and section 36. Subsection 34(1) provides that a permanent resident or foreign national is inadmissible on security grounds for, among other things, “(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada”. Subsection 36(1) provides that a permanent resident or foreign national is inadmissible for “serious criminality” and sets out what constitutes serious criminality. Subsection 36(2) provides that a foreign national is also inadmissible based on “criminality” and sets out what constitutes “criminality”.

[89] The Supreme Court of Canada found, among other things, that paragraph 34(1)(e) could not be used as a basis for inadmissibility where the conduct relied on does not have a *nexus* with

national security or the security of Canada [*Mason* at paras 121-122]. In other words, to adopt the words used in the Federal Court’s decision, paragraph 34(1)(e) could not be used as a “backstop” (i.e., catch all or alternative to find inadmissibility) for any criminal act.

[90] In his submissions to the IAD, Mr. Shen noted that the Federal Court of Appeal in *Public Safety and Emergency Preparedness v Weldemariam*, 2024 FCA 69 [*Weldemariam*] and the Federal Court in *Wahab v Canada (Citizenship and Immigration)*, 2024 FC 1985 [*Wahab*] relied on *Mason*. *Weldemariam* and *Wahab* both dealt with the principle of non-refoulement and the applicability of Canada’s international law obligations to other parts of the Act. Mr. Shen’s submissions to the IAD consist largely of excerpts from *Mason*, including regarding statutory interpretation, and of excerpts from *Weldemariam* and *Wahab*. Mr. Shen did not articulate how the references to *Mason* in these cases supports his view that *Mason* should guide the interpretation of section 40. Nor does Mr. Shen explain to this Court how *Weldemariam* and *Wahab* supports the view that *Mason* applies to find some *nexus* between sections 40 and 28.

[91] Mr. Shen’s key argument to this Court is that the IAD erred by not addressing his *nexus* argument.

[92] The Court has grappled with distilling and understanding Mr. Shen’s vague arguments. No doubt the IAD had the same challenge.

[93] The Court regards Mr. Shen’s reliance on *Mason* as related to his argument that misrepresentation in the context of an application to renew a permanent resident card should not

be the only basis to find the applicant inadmissible and that there should be a *nexus* to the breach of the residency obligations in section 28. As noted, it is not clear how this argument would assist Mr. Shen.

[94] Mr. Shen's misrepresentation was made in his application to renew his permanent resident card, and not in his application for permanent resident status. Regardless, he misrepresented a material fact, which as found by the ID and IAD foreclosed investigation into his compliance with his permanent residence obligations. Although his permanent resident status was not the issue before the IAD, it is apparent that he had not met his permanent residence obligations in the relevant five-year period as required by section 28 of the Act.

[95] The IAD did not err by not delving into Mr. Shen's vague argument regarding *Mason*. Contrary to Mr. Shen's submission, this was not a central issue. The IAD stated that it considered the post-hearing submissions (which included over 15 pages of excerpts from *Mason* including the Supreme Court of Canada's explanation of principles of statutory interpretation). Although the IAD succinctly stated that "[s]ection 40(1)(a) is not a backstop to section 28 as argued by Counsel. I find that *Mason* is not of any assistance to the Appellant in this case", and did not provide extensive reasons, the conclusion is reasonable. The IAD has plenty of experience determining misrepresentation and has ample well-established principles from the jurisprudence to rely on, which it did.

[96] The Court agrees that *Mason* does not apply and does not support that section 40 should be interpreted in a new and different way to recast the concept of misrepresentation. The IAD did not err by not providing more extensive reasons to so find.

IX. The IAD reasonably found that there were insufficient H&C grounds to justify granting relief

[97] Although Mr. Shen submits that he is not seeking a reweighing of the H&C factors, but rather a proper assessment based on accurate facts, his submissions all suggest a request for the Court to reweigh. The IAD considered the relevant *Ribic* factors and did not ignore the evidence or rely on incorrect facts. Understandably, Mr. Shen would prefer a different outcome; however, the weight attached to the relevant considerations and the overall balancing is within the discretion of the IAD and absent a serious shortcoming, the Court does not interfere.

[98] Mr. Shen submits that the IAD's misrepresentation finding overshadowed the IAD's assessment of the H&C considerations and that it "was incumbent on the IAD to remain open to the possibility that the Applicant's inadmissibility could be overcome". However, there is nothing in the IAD's decision to suggest that it began from the premise that special relief was not an option or would not be considered. The bulk of the IAD's decision addresses the H&C factors.

A. *The IAD did not rely on erroneous facts or ignore submissions*

[99] The IAD did not rely on erroneous information. Contrary to Mr. Shen's submission, the IAD did not make an "egregious" error by suggesting that Mr. Shen was absent from Canada for

two years. The IAD stated, “the Appellant returned to China in 2021 and he returned to Canada in early 2023. This is another significant period where the Appellant was away from his grandchildren”. The submissions of the Minister to the ID noted that Mr. Shen was away from Canada from November 2021 to April 2023. This is a period of 18 months, which is a significant period of time away. Although the IAD later described Mr. Shen’s absence for voluntary medical treatment as for “approximately two years”, this is not an egregious error of fact and is only one example of periods of time when Mr. Shen was away from Canada. Moreover, the IAD’s reference to this absence was not related to the seriousness of the misrepresentation or to establishment as Mr. Shen contends, but was stated in the context of the BIOC of the grandchildren. It was not an erroneous finding—and certainly not an error by the IAD—to note this absence in considering the impact of his future removal on his grandchildren.

[100] The IAD did not make “serious” factual errors that undermined the assessment of Mr. Shen’s establishment in Canada by: not mentioning Mr. Shen’s son’s business success; not acknowledging that his absence from Canada from 2021 to 2023 was for medical treatment; not accepting the role of grandfather in a traditional Chinese family when assessing BIOC; stating that he only wants to live in Canada now, although there is evidence that he took English classes in 2012 and purchased an apartment in 2014; and, referring to a “total breach” to describe his absences from Canada at the time of his application.

[101] The IAD is presumed to have considered all the evidence and submissions and was not required to address each submission. The IAD did not err by not specifically referring to Mr. Shen’s participation in English classes, which appeared to be off and on, and primarily in

more recent years. Acknowledging that Mr. Shen attended some English classes would not be determinative of his establishment in Canada. It is not apparent how Mr. Shen's son's success is attributable to Mr. Shen's own establishment, apart from his submission that he had driven his grandchildren to school years ago while his son worked. The IAD acknowledged that Mr. Shen's absence in 2021–2023 was by his choice and for medical treatment. The IAD considered Mr. Shen's role as grandfather in the BIOC assessment. The IAD's use of the term "total breach" had no bearing on the finding that Mr. Shen was out of Canada for significantly longer than reported and that his underreporting constituted misrepresentation. The IAD found that this was not disputed. It is not clear why Mr. Shen seeks to dispute this now.

[102] Mr. Shen's reliance on *Li* is misplaced. In *Li*, Justice McVeigh found that the IAD had erroneously found that the applicant signed a blank form and concluded at para 36:

I find this to be a determinative error given that this could affect the credibility assessment of the officer as well as the assessment of the remorse factor and possibly others. Given the importance of the seriousness of the representation, Mr. Li is entitled to a decision free of this serious error that was stated twice and is integral (or could be) to many of the officer's other determinations.

[103] In *Li*, the erroneous factual finding was directly related to the misrepresentation finding. In Mr. Shen's case, the characterization of his absence as approximately two years, when it was approximately 18 months, is not a determinative error and is not integral to the other determinations regarding the H&C assessment. Nor would any of the other alleged misstatements be determinative.

[104] The IAD stated, “PR status is not a placeholder until a person decides when it is most convenient to establish themselves in Canada” in the context of Mr. Shen’s submission that he had no control over when his son sponsored him to Canada. Contrary to Mr. Shen’s submission, the IAD did not say that Mr. Shen only wants to live in Canada now, although this would appear to be so. Regardless, the IAD’s comment is not an error. Mr. Shen has been a PR since 2003, yet there is no evidence of any establishment in the first ten years, as acknowledged by Mr. Shen, and only limited establishment since then.

B. *The IAD considered all the relevant Ribic factors*

[105] 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”. The IAD considered all the *Ribic* factors, beginning with the seriousness of the misrepresentation, which the IAD noted was indirect via Sunny Wang but, in the circumstances, serious and requiring “significant” H&C factors to overcome. The IAD went on to consider Mr. Shen’s remorse, the BIOC, establishment in Canada, and the hardship on Mr. Shen in leaving Canada and on his family in Canada, and also considered the submissions on the impact of the five-year ban (“retroactive impact”). The IAD then found that the negative factors outweighed the positive factors and that “on a balance of probabilities” there were insufficient H&C considerations to warrant special relief.

[106] As noted, this is a discretionary decision and not a mathematical calculation. The only positive factor noted, and characterized as “slightly in his favour” was Mr. Shen’s remorse.

However, even if there were additional positive factors, the overall assessment is within the experience and expertise of the IAD, and the Court does not reweigh.

[107] Mr. Shen argues that the IAD erred in giving negative weight to his establishment, including by misstating facts. He submits that negative weight is not an option, without citing any authority. The IAD's finding that "the Appellant's limited establishment in Canada weighs against him in granting discretionary relief" must be read in the context of the IAD's assessment of all the H&C factors. The IAD noted at the outset that the seriousness of the breach required significant H&C factors to allow the appeal. The IAD then noted that the remorse factor weighed slightly in Mr. Shen's favor, BIOC was a neutral factor, establishment weighed against granting relief, and hardship was a neutral factor. Stating that Mr. Shen's limited establishment weighed against granting discretionary relief reflects the IAD's assessment. The IAD's assessment of establishment is reasonable given the evidence on the record regarding the limited time Mr. Shen spent in Canada and how Mr. Shen spent that time.

[108] The IAD did not err in assessing the best interests of children that would be affected by Mr. Shen's removal. Mr. Shen points to the impact on his grandchildren, although he is not their primary caregiver, has been absent for long periods of time in their shorter lives, and only visits his grandchildren in Toronto once a year. The Court is not aware of any evidence provided by the grandchildren regarding the impact on them.

[109] Mr. Shen also argues that the IAD failed to apply the guidance of the Supreme Court of Canada in *Kanthasamy*, that the best interests of children are the primary consideration.

Mr. Shen's argument overlooks that first, *Kanthasamy* has been interpreted as applying primarily in the context of H&C applications pursuant to subsection 25(1) (*Lewis v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 72), although the principle that decision-makers must be alert and alive to the impact on children is considered in other contexts; second, the BIOC are generally focussed on children under 18; and third, the BIOC is not determinative of an H&C assessment, but rather is one of several, albeit important, considerations.

[110] Contrary to Mr. Shen's submission, the IAD did not ignore the hardship of his removal and the five-year ban on returning to Canada on his wife given their over 50 years marriage. While the IAD's conclusion may appear insensitive to Mr. Shen and his family, the impact on Mr. Shen's wife, his family in Canada and on Mr. Shen himself was addressed, as noted in the decision.

[111] The IAD acknowledged that Mr. Shen is a 76-year-old with health issues, but reasonably found that his submission that he may not be fit to be sponsored in 5 years or that his wife's PR status was at risk was speculative. The IAD also noted that there was no evidence that Mr. Shen's wife could not spend time with him in China while maintaining her PR status in Canada. The IAD found that Mr. Shen's wife had sufficient flexibility to maintain her status.

[112] The IAD addressed Mr. Shen's submissions that the impact of the five-year ban should be considered in the context of the H&C considerations because at the time of the misrepresentation the ban was two years. The IAD gave "little weight" to this argument, noting

that Mr. Shen had a duty of candour, and cannot put the onus on the CBSA to have discovered his misrepresentation earlier.

[113] The five-year ban is the consequence of a finding of misrepresentation. It would be circuitous for the IAD to consider the impact of the ban as a stand-alone factor in determining if there are sufficient H&C considerations to justify relief. If there were sufficient H&C considerations, this would overcome the misrepresentation finding and the appeal would be allowed or a stay of removal would be granted; there would be no removal and no five-year ban.

[114] The jurisprudence highlights that subsection 40(1) results in these consequences to reinforce the need to deter misrepresentation. While the five-year ban is a harsh consequence of the misrepresentation finding, the impact of the ban is considered as part of the hardship assessment. The IAD clearly considered the impact on Mr. Shen of being banned from Canada for five years in the context of the hardship factor.

X. The IAD did not err by not addressing whether a stay of removal pursuant to subsection 68(1) should be granted

[115] Mr. Shen argues that the IAD erred by not addressing his request for a stay of his removal order instead of dismissing the appeal.

[116] Although Mr. Shen characterizes this argument as a breach of procedural fairness, focussing on the absence of reasons, the issue is whether the IAD's decision to not grant a stay of removal is reasonable.

[117] Mr. Shen argues that because the IAD acknowledged that he was remorseful and found this to “weigh slightly in his favour”, the IAD should have considered and imposed a stay of removal. Mr. Shen also argues that the unfairness of imposing a five-year ban on returning to Canada as a result of misrepresentation (rather than the two-year ban that applied at the time of his misrepresentation) should have been a factor supporting the consideration of a stay of removal. He argues that the IAD erred in ignoring his request for a stay and not providing any reasons.

[118] This Court addressed a similar argument, and considered the same case law now cited by Mr. Shen, in *Yang* at paras 106-118. Mr. Shen has not provided any basis for this Court to depart from its analysis in *Yang*. In *Yang*, this Court concluded that “special relief” includes both allowing the appeal and the alternative of staying the removal on conditions. For both outcomes, the IAD must conclude that there are sufficient H&C grounds. If there are insufficient H&C grounds, then neither option is available as special relief.

[119] In *Yang* at para 106, this Court stated, “[g]ranting 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”.

[120] Mr. Shen seeks to find an error where there is none. Mr. Shen’s remorse was considered by the IAD in assessing the H&C considerations, as was the hardship of the five-year ban, yet the IAD found insufficient H&C considerations to overcome the seriousness of the misrepresentation.

[121] Section 66 of the Act provides for three possible outcomes upon the consideration of an appeal from the ID: the IAD can allow the appeal (in accordance with section 67), stay the removal order (in accordance with section 68) or dismiss the appeal (in accordance with section 69).

[122] Subsection 67(1) sets out three criteria that must be met to permit the IAD to allow the appeal, one of which, as described in paragraph 67(1)(c) refers to “special relief” and states:

(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, <u>sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.</u>	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.
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[Emphasis added.]

[123] Subsection 68(1) sets out the criteria for the IAD to grant the “special relief” of staying the removal order, and states:

68 (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, <u>that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.</u>	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 motifs d’ordre humanitaire justifiant, vu les autres circonstances de l’affaire, la prise de mesures spéciales.
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[Emphasis added.]

[124] The IAD assessed all the relevant H&C factors and concluded, “I find on balance that there are not sufficient humanitarian and compassionate considerations that warrant discretionary or special relief in light of all the circumstances of this case. Therefore, the appeal is dismissed” [Emphasis added].

[125] However, if the IAD had found that there were sufficient H&C grounds, the IAD would have had two options: to allow the appeal or to grant a stay of the removal order for a period of time, possibly with conditions. The IAD would determine the appropriate option.

[126] The term “special relief” refers to allowing the appeal based on H&C considerations and granting a stay of removal based on H&C considerations. Without finding sufficient H&C considerations, there was no need for the IAD to specifically explain why the alternative of a stay of removal for Mr. Shen was not granted. The IAD’s reasons are obvious.

[127] Mr. Shen submits that in *Eftekharzadeh v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 1000 [*Eftekharzadeh*], the Court addressed the duty on the IAD to provide reasons for not imposing a stay where a stay is requested. That overstates the finding in *Eftekharzadeh*; Justice Ahmed found that the IAD’s failure to consider a stay of removal was not an error given that the applicants 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”. However, this statement had no bearing on the decision in

Eftekharzadeh and there was no analysis and no reference to any jurisprudence from this Court in support of this proposition.

[128] Mr. Shen also points to jurisprudence (also addressed in *Yang*) in support of his argument that the IAD should have provided reasons for not granting a stay of removal. In *Yang*, this Court noted at para 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.

[129] In the present case, Mr. Shen submits that he asked the IAD to consider a stay of removal. The IAD found that “special relief”, which encompasses both a stay of removal and allowing the appeal was not warranted.

[130] Mr. Shen knows why a stay was not granted; there were insufficient H&C considerations. His arguments are basically a plea to this Court to reweigh the H&C factors and find a way to overcome the consequences of his misrepresentation.

XI. The IAD did not fail to consider that the five-year ban on returning to Canada would apply to Mr. Shen

[131] Mr. Shen argues that the IAD should have considered the impact of the five-year ban as an H&C factor, which it did, as addressed above. Mr. Shen also argues that the IAD should have addressed his argument that the five-year ban should not apply retroactively to him because his

misrepresentation occurred in 2011 and that he should only face the consequences for misrepresentation that applied at that time (i.e., a two-year ban).

[132] Mr. Shen applied to renew his PR card in 2011 relying on Sunny Wang. Mr. Shen contends that CBSA had concerns in 2012 but did not follow up. He points to the notes in the Field Operations Support System [FOSS] that show that on May 17, 2012, a reminder to pick up his renewed PR card was sent and on September 10, 2012, given that 180 days had passed since the reminder, the number listed in the FOSS was called and the woman who answered the call “had no idea who Mr. Shen was”. The entry states, “[w]hen finalizing file noticed possible residence concerns. Given to supervisor [name] for review”.

[133] Mr. Shen again argues that if his misrepresentation had been discovered in 2012, he would have faced only a two-year ban. He suggests that the five-year ban cannot be imposed retroactively; however, his argument is about retrospective application (i.e. a new consequence for an act that occurred prior to the enactment of that new consequence). He submits that he should have the benefit of the consequences that applied at that the time of the “commission” of his misrepresentation.

[134] Paragraph 40(2)(a) sets out the consequences of misrepresentation:

(2) The following provisions govern subsection (1):

(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the

(2) Les dispositions suivantes s'appliquent au paragraphe (1) :

a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est

case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, <u>the date the removal order is enforced</u> ; and	pas au pays, ou suivant l'exécution de la mesure de renvoi;
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[Emphasis added.]

[135] The provision in effect up until 2014 was identically worded, except that it stated, “...inadmissible for a period of two years following...” [Emphasis added].

[136] In both the pre-2014 version and the current version of the Act, the prohibition or ban applies from the date of the final determination of inadmissibility or the date the removal order is enforced. Mr. Shen falls within a “determination made in Canada” and the key date for him is the date his removal order is enforced. It appears that Mr. Shen’s removal has not yet been enforced. Even if his misrepresentation had been discovered in 2012, the date of his removal would govern the length of his ban on returning to Canada.

[137] As noted in *Zeng* at para 4, there are no transitional provisions in the legislation that amended paragraph 40(2)(a) of the Act.

[138] Mr. Shen argues that the conclusion in *Zeng* should not apply, but that the possible interpretation noted by Justice McHaffie should apply. In *Zeng*, Justice McHaffie did not find that the two-year ban should apply to misrepresentations committed before the ban was increased to five years in 2014. However, Justice McHaffie acknowledged, at para 52, that the application of the principles considered by the Supreme Court in *Tran v Canada (Public Safety and*

Emergency Preparedness), 2017 SCC 50 [*Tran*], could lead to such an interpretation, i.e., to “conclude that the two-year inadmissibility period should apply whenever the misrepresentation occurred prior to the change in the legislation, considering that to be equivalent to the ‘time of the commission of the offence’: *Tran* at paras 35-41”.

[139] Justice McHaffie explained why he was not persuaded that the date of the “commission” of the misrepresentation should determine the consequences, and that in his view, the date of the exclusion order should be determinative, noting at para 53:

I do not need to decide this issue in this case, as both Mr. Zeng’s misrepresentation and the resulting exclusion order predated the amendments. However, there are two primary reasons that I do not believe this to be the correct interpretation. First, in *Tran*, Justice Côté recognized that the triggering language in the *IRPA* was the date of conviction, rather than the date of commission of the offence. It was only the operation of subsection 11(i) of the *Charter* that in turn made the date of commission of the offence relevant, since the maximum sentence imposable on conviction is that in place at the time of the offence: *Tran* at paras 36-38. Second, a misrepresentation may not be discovered for many years, which would result in both a potentially lengthy “transition” period and an unnecessary debate over when a misrepresentation occurred. The date of the exclusion order that imposes the inadmissibility consequence sets a clear date for assessing the length of the consequence, even though enforcement may not occur until some time later. The concern regarding retrospectivity is therefore attenuated.

[Emphasis added.]

[140] In *Tran*, the Supreme Court of Canada found, in the context of a finding of inadmissibility pursuant to paragraph 36(1)(a) of the Act, that “term of imprisonment” does not include a conditional sentence, and that the term “punishable by a maximum term of imprisonment of at least 10 years” in paragraph 36(1)(a) of the Act refers to the maximum term

of imprisonment available at the time of the commission of the offence, which in Mr. Tran's case was less than 10 years. However, the Supreme Court of Canada reached that conclusion due to subsection 11(i) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*, which applies to persons charged with criminal offences and states:

11. Any person charged with an offence has the right...(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

[141] In *Zeng*, Justice McHaffie concluded that the date of the exclusion order that rendered the applicant inadmissible should govern regardless of whether the exclusion order had been enforced, noting at para 55:

[55] The exclusion order issued to Mr. Zeng was issued before the amendments to section 40 of the *IRPA* came into force. The consequence of that exclusion order at the time it was issued was that Mr. Zeng was inadmissible, and would remain inadmissible for a period of two years from the date of enforcement of the order. Although the consequences of an exclusion order for inadmissibility were subsequently increased, I find that there is no indication that Parliament intended that increase to apply to exclusion orders that had already been issued, such as that issued to Mr. Zeng, whether or not they had been enforced.

[Emphasis added.]

[142] Unlike *Zeng*, in Mr. Shen's case, the finding of inadmissibility and exclusion order by the ID occurred in 2022, long after the five-year ban was enacted.

[143] Neither the conclusion in *Zeng* (which was based on different facts) nor the possible interpretation, ultimately rejected by Justice McHaffie, assists Mr. Shen.

[144] As the Respondent notes, the statutory language clearly conveys that the ban runs from the date of removal (not the date the exclusion order is issued and not the date of the “commission” of the misrepresentation) and the ban in effect at that date applies. In other words, the five-year ban runs from the date of a removal that occurs after November 21, 2014.

[145] As noted in *Zeng*, in *Tran*, the Supreme Court of Canada recognized that the statutory language to trigger inadmissibility was the date of conviction, not the date of the commission of the offence. The protection of subsection 11(i) of the *Charter* was the basis for the Court to find that the penalty in place at the date of commission should govern. This *Charter* provision does not apply to Mr. Shen. As a result, and contrary to the conclusion reached in *Zeng* on different facts, the date of removal is the triggering event.

[146] It is not a retrospective application of the provision to apply the five-year ban from the date of a removal which would occur after November 2014.

[147] In addition, I regard Mr. Shen’s misrepresentation as a continuing misrepresentation; this was not a stand-alone event that began and ended in 2011. Although the misrepresentation relates to Mr. Shen’s application to renew his permanent resident card in 2011, Mr. Shen has benefitted from his continuing misrepresentation for many years as his PR card was renewed in 2011–2012. It appears that there were no negative consequences for Mr. Shen until long after the CBSA discovered the immigration fraud of Sunny Wang and subsequently identified Mr. Shen as one of Sunny Wang’s clients. The IAD issued the exclusion/removal order 10 years after the permanent resident card was renewed based on the misrepresentation. It does not appear that Mr. Shen has

yet faced possible removal from Canada. As the IAD reasonably noted, the onus is not on the CBSA to promptly discover a misrepresentation, but on an applicant to not misrepresent.

[148] The IAD did not engage in an analysis of the issue of retrospective or retroactive application of the law. Mr. Shen's submissions to the IAD did not elaborate on the distinction or the relevant principles, but simply asserted that *Zeng* was not binding (i.e. the date of the exclusion order being the trigger) and that the date of the commission of the misrepresentation should govern, just as the date of the commission of the offence governed in *Tran*. The IAD noted Mr. Shen's submission that the impact of the retroactive (as characterized by Mr. Shen) impact of the exclusion order be considered—which was also raised in the context of the H&C considerations—and gave this “little weight”. The IAD cannot be faulted for not providing more extensive reasons regarding the broader issue of the retrospective application of statutory provisions in response to arguments that were not made.

[149] Mr. Shen's submission to the Court that *Tran* should guide and that the date of the “commission” of the misrepresentation should govern, just as the date of the commission of the offence governed in *Tran*, overlooks that the statutory language at issue in *Tran* focussed on the date of conviction, however the application of paragraph 11 (i) of the *Charter* required that the lower maximum sentence that applied at the time of the commission of the offence governed.

[150] There is no analogous provision that applies to Mr. Shen.

XII. Proposed Certified Questions

A. *The Applicant's Proposed Questions*

[151] Mr. Shen proposes four questions for certification:

1. Was paragraph 40(2)(a) of the *Immigration and Refugee Protection Act* [IRPA], that imposes a 5-year entry bar for misrepresentation, retrospectively applied to the applicant? If so, should the IAD consider granting equitable relief to mitigate against such retrospective application of the 5-year bar?
2. Was it a breach of procedural fairness for the IAD to not consider the alternative remedy of a stay under paragraph 68(1) [*sic*] of the IRPA even though it was requested by the Applicant as mitigation against the retroactive (or retrospective) impact of the 5-year bar in paragraph 40(2)(a) of the IRPA?
3. 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?
4. In addition, is the IAD required to specifically state in its conclusion that both options have been considered?

B. *The Respondent's Submissions*

[152] The Respondent opposes the certification of Question 1. The Respondent does not take any position regarding Questions 3 and 4, noting that the same questions were certified in *Yang*. The Respondent submits that Question 2 is contingent on an answer to Question 3 and does not take a position on whether it should be certified.

[153] With respect to Question 1, the Respondent submits that the 2014 amendments to section 40 did not change the timing of the triggering of the ban; “the date the removal order is enforced” governs. The Respondent submits that because the removal has not yet occurred, the ban that applies on removal is the ban that is now provided by paragraph 40(2)(a).

[154] The Respondent notes that in *Zeng*, Justice McHaffie appears to have found that the date of the exclusion order—i.e. the determination of the misrepresentation—governs and the ban in effect at that date applies even if removal has not occurred. The Respondent adds that *Zeng* arises from different facts and a different chronology and does not address the issues raised by Mr. Shen.

[155] The Respondent more generally submits that the question does not meet the test for certification as it is not an issue of “broad significance or general importance”.

C. *The Applicant's Reply*

[156] Mr. Shen disputes the Respondent's position and submits that Question 1 is of general importance because in *Zeng*, the Court relied on *Tran* to find that subsection 40(2) could not be applied retrospectively. Mr. Shen argues that the IAD failed to address the issue of retrospective application at all, including in the context of granting special relief. He again submits that the presumption against retrospective application should apply and that *Tran* should govern to find that the date of the commission of the misrepresentation is determinative of the applicable ban. Mr. Shen argues that if there remains uncertainty, the question should be certified.

[157] Mr. Shen further argues that if retrospectivity should be considered in the context of the H&C assessment, the IAD's failure to consider it is a reviewable error and would be dispositive of the appeal.

D. *The test for certification*

[158] The test to certify a question is high. A question will only be certified if it is a serious question of general importance which will be dispositive of an appeal. The test is well-established (see for example *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22[Lunyamila] at para 46, citing *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras 36) and was more recently set out in *Obazughanmwun v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 28:

[28] It is well established in the jurisprudence of this Court that a question cannot be certified unless it is serious, dispositive of the appeal and transcends the interests of the parties. It must also have been raised and dealt with by the court below, and it must arise from the case rather than from the judge's reasons. Finally, and as a corollary of the requirement that it be of general importance pursuant to section 74 of the IRPA, it cannot have been previously settled by the decided case law: see *Liyanagamage v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1637 (QL) at para. 4; *Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178 at para. 36; *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras. 36, 39 (*Lewis*).

[159] In *Lunyamila*, the Federal Court of Appeal cited *Lewis* noting at para 46: “[t]he 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”.

E. *One question is certified*

[160] Mr. Shen's proposed Question 1, as worded, would not be dispositive of an appeal. Mr. Shen has not been removed and the period of his inadmissibility—or ban on return to Canada—has not yet been triggered. Moreover, whether the period of the ban is two years or five years would not change the IAD's finding that Mr. Shen misrepresented a material fact and is inadmissible pursuant to paragraph 40(1)(a). The period of the ban also does not change the IAD's finding that there are insufficient H&C grounds to grant special relief.

[161] Mr. Shen's submissions regarding the application of *Zeng* do not reflect the finding or different underlying facts in *Zeng*.

[162] Mr. Shen also overlooks that the IAD did not fail to consider his submission regarding retrospective impact, but rather gave his argument, which was largely focussed on whether this should be an H&C factor, “little weight”. As found above, the IAD considered the impact of the five-year ban on Mr. Shen, his wife and his family in the context of the assessment of hardship in the assessment of the H&C considerations. If the IAD should have considered the impact of a shorter—two-year ban—the hardship would not have been greater and the finding would not have differed.

[163] Although the question as framed, or even as reformulated, would not be dispositive of an appeal of the finding of misrepresentation or whether sufficient H&C considerations should justify special relief, the resolution or confirmation of the triggering event for the ban in cases where the initial misrepresentation occurred before the 2014 amendments would be an issue of broader application in circumstances where the issue arises, but remains theoretical because Mr. Shen’s removal has not occurred. I would reformulate the question as follows:

Where a permanent resident is found to be inadmissible for a misrepresentation which was made before the 2014 amendments to paragraph 40(2)(a) came into force, and that permanent resident has not yet been removed from Canada, should the date of the initial misrepresentation govern the length of the period of inadmissibility or should the statutory language, which identifies the date the removal order is enforced as the date governing the length of the period of inadmissibility, apply?

[164] With respect to the proposed Questions 2, 3 and 4, which focus on the availability of a stay of removal and whether the IAD is required to specifically explain why a stay of removal is has not been granted, the Court declines to certify the proposed questions.

[165] In *Yang*, this Court certified the same questions now proposed as Questions 3 and 4, noting at para 130:

[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.

[166] As noted, it appears that *Yang* was not appealed. While consistency may suggest that the question be again certified, the underlying circumstances differ. In the present case, Mr. Shen’s argument to the Court was that because the IAD found that his remorse weighed “slightly in his favour” in the assessment of H&C considerations, the IAD erred by not considering a stay of removal. However, the IAD did not find that this one factor resulted in sufficient H&C considerations overall. Mr. Shen did not raise the argument that he now seeks to have answered by way of a certified question.

[167] As noted above, where the IAD finds that there are insufficient H&C factors, the IAD cannot grant special relief at all and the appeal is dismissed. However, where the IAD finds that there are sufficient H&C considerations, the IAD has two options; to grant a stay of removal or allow the appeal. The IAD must first find sufficient H&C grounds, then determine which option is appropriate. Nothing impedes the IAD from granting a stay where “sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case”. In the present case, the IAD found—despite finding that Mr. Shen’s remorse weighed slightly in his favour—that there were insufficient H&C considerations.

[168] In this Court’s view, on the facts of the present case, the answer to the proposed questions would not be dispositive of any appeal. Nor would the related question of whether the IAD is specifically required to state that both a stay of removal and allowing the appeal have been

considered, because where the IAD does not find sufficient H&C considerations neither option is available.

[169] In conclusion, the Application for Judicial Review is dismissed.

[170] The following question is proposed for certification:

Where a permanent resident is found to be inadmissible for a misrepresentation which was made before the 2014 amendments to paragraph 40(2)(a) came into force, and that permanent resident has not yet been removed from Canada, should the date of the initial misrepresentation govern the length of the period of inadmissibility or should the statutory language, which identifies the date the removal order is enforced as the date governing the length of the period of inadmissibility, apply?

JUDGMENT in file IMM-4069-24

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. The following question is certified:

Where a permanent resident is found to be inadmissible for a misrepresentation which was made before the 2014 amendments to paragraph 40(2)(a) came into force, and that permanent resident has not yet been removed from Canada, should the date of the initial misrepresentation govern the length of the period of inadmissibility or should the statutory language, which identifies the date the removal order is enforced as the date governing the length of the period of inadmissibility, apply?

"Catherine M. Kane"

Judge

ANNEX A

The relevant statutory provisions of the Act are:

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.
...	[...]
28 (1) A permanent resident must comply with a residency obligation with respect to every five-year period.	28 (1) L'obligation de résidence est applicable à chaque période quinquennale.
(2) The following provisions govern the residency obligation under subsection (1):	(2) Les dispositions suivantes régissent l'obligation de résidence :
(a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are	a) le résident permanent se conforme à l'obligation dès lors que, pour au moins 730 jours pendant une période quinquennale, selon le cas :
(i) physically present in Canada,	(i) il est effectivement présent au Canada,
(ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,	(ii) il accompagne, hors du Canada, un citoyen canadien qui est son époux ou conjoint de fait ou, dans le cas d'un enfant, l'un de ses parents,
(iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration	(iii) il travaille, hors du Canada, à temps plein pour une entreprise canadienne ou

or the public service of a province,

pour l'administration publique fédérale ou provinciale,

(iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, or

(iv) il accompagne, hors du Canada, un résident permanent qui est son époux ou conjoint de fait ou, dans le cas d'un enfant, l'un de ses parents, et qui travaille à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale,

(v) referred to in regulations providing for other means of compliance;

(v) il se conforme au mode d'exécution prévu par règlement;

(b) it is sufficient for a permanent resident to demonstrate at examination

b) il suffit au résident permanent de prouver, lors du contrôle, qu'il se conformera à l'obligation pour la période quinquennale suivant l'acquisition de son statut, s'il est résident permanent depuis moins de cinq ans, et, dans le cas contraire, qu'il s'y est conformé pour la période quinquennale précédant le contrôle;

(i) if they have been a permanent resident for less than five years, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;

(ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year

period immediately before the examination; and

(c) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(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;

(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;

(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection; or

(d) on ceasing to be a citizen under

40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

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;

b) être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;

c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou de protection;

d) la perte de la citoyenneté :

- | | |
|--|---|
| <p>(i) paragraph 10(1)(a) of the <i>Citizenship Act</i>, as it read immediately before the coming into force of section 8 of the Strengthening Canadian <i>Citizenship Act</i>, in the circumstances set out in subsection 10(2) of the <i>Citizenship Act</i>, as it read immediately before that coming into force,</p> | <p>(i) soit au titre de l'alinéa 10(1)a) de la <i>Loi sur la citoyenneté</i>, dans sa version antérieure à l'entrée en vigueur de l'article 8 de la <i>Loi renforçant la citoyenneté canadienne</i>, dans le cas visé au paragraphe 10(2) de la <i>Loi sur la citoyenneté</i>, dans sa version antérieure à cette entrée en vigueur,</p> |
| <p>(ii) subsection 10(1) of the <i>Citizenship Act</i>, in the circumstances set out in section 10.2 of that Act, or</p> | <p>(ii) soit au titre du paragraphe 10(1) de la <i>Loi sur la citoyenneté</i>, dans le cas visé à l'article 10.2 de cette loi,</p> |
| <p>(iii) subsection 10.1(3) of the <i>Citizenship Act</i>, in the circumstances set out in section 10.2 of that Act.</p> | <p>(iii) soit au titre du paragraphe 10.1(3) de la <i>Loi sur la citoyenneté</i>, dans le cas visé à l'article 10.2 de cette loi.</p> |
| <p>(2) The following provisions govern subsection (1):</p> | <p>(2) Les dispositions suivantes s'appliquent au paragraphe (1) :</p> |
| <p>(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and</p> | <p>a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;</p> |
| <p>(b) paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility.</p> | <p>b) l'alinéa (1)b) ne s'applique que si le ministre est convaincu que les faits en cause justifient l'interdiction.</p> |

(3) A foreign national who is inadmissible under this section may not apply for permanent resident status during the period referred to in paragraph (2)(a).

...

41 A person is inadmissible for failing to comply with this Act

(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and

(b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.

...

66 After considering the appeal of a decision, the Immigration Appeal Division shall

(a) allow the appeal in accordance with section 67;

(b) stay the removal order in accordance with section 68; or

(3) L'étranger interdit de territoire au titre du présent article ne peut, pendant la période visée à l'alinéa (2)a), présenter de demande pour obtenir le statut de résident permanent.

[...]

41 S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.

[...]

66 Il est statué sur l'appel comme il suit :

a) il y fait droit conformément à l'article 67;

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

(c) dismiss the appeal in accordance with section 69.	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,	67 (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :
(a) the decision appealed is wrong in law or fact or mixed law and fact;	a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;
(b) a principle of natural justice has not been observed; or	b) il y a eu manquement à un principe de justice naturelle;
(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.	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 affected by the decision, that sufficient humanitarian and	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 motifs d'ordre humanitaire justifiant, vu les autres

compassionate considerations warrant special relief in light of all the circumstances of the case.

circonstances de l'affaire, la prise de mesures spéciales.

(2) Where the Immigration Appeal Division stays the removal order

(2) La section impose les conditions prévues par règlement et celles qu'elle estime indiquées, celles imposées par la Section de l'immigration étant alors annulées; les conditions non réglementaires peuvent être modifiées ou levées; le sursis est révocable d'office ou sur demande.

(a) it shall impose any condition that is prescribed and may impose any condition that it considers necessary;

(b) all conditions imposed by the Immigration Division are cancelled;

(c) it may vary or cancel any non-prescribed condition imposed under paragraph (a); and

(d) it may cancel the stay, on application or on its own initiative.

(3) If the Immigration Appeal Division has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under this Division.

(3) Par la suite, l'appel peut, sur demande ou d'office, être repris et il en est disposé au titre de la présente section.

(4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible

(4) Le sursis de la mesure de renvoi pour interdiction de territoire pour grande criminalité, criminalité ou criminalité transfrontalière est

on grounds of serious criminality, criminality or transborder criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.

révoqué de plein droit si le résident permanent ou l'étranger est reconnu coupable d'une autre infraction mentionnée au paragraphe 36(1), l'appel étant dès lors classé.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4069-24

STYLE OF CAUSE: DA XIANG SHEN v THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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JUDGMENT AND REASONS: KANE J.

DATED: APRIL 25, 2025

APPEARANCES:

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