

Federal Court



Cour fédérale

Date: 20250516

Docket: IMM-15241-23

Citation: 2025 FC 895

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 16, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

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

Applicant

and

MARC-JAMESON BRUTUS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada, dated November 16, 2023. In that

decision, the IAD granted a three-year stay of the deportation order made against the respondent, who is inadmissible on grounds of serious criminality.

[2] For the reasons that follow, I find that the IAD's decision is not reasonable and allow the application for judicial review.

II. Background

[3] The respondent, Marc-Jameson Brutus [respondent], is a citizen of Haiti, who immigrated to Canada with his father and two brothers. In 2012, at the age of 15, he was granted permanent residence in Canada.

[4] On August 10, 2018, the respondent was convicted of the offence of extortion described in subsection 346(1) of the Canadian *Criminal Code*, RSC 1985, c C-46 [Cr. C.], and punishable by imprisonment for life under paragraph 346(1.1)(b) of the Cr. C. This conviction relates to other offences of which the respondent was convicted and that he committed on July 15, 2016, June 22, 2017, and May 27, 2018, namely obstruction of a peace officer, as described in paragraph 129(a) of the Cr. C., and breach of conditions, as described in subsection 145(3) of the Cr. C. The respondent received several sentences, the longest being two years of probation.

[5] On March 16, 2023, the respondent was found inadmissible by the Immigration Division, and a deportation order was made against him for serious criminality, specifically extortion. The respondent appealed the deportation order to the IAD. He did not challenge the legal validity of

the deportation order but instead cited humanitarian and compassionate [H&C] considerations warranting special relief.

[6] On appeal, the IAD issued a three-year stay of the deportation order, finding that H&C considerations warranted special relief. That decision by the IAD is the subject of this judicial review. The IAD chose to impose conditions on the stay of the deportation order, which are to be maintained until it re-examines the matter. Thus, the respondent must notify the Canada Border Services Agency [CBSA] and the IAD of any changes to his address or telephone number. He also had to send a copy of his passport to the CBSA or, if he did not have one, fill out an application and forward a copy to the CBSA, and ensure that his passport remained valid throughout the stay period.

III. Decision under judicial review

[7] In its reasons, the IAD explained that Mr. Brutus's criminality is serious, that it demonstrates a rapid escalation to committing an offence, that he has shown some remorse for the crimes committed, and that the possibility of rehabilitation is low. The IAD accepted the presence of family in Canada, namely the respondent's father and two brothers, as a factor weighing in favour of special relief. The IAD also found that the respondent's removal to his country of origin would cause dislocation of the family in Canada.

[8] The IAD stated that in assessing H&C considerations for the purpose of granting a stay, it must take into account the non-exhaustive factors set out in *Ribic v Canada (Minister of*

Employment and Immigration), [1985] IABD No 4 (QL) at paragraph 14. In examining the respondent's situation, the IAD considered the following factors.

[9] First, the IAD indicated that the circumstances and the offence of which the respondent was convicted and that led to the deportation order are serious. For the extortion, the respondent was sentenced to probation for a period of two years (from August 10, 2018, to August 10, 2020). The IAD was of the view that this demonstrates a rapid escalation to committing the offence and establishes the respondent's violent temperament. The IAD concluded that the seriousness of the offence that led to the inadmissibility report does not favour granting special relief to the respondent.

[10] In its decision, the IAD indicated that the evidence in the record showed that the respondent had had run-ins with the law between 2018 and 2023 and that he had been charged with many other indictable offences of which he was acquitted in April 2023, including the following:

- Assault with a weapon, on January 25, 2015
- Assault with a weapon, on June 24, 2021
- Assault, on June 24, 2021
- Uttering threats, on June 24, 2021
- Assault, on June 1, 2021
- Assault with a weapon, on June 1, 2021
- Assault with a weapon causing injury, on June 1, 2021
- Forcible confinement, on June 1, 2021
- Mischief, on June 1, 2021
- Assault / forcible confinement / harassment / mischief, on February 1, 2023

[11] Second, the IAD noted that the respondent expressed some remorse for the reportable offence, said that he had been influenced by accomplices whom he had wanted to impress and

that he accepted full responsibility for his actions and stated that he had behaved badly and that it had bothered his family. The IAD stated that it had considered the report under subsection 44(1) issued in 2020 in which the CBSA officer noted that the respondent had apologized for the inconvenience caused and asked for a pardon, but had never mentioned the victims, expressed regret, or acknowledged that his actions were illegal. The IAD found that the numerous criminal offences the respondent had committed between 2015 and 2018 showed that he had a long way to go to demonstrate his possibility of rehabilitation, but that in any case those factors weighed in favour of granting special relief.

[12] Third, the IAD found that the respondent's establishment in Canada weighed in favour of granting special relief. According to the IAD, the evidence in the record shows that since 2015, the respondent has held several jobs for which he was able to produce tax returns; that, in September 2022, he acquired a restaurant franchise, which he had until 2023; and that, at the time of the hearing, he was working full-time. The IAD determined that the respondent had demonstrated some financial stability since 2019 and that he was not relying on social assistance.

[13] Fourth, the IAD found that the respondent's immediate family would be negatively impacted if he were to leave Canada. In the IAD's view, this factor weighs in favour of granting special relief to the respondent. The respondent stated that he lives with his two younger brothers, pays for the electricity and the Internet service, and helps cover the rent.

[14] Fifth, the IAD found that the best interests of a child did not favour granting special relief. The IAD considered the evidence of a woman with whom the respondent had been in a

relationship and with whom he had cohabited. She testified at the hearing that she was 23 weeks pregnant and that they no longer lived together.

[15] Sixth, the IAD found that the respondent would suffer hardship and dislocation if he lost his permanent resident status. The IAD considered the fact that he had come to Canada from Haiti when he was 15 years old, that he was now 27, that he had never returned to Haiti, and that he lived in Canada with his father and two brothers and had a job. The IAD also took into account the fact that the respondent's mother lived in Haiti, that he was still in contact with her, and that she was financially dependent on him. According to the IAD, the respondent would have to rebuild his life in Haiti, where life is hard. He would have to start over, and he would have problems finding a job there.

IV. Issues

[16] The issues are the following:

- A. Is the IAD's decision to allow the respondent's appeal and grant a three-year stay of removal reasonable?
- B. Was the applicant denied procedural fairness?

V. Standard of review

A. *Standard of review for reasonableness*

[17] The applicable standard of review is reasonableness.

[18] The Supreme Court has confirmed that the reasonableness standard applies to judicial review of an administrative decision (*Canada (Minister of Citizenship and Immigration) v*

Vavilov, 2019 SCC 65 at para 25 [*Vavilov*]). None of the situations for rebutting that presumption arise in this judicial review (*Vavilov* at paras 25, 33, 53; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27). The Court must assess whether the decision is “based on an internally coherent and rational chain of analysis and ... is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

[19] The role of this Court is simply to determine whether the primary decision maker’s decision is reasonable, in light of the evidence and arguments before it (*Paquin v Canada (Attorney General)*, 2024 FC 1430 at para 3).

[20] The burden is on the Minister to show that the decision is unreasonable. To that end, he must satisfy the Court that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). Indeed, when the reasonableness standard applies on judicial review, it is not the role of this Court to reweigh the evidence to reach a different outcome (*Vavilov* at para 125).

B. *Standard of review for procedural fairness*

[21] The Court reviews alleged breaches of procedural fairness in a manner akin to applying the correctness standard of review (*Mohamed v Canada (Citizenship and Immigration)*, 2023 FC 1297 at para 19).

[22] The reviewing court must conduct its own analysis to determine whether the process followed by the decision maker was fair, having regard to all the relevant circumstances,

including those described in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21 to 28 (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

VI. Relevant provisions

[23] At the conclusion of an admissibility hearing, the Immigration Division may make a determination of inadmissibility and make a deportation order against a permanent resident under paragraph 45(d) of the IRPA.

[24] Subsection 63(3) of the IRPA provides for the right to appeal a removal order:

63(3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision to make a removal order against them made under subsection 44(2) or made at an admissibility hearing.	63(3) Le résident permanent ou la personne protégée peut interjeter appel de la mesure de renvoi prise en vertu du paragraphe 44(2) ou prise à l'enquête.
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[25] Section 66 of the IRPA governs the IAD's powers in respect of appeals:

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 (c) dismiss the appeal in accordance with section 69.	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) il est rejeté conformément à l'article 69.
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[26] Section 67 of the IRPA sets out the grounds on which an appeal may be allowed:

Appeal allowed	Fondement de l'appel
67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, (a) the decision appealed is wrong in law or fact or mixed law and fact; (b) a principle of natural justice has not been observed; or (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.	67 (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé : a) la décision attaquée est erronée en droit, en fait ou en droit et en fait; b) il y a eu manquement à un principe de justice naturelle; 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.

[27] Section 68 of the IRPA sets out the circumstances for a stay of removal:

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

A. *Applicant's submissions*

(1) Breach of procedural fairness

[28] The applicant submits that the IAD breached procedural fairness by failing to notify the parties that a stay of removal was contemplated, on the grounds that the IAD never raised the possibility of issuing a stay before it made its decision.

[29] According to the applicant, the IAD's failure to provide notice of a potential stay breaches the principles of procedural fairness because the applicant was unable to make submissions on the issue and was thereby denied his right to be heard (*Canada (Citizenship and Immigration) v Palumbo*, 2007 FC 1047 at para 6; *Canada (Minister of Citizenship and Immigration) v Charabi*, 2006 FC 996 at para 20).

(2) Reasonableness of the decision

[30] The applicant maintains that the IAD failed to consider all of the evidence presented and provided no adequate explanation to justify its conclusion. He submits that the IAD made no mention of the police incident report dated February 1, 2023, filed in evidence. That report refers to assault, forcible confinement, harassment and mischief committed by the respondent against his former partner and future mother of his unborn child during a violent episode. According to the applicant, ignoring these events vitiates the IAD's decision and makes it unreasonable because they have an impact on the applicable tests, on the respondent's possibility of rehabilitation and remorse, on the broader H&C factors, and thus on the IAD's determination. The applicant cites the following excerpt from *Naqvi v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 144 at paragraph 8 [*Naqvi*]: "This Court cannot ignore intimate partner violence, which is profoundly unequal in its instantiation and chillingly destructive in its application. It is a by-product of a violent, misogynistic, and demeaning history."

[31] The applicant also argues that the IAD's decision is neither coherent nor intelligible because, despite all the negative elements regarding the respondent's criminal history and rehabilitation that it raised, the IAD still found that those factors weighed in favour of granting him special relief. Among the negatives raised by the applicant are the IAD's determination that the criminal offence that gave rise to inadmissibility was serious and the finding that the respondent had a long way to go to demonstrate his possibility of rehabilitation. The applicant points out that the evidence shows that the respondent has been convicted of several breaches of conditions in the past and that he does not take responsibility for these breaches, preferring to blame the police.

[32] The applicant also criticizes the IAD for attaching conditions to the stay of removal when the respondent has been convicted of numerous breaches of conditions for which he does not take responsibility. The applicant submits that the IAD's decision does not explain why the respondent would comply with the conditions of a stay of removal when he did not comply with the conditions imposed by the Court in criminal proceedings. In the applicant's opinion, this makes the IAD's decision irrational and incoherent.

B. *Respondent's submissions*

[33] The respondent did not file a memorandum. However, he stated at the hearing before this Court that the IAD's decision is reasonable and that the applicant is wrong to challenge it.

VIII. Analysis

A. *The IAD did not breach procedural fairness*

[34] I do not accept the applicant's argument that the IAD did not raise the possibility of issuing a stay of removal before it made its decision. In my view, the Minister was not denied the right to be heard. When the respondent appealed the deportation order before the IAD, he relied on H&C considerations warranting special relief. The Minister was therefore in a position to know that the IAD might issue a stay of removal. Accordingly, the IAD did not commit an error that breached procedural fairness.

B. *The IAD's decision is unreasonable*

[35] I agree with the applicant. In my view, the IAD's decision is not reasonable because it failed to consider all the evidence in the record. I find that the IAD ignored the respondent's actions against his former partner, as set out in the police report that was in evidence in the record before it. I am of the opinion that the report contains facts that could affect the IAD's assessment of the applicable criteria in the consideration of humanitarian and compassionate factors (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 73).

Consequently, these facts potentially have an impact on the decision to grant special relief to the respondent and therefore on the decision whether to grant him a stay. I have reached this conclusion after considering the following.

[36] First, the starting assumption is that the IAD considered all the evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL) at para 1) and that the Court is not required to make an explicit finding on each constituent element leading to its final conclusion (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). Moreover, the threshold for determining that

evidence was ignored is a high one (*Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161).

[37] Furthermore, as stressed by Justice Gascon and Justice Brown of this Court in *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at paragraph 15 and in *Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904 at paragraph 24, it is fundamental to reassert that H&C exemptions are exceptional and represent a discretionary remedy (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15) and should therefore remain available for exceptional cases in order to avoid becoming an “alternative immigration stream or an appeal mechanism” (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [2015] 3 SCR 909 at para 90; *Canada (Public Safety and Emergency Preparedness) v Nizami*, 2016 FC 1177 at para 16 [*Nizami*]).

[38] In addition, while the Court rarely finds criminality favourable as an H&C consideration, it is not an absolute bar to special relief and is one of the factors to be taken into account in light of all the circumstances (*Nizami*).

[39] I note that the evidence in the record indicates that the respondent’s former partner filed a complaint of domestic violence against him, which she then withdrew. Nevertheless, in *Canada (Citizenship and Immigration) v Solmaz*, 2020 FCA 126 [*Solmaz*], the Federal Court of Appeal determined that the IAD may, within the limitations propounded in *Sittampalam v Canada (Minister of Citizenship and Immigration)*, [2007] 3 FCR 198, consider the facts underlying criminal allegations for which the inadmissible individual was not convicted, when exercising its

discretion under paragraph 67(1)(c) and subsection 68(1) of the IRPA (*Solmaz* at paras 92 and 114). The limitations are as follows:

- A. In and of themselves, the facts underlying criminal allegations for which the inadmissible individual was not convicted must not be used to establish an inadmissible individual's criminality;
- B. The facts must be based on credible and trustworthy evidence and be brought to the attention of the individual concerned, who must be offered the opportunity to respond; and
- C. The decision-maker's findings must be the product of an independent review on his or her part, not based on the simple fact that charges have been brought against this individual.

[40] That said, in this case, the IAD made no reference to the police incident report dated February 1, 2023, regarding assault, forcible confinement, harassment and mischief—offences that the respondent's former partner says she suffered at his hands. Therefore, the IAD did not consider these events.

[41] Again, as this Court recently found in *Naqvi* at paragraph 8, "[t]his Court cannot ignore intimate partner violence, which is profoundly unequal in its instantiation and chillingly destructive in its application. It is a by-product of a violent, misogynistic, and demeaning history."

[42] In this case, the incident report identifies numerous acts that allegedly occurred as part of several separate violent episodes over a period spanning from 2021 to 2023, including the following: slapping; assault, including punching to the stomach, back, face and head; attempted strangulation, particularly after the respondent's former partner became pregnant; forcible confinement; dragging by the hair and throat; holding the victim's head under water in the bathtub; and uttering threats and insults. The report also indicates that the respondent allegedly

whipped his former partner and tied her up, and that after each violent incident, he apologized and begged for forgiveness.

[43] I agree with the applicant that this evidence is likely to have an impact on the respondent's possibility of rehabilitation and remorse, as well as on all the H&C factors to be weighed by the IAD. Yet the IAD makes no mention of these acts in its decision. I also find that, if the IAD was of the opinion that the respondent's actions against his former partner weighed in favour of granting him special relief, it was required to clearly state this and to explain why or to explain why it rejected the acts committed by the respondent and referred to in the evidence before it.

[44] In my view, the IAD thus failed to reasonably consider material evidence that potentially ran counter to its finding that the respondent was on track for rehabilitation. Yet this is a factor that weighed heavily in the decision to grant the respondent—who was found inadmissible for serious criminality—a three-year stay of the deportation order against him. The IAD's decision therefore lacks coherence and intelligibility.

[45] As for the measures taken by the IAD to counter the risk of re-offending, the IRPA gives the IAD the jurisdiction and discretion to impose such conditions as it deems necessary to protect Canadian society (*Canada (Public Safety and Emergency Preparedness) v Slimani*, 2019 FC 39).

IX. Conclusion

[46] I allow the Minister's application for judicial review because the IAD's decision is unreasonable. The matter must be sent back to the IAD for redetermination by a different member.

[47] There is no question for certification.

JUDGMENT in IMM-15241-23

THIS COURT’S JUDGMENT is as follows:

1. The applicant’s application for judicial review is allowed.
2. The matter must be sent back to the IAD for redetermination by a different member.
3. There is no question for certification.

“L. Saint-Fleur”

Judge

Certified true translation
Margarita Gorbounova, Senior Jurilinguist

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-15241-23

STYLE OF CAUSE: THE MINISTER OF PUBLIC SAFETY AND
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MARC-JAMESON BRUTUS

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 11, 2025

**JUDGMENT AND REASONS
BY:** SAINT-FLEUR J

DATED: MAY 16, 2025

APPEARANCES:

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