IMMIGRATION AND REFUGEE BOARD
(IMMIGRATION APPEAL DIVISION)

COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION D'APPEL DE L'IMMIGRATION)

IAD File No. / N° de dossier de la SAI : TB5-09239
Client ID No. / N° ID client : 5881-4487

Reasons and Decision – Motifs et décision

Removal Order

Appellant(s)	**Appelant(s)**
MOHAMMED ABUSHARABIN	
Respondent	**Intimé**
The Minister of Public Safety and Emergency Preparedness **Le ministre de la Sécurité publique et de la Protection civile**	
Date(s) and Place of Hearing	**Date(s) et Lieu de l'audience**
July 27, 2017 **Toronto, Ontario**	
Date of Decision	**Date de la Décision**
July 27, 2017	
Panel	**Tribunal**
Benjamin R. Dolin	
Appellant's Counsel	**Conseil de l'appelant(s)**
Edward C. Corrigan **Barrister and Solicitor**	
Minister's Counsel	**Conseil de l'intimé**
Ian Catterall	

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Case Officer
Agent préposé au cas

Canada

REASONS FOR DECISION

[1] These are my oral reasons for decision in the appeal of Mohammed Abusharabin (the appellant) from an Exclusion Order made against him by Member K. Thomson of the Immigration Division (ID) on September 1, 2015. The appellant was issued an Exclusion Order because the ID Member determined that he is inadmissible for misrepresentation pursuant to section 40(1)(a) of the *Immigration and Refugee Protection Act* (*IRPA*).

[2] The appellant does not challenge the legal validity of the removal order. This appeal only relates to his request for relief on humanitarian and compassionate grounds under section 67(1)(c) of the *IRPA*.

[3] By way of background, the appellant is a 33-year old Palestinian from Gaza. His father and mother applied to come to Canada under the Investor class and the appellant was listed as their dependent. He was landed in February 2011 as a dependent of his parents. At that time, however, he was married and had a child. The appellant indicates that he married in December 2009. After discussing his plans with his immigration consultant, he indicates that he was told that there would be no problem with him marrying, but he was told not to mention it until he got his permanent residence in Canada. His first child was born in October 2010 before his landing. There was no mention of that child's existence when the appellant was landed as a dependent of his father.

[4] When the appellant tried to sponsor his wife he was referred to an Admissibility hearing which resulted in the Exclusion Order. Since then his wife was able to get a visa in the United States, come to Canada and make a refugee claim. The wife and the children were granted refugee status and are now permanent residents of Canada. The appellant is living with them in Windsor. His parents are still in Canada, as are his siblings. His wife's parents are now in Canada as well, residing in reasonably close proximity to the appellant.

[5] The appellant, who was represented by counsel, testified at the *de novo* appeal hearing and filed documentary evidence[1] that includes various documents relating to his establishment in Canada, the issue of the misrepresentation and the bad advice from his consultant, information pertaining to his wife and children, as well as country condition documents regarding Gaza and the situation for Palestinians in terms of being able to return there.

[6] At the conclusion of the appellant's testimony, counsel for the Minister very reasonably conceded that there exists sufficient humanitarian and compassionate grounds to grant special relief. I am in agreement with that submission. However, I will briefly canvas some of the factors as set out in *Ribic*[2] and confirmed by the Supreme Court in *Chieu*[3].

[7] First of all, in terms of misrepresentation itself, the appellant denies any nefarious intent. He testified that he informed his immigration consultant of his upcoming marriage and later of the birth of his first child, but he was advised not to inform Immigration Canada. He was told by his consultant that he could sponsor them later.

[8] The Federal Court jurisprudence - and in particular the *Vieira*[4] case - deals with cases of this nature. Justice Shore, in addressing a situation where an applicant levelled accusations against their legal representative, held that an applicant must be held to their choice of advisor. Moreover, allegations of professional incompetence will not be entertained unless they are accompanied by corroborating evidence.

[9] In this appeal we do have letters from two witnesses who were with the appellant when he was given the improper advice by his consultant. There is also evidence in the materials that the appellant has started a legal action against the consultant's firm; that action is taking place in Jordan.

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[1] Exhibits A-1 to A-5.
[2] *Ribic, Marida* v. *M.E.I.* (I.A.B. 84-9623), D. Davey, Benedetti, Petryshyn, August 20, 1985 (See CLIC, No.86, May 14, 1986).
[3] *Chieu v. Canada (MCI)*, 2002 SCC 3.
[4] *Vieira* v. *Canada (MPSEP)*, 2007 FC 626.

[10] Counsel for the Minister did not take issue with the appellant's testimony in this regard. While I find that regardless of the advice he received, the appellant must be held responsible for his failure to disclose, I feel that the consultant's role in all of this mitigates the negative weight usually associated with such misrepresentations.

[11] Turning then to the establishment factor, the Federal Court in the *Archibald*[5] case sets out a number of indicia that we look to in considering establishment in removal order appeals. Where the various indicia of establishment exists because an appellant has obtained permanent resident status by way of misrepresentation, I generally do not accord this factor significant positive weight. I note though that the appellant is socially established in Canada at this point and is in the process of getting his Engineering license. In the meantime, he is working at a hardware store and doing some construction/handyman work. I treat this as a mildly positive consideration.

[12] In terms of family in Canada and dislocation to the family were the appellant removed, as I indicated he has his wife and children here. We also have evidence that the appellant cannot be returned to Gaza. In fact, he requires Israeli and Egyptian permission to enter Gaza. In addition, there is a moratorium on removals to Gaza at this point in time.

[13] Even if the appellant could be returned, his wife and children are not from Gaza. They are stateless Palestinians who had Lebanese travel documents and were, I believe, residents of the UAE for some time. So, if the appellant were removed to Gaza it appears that his wife and children would not be able to accompany him. This separation would cause obvious emotional hardship for his wife and children, but in addition to that, he is also the lone breadwinner for the family.

[14] The appellant has siblings and his parents are in Canada, although there appears to be some degree of alienation at this point because the appellant married without their permission. So, the hardship that they might experience were the appellant removed may not be as significant. Overall however, this factor does weigh in favour of granting special relief.

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[5] *Archibald, Russell* v. *M.C.I.* (F.C.T.D., no. IMM-4486-94), Reed, May 10, 1995.

[15] In terms of hardship to the appellant, as I indicated there is a moratorium on removals to Gaza right now, so at present there may not be a likely country of removal. However, if I were to assume that he could get Israeli and Egyptian permission to return to Gaza, I find that he would clearly suffer significant hardship due to the separation from his family and the conditions in Gaza, which many have described as an open-air prison.

[16] I am also in agreement with counsel for the Minister that it would be in the best interests of the appellant's two children that he remain involved in their lives and this strongly favours the granting of special relief.

[17] Therefore, placing all of the above factors in the balance, I find that there are sufficient humanitarian and compassionate considerations to allow the appeal. So, with the consent of the Minister, the appeal is allowed.

[Edited for clarity, grammar, footnotes, citations and/or syntax.]

DECISION

The appeal is allowed. The removal order is set aside. The Immigration Appeal Division finds that the appellant has not lost his permanent resident status.

Benjamin R. Dolin
Benjamin R. Dolin

August 18, 2017
Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act,* you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.