Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

Immigration Appeal Division

Section d'appel de l'immigration

IAD File No. / Nº de dossier de la SAI : TC4-70802
Unique Client Identifier (UCI) / Identificateur unique de client (IUC) : 62209485

Reasons and Decision – Motifs et décision

Removal Order Appeal

Appellant(s)	Aleksei PAKHOMOV	**Appelant(e)(s)**
and		**et**
Respondent	Minister of Public Safety and Emergency Preparedness	**Intimé(e)**
Date(s) of Hearing	July 8, 2025	**Date(s) de l'audience**
Place of Hearing	Toronto, ON (by videoconference)	**Lieu de l'audience**
Date of Decision	July 15, 2025	**Date de la décision**
Panel	S. Loeb	**Tribunal**
Counsel for the Appellant(s)	Nikolay Chsherbinin	**Conseil de l'appelant(e) / des appelant(e)s**
Designated Representative(s)	N/A	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	Erin Franklin	**Conseil du (de la) ministre**

Canada

REASONS FOR DECISION

OVERVIEW

[1] Aleksei PAKHOMOV (the "Appellant") appeals the issuance of a removal order issued against him by a Minister's Delegate on the basis of criminality under section 36(2)(a) of the *Immigration and Refugee Protection Act* (the "IRPA").

[2] The Minister's counsel acknowledges that the underlying section 44(1) report and the section 44(2) decision under appeal contain material errors and, by extension, the removal order is not legally valid. I therefore allow the appeal and refer the matter back to the Minister for reconsideration.

[3] The Appellant's counsel has also requested that I make various comments or findings about the Appellant's immigration status in Canada and whether he is a permanent resident or foreign national. I decline to do so because the issuance of a subsequent removal order is speculative, and the Appellant can make these submissions directly to the Minister in the reconsideration.

BACKGROUND

[4] The Appellant's immigration history in Canada is lengthy. It has been summarized in my colleague's November 29, 2024 decision granting the Appellant the right of appeal, and I will not repeat it in full here.

[5] Briefly, the Appellant's daughter submitted an application to sponsor the Appellant to Canada in 2011. In the meantime, the Appellant was granted a Parent/Grandparent super visa and has been residing in Canada since 2013. A Confirmation of Permanent Residence and single-entry immigrant visa were issued to the Appellant on March 2, 2018. However, when the Appellant went to be landed at the port of entry, the examining officer discovered an undeclared criminal charge. The Appellant was ultimately issued an exclusion order by the Immigration Division, which he appealed to the Immigration Appeal Division (the "IAD"). On August 27, 2019, the IAD allowed the appeal on consent based on humanitarian and compassionate grounds. On September 13, 2019, the Appellant was convicted of an impaired driving offence. On February 27, 2020, the Minister issued a section

44(1) report against the Appellant concerning his conviction. On August 12, 2024, a Minister's Delegate issued a deportation order against the Appellant due to the conviction.[1]

[6] The Appellant appealed this decision to the IAD. On November 29, 2024, my colleague issued an interlocutory decision finding the Appellant retains a right of appeal to the IAD. She found that his Confirmation of Permanent Residence expired on July 17, 2018. However, she found there are special circumstances that warrant granting the Appellant a right of appeal because the Appellant had only been charged with a criminal offence and not convicted when he presented himself at the port of entry to be landed.[2]

[7] In the meantime, however, the Appellant also applied for leave and judicial review of the Minister's section 44(1) report and section 44(2) decision. On January 17, 2015, the Minister offered to settle the these applications, such that the section 44(1) report and section 44(2) decision will be redetermined. The settlement indicated that the parties agree that the August 12, 2024 removal order is moot. The settlement would take effect upon the Appellant discontinuing his applications for leave and judicial review, which I understand he then did.[3]

[8] On February 7, 2025, the Minister's counsel wrote the IAD and submitted that there is no basis for an IAD appeal because the section 44(2) decision under appeal is not legally valid. The Appellant's counsel opposed this request and the IAD scheduled a hearing.

[9] At the hearing, the Minister's counsel submitted that the Appellant's deportation order still exists, but is not legally valid. She submits that since the IAD took jurisdiction over the appeal, the Minister cannot set aside the removal order and the IAD must do so. She concedes that the section 44(1) report and section 44(2) decision contain material errors, and the removal order under appeal is not valid in law.

[10] The Appellant's counsel agrees with the Minister's counsel on this issue, but also asks the IAD to make additional findings or comments about the Appellant's immigration status.

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[1] *Pakhomov v. Canada (MCI)*, TC4-70802, November 29, 2024, at paras. 3-7.
[2] Ibid., paras. 9-17.
[3] Appellant's March 27, 2025 disclosure, Tab 1.

ANALYSIS

The Appellant's removal order is not legally valid

[11] The Appellant was issued a removal order on August 12, 2024, pursuant to a section 44(1) report issued on February 27, 2020. That section 44(1) report states that the Appellant was convicted of "operation while impaired", contrary to section 253(1)(b) of the *Criminal Code*.[4] However, the Appellant has provided documentation from his criminal court proceedings that he was in fact convicted of an offence under section 253(1)(a) of the *Criminal Code*.[5] The section 44(1) report therefore contains a material error. The ensuing removal order rests on the erroneous section 44(1) report, which the Minister's counsel submits has been set aside. The Appellant's removal order was therefore issued based on a section 44(1) report that contains a material error and no longer exists. The Appellant's removal order is therefore not legally valid.

[12] The Appellant's counsel requests that I comment on or make findings about the Appellant's immigration status, particularly during the period between when the IAD allowed his first appeal and when he received his criminal conviction. The Appellant's counsel submits that during this period, there was no impediment to the Appellant being granted permanent resident status and it should have been granted. The Appellant's counsel also submits that the Appellant's Confirmation of Permanent Residence remains valid because it was never actively revoked or otherwise cancelled, and that this document entitles the Appellant to permanent residence, such that he cannot be found inadmissible under section 36(2)(a) of the IRPA.

[13] I decline to make any such findings because there is no legally valid section 44(1) report or section 44(2) referral or removal order currently in place against the Appellant, and the potential issuance of these documents is speculative. The Appellant can make these submissions directly to the Minister in the reconsideration, and the Minister can then decide how to proceed, including whether to issue another removal order against the Appellant. If they do, the Appellant can then determine whether and how to challenge the issuance of that removal order, including potentially at the IAD,

[4] Appeal Record, pp. 3-4.
[5] Appellant's March 27, 2025 disclosure, Tabs 8-10.

which previously granted the Appellant's first appeal on humanitarian and compassionate grounds with the consent of the Minister nearly six years ago.

CONCLUSION

[14] The Appellant's removal order is not legally valid. The appeal is therefore allowed.

NOTICE OF DECISION

The appeal is allowed. The removal order is set aside. The matter is referred back for reconsideration.

(Signed) S. Loeb
S. Loeb

July 15, 2025
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.