Federal Court  Cour fédérale

Date: 20220614

Docket: IMM-2145-21

Citation: 2022 FC 884

Toronto, Ontario, June 14, 2022

PRESENT: Madam Justice Go

BETWEEN:

IFTIKHAR AHMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Iftikhar Ahmed [Applicant], a citizen of Pakistan, brings an application for judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision rendered on February 26, 2021 [Decision] by the Refugee Protection Division [RPD]. The RPD allowed the application by the Minister of Public Safety and Emergency Preparedness [the Minister] for the cessation of refugee protection to the Applicant,

pursuant to s. 108(2) of the *IRPA* and rule 64 of the *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*].

[2] The Applicant was granted refugee protection in Canada in 2006 based on religious grounds as a follower of the Ahmadi religion. The RPD found that the Applicant voluntarily re-availed himself of the protection of Pakistan, his country of nationality, pursuant to s. 108(1)(a) of the *IRPA*, as the Applicant applied for and received at least two Pakistani passports and travelled to Pakistan five times between 2011 and 2019, cumulatively spending over a year in Pakistan.

[3] For the reasons set out below, I dismiss this application for judicial review.

II. Background

A. *Factual Context*

[4] The Applicant was granted permanent resident [PR] status in Canada in 2010, about four years after his successful refugee claim. Prior to obtaining his PR status, in 2008, the Applicant obtained a Canadian travel document which explicitly prohibited travel to Pakistan. The Applicant used the document to visit one of his brothers in Germany in 2008 and again in 2009 to visit his ex-wife in Sri Lanka.

[5] The Applicant obtained a Pakistani passport issued on March 29, 2011 and valid until March 28, 2016. Between 2011 and 2016, the Applicant travelled to Pakistan on the following three occasions:

- From May 11, 2011 to August 9, 2011 (90 days) to visit his mother and to marry his current wife;
- From April 30, 2012 to August 17, 2012 (109 days) to see his ailing mother and his wife;
- From December 31, 2012 to March 3, 2013 (62 days) to see his ailing mother.

[6] On August 9, 2011, after the Applicant's return from Pakistan, Canada Border Services Agency [CBSA] officials stopped the Applicant at Pearson International Airport and questioned the Applicant for five hours about his travel back to his country of citizenship as a refugee.

[7] The Applicant's mother died in 2013. Thereafter, the Applicant travelled between Pakistan and Canada two more times on two new Pakistani passports to visit his wife: from September 2017 to March 23, 2018 (approximately six months) and from January 19, 2019 to July 2, 2019 (164 days).

[8] In his last trip to Pakistan, the Applicant was attacked. Ten people broke into his house and beat him, trying to force him to sign over property he owned. He reported the incident to the authorities in Pakistan.

[9] On June 12, 2019, the Minister made an application to the RPD pursuant to section 108(2) of the *IRPA* and rule 64 of the *RPD Rules* for the cessation of the Applicant's refugee protection, arguing that he re-availed himself of Pakistan's protection.

B. *Decision under Review*

[10] The RPD allowed the Minister's application for cessation, finding that the Applicant had re-availed himself of Pakistan's protection, pursuant to s. 108(1)(a) of the *IRPA*. In making this determination, the RPD applied the *United Nations' High Commission on Refugees Handbook on Procedures and Criteria for Determining Refugee Status* [UNHCR Handbook], which sets out, at paragraph 119, the conditions for re-availment:

> (a) voluntariness: the refugee must act voluntarily;
>
> (b) intention: the refugee must intend by his action to re-avail himself of the protection of the country of his nationality;
>
> (c) re-availment: the refugee must actually obtain such protection.

[11] The RPD found all three conditions were met in the Applicant's case.

III. Issues and Standard of Review

[12] The Applicant raises two arguments in his written submission: a) that the Decision was unreasonable; and b) that the Canadian law on cessation is inconsistent with Canada's international obligations. The Applicant did not pursue the second issue at the hearing nor do I find it necessary to consider this issue.

[13] The appropriate standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25).

[14] Reasonableness is a deferential, but robust, standard of review *(Vavilov*, at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov*, at para 15). 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 para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov*, at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov*, at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov*, at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov*, at para 100).

IV. Post Hearing Submissions

[16] Shortly after the hearing, it was brought to my attention that this Court has issued a decision (per Justice Fuhrer) in *Galindo Camayo v Canada (Minister of Citizenship and Immigration)*, 2020 FC 213 [*Galindo Camayo*] dealing with s. 108. The applicant in that case came to Canada as a minor who was included in her mother's refugee claim and was granted protected person status under s. 95 of *IRPA*. The applicant later obtained PR status. She obtained

or renewed her Colombian passport twice and returned to Colombia five times since obtaining protected person status. The applicant alleged that during each of her visits to see family in Colombia, she hired private security to keep her safe and hidden. She also travelled to several other countries on her Colombian passport.

[17] After finding the RPD acted unreasonably in leaving no room for Ms. Galindo Camayo to demonstrate that despite her acquisition and use of her Columbian passport, she did not intend to avail herself of state protection, Justice Fuhrer certified three questions of general importance with regard to factors for the RPD to consider when determining cessation cases under s. 108. The certified questions were:

1) Where a person is recognized as a Convention refugee or a person in need of protection by reason of being listed as a dependent on an inland refugee claim heard before the Refugee Protection Division [RPD], but where the RPD's decision to confer protection does not confirm that an individual or personalized risk assessment of the dependent was performed, is that person a Convention refugee as contemplated in paragraph 95(1) of the IRPA and therefore subject to cessation of refugee status pursuant to subsection 108(2) of the IRPA?

2) If yes to Question 1, can evidence of the refugee's lack of subjective [let alone any] knowledge that use of a passport confers diplomatic protection be relied on to rebut the presumption that a refugee who acquires and travels on a passport issued by their country of origin to travel to a third country has intended to avail themselves of that state's protection?

3) If yes to Question 1, can evidence that a refugee took measures to protect themselves against their agent of persecution [or that of their family member who is the principal refugee applicant] be relied on to rebut the presumption that a refugee who acquires [or renews] a passport issued by their country of origin and

> uses it to return to their country of origin has intended to avail themselves of that state's protection?

[18] The hearing before the Federal Court of Appeal [FCA] was held on December 8, 2021.

[19] I issued a direction dated February 18, 2022 to the parties seeking their submissions on whether I should reserve my decision until the FCA released its decision. The Respondent argued that it was not in the interest of justice to await the FCA's decision for *Galindo Camayo* before rendering a decision for this matter, stating that the case in *Galindo Camayo* and the case at bar are factually dissimilar. The Respondent further conceded the possibility that the FCA may release their decision in *Galindo Camayo* prior to a decision being rendered for the case at bar and requested an opportunity to answer any specific questions from this Court about the applicability of *Galindo Camayo*. The Applicant did not provide any submission.

[20] I decided to reserve my decision until the FCA released its decision, and to provide parties with the opportunity to make additional submissions before rendering my decision. The FCA released its decision in *Minister of Citizenship and Immigration v Camayo* 2022 FCA 50 [*Camayo (FCA)*] on March 29, 2022. I have since received submissions from the parties regarding the applicability of the FCA decision, which I incorporate in my analysis below.

V. Analysis

[21] The relevant provisions are ss. 108, 46(1)(c.1) and 40.1(1) of the *IRPA*, which are set out in Appendix A.

Legal Test for Re-availment and the FCA's decision in *Camayo* (*FCA*)

[22] The Federal Courts have recognized the three-part test for re-availment, which requires the decision-maker to assess 1) voluntariness, in that the refugee must not be coerced; 2) intention, meaning the refugee must intend by their actions to re-avail themselves of the protection of the country of their nationality; and 3) re-availment, in the sense that the refugee must actually obtain such protection (*Chowdhury v Canada (Citizenship and Immigration*), 2021 FC 312 at para 8). This three-part test remains intact under *Camayo (FCA)*. The FCA decision however, provided additional guidance on how the RPD may determine a cessation case under s.108 of the *IRPA.*

[23] While the FCA was initially asked to address three certified questions in *Galindo Camayo*, the parties agreed the first question was not in issue. The FCA answered the second and third questions in the affirmative. In confirming Justice Fuhrer's finding that the decision of the RPD was unreasonable, the FCA provided the following reasons.

[24] The FCA found that the RPD adopted a certain meaning of s.108 of *IRPA* without conducting any statutory interpretation analysis. Among other things, the FCA found that the RPD erred by pronouncing that "ignorance of the law is no excuse under s.108", by finding that Ms. Galindo Camayo intended to reavail herself of the protection of the Colombian government based solely on her having a Colombian passport, and by failing to explain the meaning of the elements of intention, voluntariness and re-availment.

[25] The FCA also addressed the significance of the state of a protected person's knowledge with respect to the immigration consequences of their actions and confirmed the presumption that refugees who acquire and travel on passports issued by their country of nationality have intended to avail themselves of the protection of their country of nationality. As well, the FCA confirmed that the presumption is a rebuttable one and the onus is on the refugee to adduce sufficient evidence to do so. The FCA found that the RPD should have considered not what Ms. Galindo Camayo "*should have* known", but rather "whether she *did* subjectively intend by her actions to depend on the protection of Colombia" (at para 68, emphasis in original).

[26] The FCA also asserted that key to the assessment of the reasonableness of the RPD decision "is whether it could rely on evidence that Ms. Galindo Camayo took measures to protect herself against her agent of persecution while she was in Colombia to rebut the presumption of reavailment" (at para 73). The FCA found the RPD erred by failing to consider Ms. Galindo Camayo's evidence about hiring private security, as such evidence speaks to her ongoing subjective fear of the situation in Colombia, and her lack of confidence in the ability of the state to protect her.

[27] Finally, the FCA commented on the RPD's reliance on Ms. Galindo Camayo's use of her passport to travel to Colombia as satisfying all three elements of the test for re-availment. The FCA took issue with this approach as it "left little room for Ms. Galindo Camayo to demonstrate that even though she had used her Colombian passport for travel, she did not intend to avail herself of the protection of that country" (at para 79).

[28] I will follow the FCA's guidance to assess the findings of the RPD in the herein matter.

Voluntariness

[29] The RPD found that the Applicant obtained Pakistani passports and travelled to Pakistan entirely voluntarily. The RPD noted that the Applicant admitted to the trips during his testimony and did not deny that he travelled using Pakistani passports.

[30] The Applicant submits that he travelled to Pakistan due to emergency reasons, i.e. visiting his ailing mother and visiting his wife. The Applicant had sought to sponsor his wife but the sponsorship application was refused. As the Applicant is not a Canadian citizen, having a Pakistani passport was the only option he had.

[31] The Respondent submits that the RPD reasonably concluded that the Applicant's return trips to Pakistan were voluntary, as there was no evidence that the Applicant did not travel to Pakistan on his own volition or that he was constrained by any circumstances outside his control.

[32] The RPD's finding, in my view, is consistent with the case law: *Kuoch v Canada (Citizenship and Immigration*), 2015 FC 979 at para 27. Further, as this Court has confirmed, the reasons provided by an applicant to justify his or her return to the country against which they claimed protection does not alter the voluntariness of the act (*Cabrera Cadena v Canada (Public Safety and Emergency Preparedness*), 2012 FC 67 at para 22). *Camayo (FCA)* has not altered this legal principle.

[33] As such, I find the RPD reasonably found that the Applicant acted voluntarily when he travelled to Pakistan on five occasions using Pakistani passports he applied for.

Intention

[34] On the question of intention, the RPD cited paragraphs 121, 124 and 124 of the UNHCR Handbook as follows:

> 121. … If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of his country. …
>
> …
>
> 124. Obtaining a national passport or an extension of its validity, may, under certain exceptional circumstances, not involve termination of refugee status. …
>
> 125. … Visiting an old or sick parent will have a different bearing on the refugee's relation to his former home country than regular visits to that country spent on holidays or for the purpose of establishing business relations.

[35] The RPD noted that only two of the Applicant's five trips to Pakistan were related to his mother's health. It also noted that the Applicant's mother had family support in Pakistan by way of her son and his wife with whom she lived. The RPD further noted that the Applicant was aware, having received a Canadian travel document in 2008 prohibiting travel to Pakistan, that he was not to travel to the country against which he had filed a refugee claim. The RPD found that the fact that the Applicant travelled to Pakistan on five occasions despite being warned not to confirms his intention to re-avail himself of the country's protection.

[36] I do not agree with every aspect of the RPD's findings, especially its rejection of the Applicant's testimony that his brother and sister-in-law were not looking after his mother. However, I find the RPD's reasoning on the whole transparent, intelligible and justified.

[37] I accept that the Applicant travelled to Pakistan for legitimate family reasons. Yet both the case law and the UNHCR Handbook confirm that if a refugee returns to his country of nationality on a passport issued by that country, there is a strong presumption that he has intentionally and actually re-availed himself of that country's protection (*Chokheli v Canada (Citizenship and Immigration*), 2020 FC 800 [*Chokheli*] at paras 55-56; *Seid v Canada (Citizenship and Immigration*), 2018 FC 1167 at para 20).

[38] The Respondent submits that while paragraph 125 of the UNHCR Handbook indicates that visiting sick family members may constitute an exceptional circumstance, this Court has repeatedly limited the application of paragraph 125 to refugees who travel to their country of nationality under a travel document issued by their country of residence, as opposed to a passport issued by their country of nationality (*Abadi v Canada (Citizenship and Immigration*), 2016 FC 29 at para 18; *Canada (Citizenship and Immigration) v Nilam*, 2015 FC 1154 [*Nilam*] at para 28).

[39] I do not read the case law as narrowly as the Respondent urges. In *Canada (Citizenship and Immigration) v Antoine*, 2020 FC 370 [*Antoine*] at para 34, Justice Pentney distinguished *Nilam* based on several factors including: the number of trips, the use of a passport from the country of origin to travel to other countries, the reasons for returning to the country of origin

were to visit the applicant's elderly and ailing father, and the measures taken by the applicant to protect himself from his persecutors. Based on those facts, Justice Pentney confirmed as reasonable the RPD's acceptance of the case to be an "exceptional circumstance."

[40] In view of *Antoine*, I believe it could have been open to the Applicant to argue that exceptional circumstances existed before 2013, when he went to Pakistan to visit his ailing mother. However, I agree with the Respondent that the Applicant failed to justify his last two trips, taken over fours years after his mother's death. As the Applicant's representative also admitted at the RPD hearing, the Applicant could have visited his wife outside of Pakistan.

[41] I also reject the Applicant's submission that the RPD failed to take into account that he was relying on his belief that his permanent resident status provided him protection in returning to Pakistan. The RPD did consider this argument but rejected it. The RPD found that the Applicant knew or should have known, based on the travel document he obtained in 2008, that travel to Pakistan was prohibited. The RPD also noted that the Applicant acknowledged he was made aware by CBSA officials upon his return to Canada in August 2011 that he should not be travelling to Pakistan. The RPD found not credible the Applicant's testimony that after being interviewed for five hours by CBSA officials in August 2011, he was left unaware that he faced risks by travelling to Pakistan. While I acknowledge that there was no direct evidence before the RPD – other than the Applicant's testimony – as to what transpired during that five hours of interview with the CBSA, deference is owed to the RPD findings of facts and credibility.

[42] The RPD's analysis in this regard, in my view, further satisfies the FCA's guidance in *Camayo (FCA)* to consider the question of whether the Applicant lacked ***actual*** knowledge of the immigration consequences of his actions.

[43] The Applicant relies on the adoption of the *Protecting Canada's Immigration System Act*, SC 2012, c 17 [*PCISA*] in June 2012, and on this Court's decision in *Cerna v Canada (Citizenship and Immigration),* 2015 FC 1074 [*Cerna*] to support his position. Before the adoption of the *PCSIA*, cessation of refugee status did not affect PR status. In *Cerna*, the Court found that the RPD failed to take into account Mr. Cerna's testimony that he travelled to his country of nationality on the belief that he enjoyed the security of having PR status in Canada, as the *PCSIA* had not yet been adopted at the time of his travels.

[44] I reject the Applicant's submission for two reasons. First, the *PCSIA* was well into force during the Applicant's three other trips to Pakistan in December 2012, September 2017 and January 2019. Second, I agree with the Respondent that *Cerna* can be distinguished on facts, as there was evidence in this case suggesting that the Applicant was aware that he should not have been travelling to Pakistan.

[45] The Applicant made an additional argument at the hearing that the RPD failed to consider his testimony that during his visits to Pakistan he was in hiding. This evidence, the Applicant argued, was relevant to determining his intention, citing this Court's decision in *Peiqrishvili v Minister (Citizenship, Refugees and Citizenship),* 2019 FC 1205 [*Peiqrishvili*] in which the Court found the RPD erred by failing to analyze the Applicant's evidence that she was hiding from her

ex-husband as she continued to fear him. I might add that this argument was also reinforced by *Camayo (FCA)* at paras 73-78.

[46] I find the RPD did not have to address this argument as the Applicant's evidence on this point was negligible. I also find the facts of this case can be distinguished from *Peiqrishvili* in which the claimant provided written evidence and testified before the RPD as to precautions she took to prevent her ex-husband from being aware that she had returned. Similarly, the case is also distinguishable from *Camayo (FCA)*. Other than stating that he did not go shopping, the Applicant provided little details about the measures he took in Pakistan. Moreover, the evidence confirmed that the Applicant did get married, reported an assault to the police, took his mother to the hospital and stayed at the hospital for close to 60 days to look after her during the multiple trips he took.

[47] Based on the above, I find the RPD reasonably concluded that the Applicant intended to re-avail himself of Pakistan's protection.

Re-availment

[48] The RPD relied on paragraphs 121 and 122 of the UNHCR Handbook, which indicate the following:

> 121. … If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality. On the other hand, the acquisition of documents from the national authorities, for which non-nationals would likewise have to apply – such as a birth or marriage certificate – or similar services, cannot be regarded as a re-availment of protection.

> 122. A refugee requesting protection from the authorities of the country of his nationality has only "re-availed" himself of that protection when his request has actually been granted. … On the other hand, obtaining an entry permit or a national passport for the purposes of returning will, in the absence of proof to the contrary, be considered as terminating refugee status. …

[49] The RPD noted that the Applicant, despite claiming refugee protection out of fear of state and non-state actors because of his religious beliefs as an Ahmadi, returned to Pakistan on five occasions using Pakistani passports he applied for and obtained after he was granted refugee protection. The RPD found that this is indicative of lack of subjective fear.

[50] The RPD rejected the Applicant's argument that there could have been no re-availment because he did not and could not obtain protection of the Pakistani state, as it does not protect Ahmadis. The RPD noted that the Applicant did not encounter any difficulties with Pakistani authorities during his multiple trips to Pakistan. To the contrary, the RPD noted that the Applicant sought protection from the authorities after he was attacked at his house in 2019, his Ahmadi faith notwithstanding. The RPD found that by returning to Pakistan on multiple occasions, the Applicant was prepared to accept the risk associated with being an Ahmadi. The RPD found that he accepted and relied on the protection of Pakistan. Furthermore, the RPD found that the Applicant's reliance on Pakistani passports for multiple trips to Pakistan demonstrates his actual re-availment to the protection of that country.

[51] The RPD added that it was not required to assess the risk the Applicant would face upon return. In any event, the RPD noted that the Applicant knew he could be at risk in Pakistan due to his religion, but he nullified that risk by returning to that country on five occasions.

[52] The Applicant submits that the RPD's finding that nothing on his passport identifies him as an Ahmadi is unreasonable since Ahmadis are not considered Muslims in Pakistan. He pleads that the RPD ignored evidence of his religious beliefs as an Ahmadi. The Applicant also pleads that it was unreasonable to find that him reporting the attack he suffered in 2019 to the Pakistani authorities was a form of re-availment. He submits that by going to the authorities, he simply did what any reasonable person would have done in the circumstances.

[53] The Applicant's submission on this point has no merit. The RPD did consider the Applicant's profile as an Ahmadi, but reasonably found that the Applicant's actions demonstrated a lack of subjective fear and a clear re-availment to Pakistan's diplomatic protection. The RPD's comments regarding the lack of reference to the Applicant's Ahmadi identity in his passport should be considered in the context of its finding that there was no evidence the Applicant encountered any difficulties with the Pakistani authorities during his multiple trips and that the Applicant could have relied on this absence of reference to his faith to seek state protection. Viewed in that light, the RPD's findings were reasonable.

[54] The Applicant relies on *Din v Canada (Citizenship and Immigration)*, 2019 FC 425 [*Din*] to assert that it was unreasonable to find that he actually re-availed himself of Pakistan's protection. In *Din*, the Court found that the RPD failed to consider evidence that the applicant could not obtain actual protection in Pakistan as an Ahmadi (at para 34).

[55] In my view, *Din* can be distinguished on facts. In *Din*, the Court found that the RPD failed to consider the applicant's extensive evidence of the precautions he took in Pakistan and if

that evidence affected whether he obtained actual protection. In this case, the RPD did consider all of the Applicant's evidence and arguments. While the Applicant testified that he hid during his visits in Pakistan, as the Respondent notes, the evidence shows that at the very least, he got married, visited his mother at the hospital, and interacted with family and the police. The Respondent submits that the RPD simply found the Applicant's circumstances insufficient to rebut the presumption that he actually re-availed himself of Pakistan's protection. I agree.

[56] Citing *Camayo (FCA)*, the Applicant submits that measures he took which illuminate his lack of confidence in state protection and his subjective fear should not have been disregarded or treated as negative factors. As the Respondent submits, however, and I agree, the actions of the Applicant support the RPD's finding that he "was accepting of, and relied on, the protection of Pakistan."

[57] Lastly, the Applicant submits that the RPD failed to address whether he would face a risk under s. 97 of the *IRPA* on return to Pakistan, which he contends is a reviewable error.

[58] The Applicant further submits that *Din* stands for the proposition that even if the Applicant intends to re-avail and has no subjective fear, there is still the possibility that when he returns to Pakistan, he is at risk under s. 97 which does not require subjective fear (*Din* at para 45).

[59] The Respondent notes, and I agree, that the Applicant conflates state protection at the refugee claim stage and the protection at issue at the re-availment context. The preponderant

jurisprudence has held that whether an applicant would be at risk in their country of nationality is not a relevant consideration in a cessation hearing (*Chokheli* at para 65 citing *Cerna* at para 13; *Al-Habib v Canada (Citizenship and Immigration*), 2020 FC 545 at para 14). This principle was not addressed or altered by the decision in *Camayo (FCA).*

[60] The Applicant submits that *Chokheli* did not say *Din* was decided incorrectly, rather the decision turned on its facts: *Chokehli* at para 50. I agree. However, while the Applicant urges me to focus on the fact that *Din* also involved an Ahmadi Muslim, there were other facts highlighted by Justice Elliott in *Chokehli* that distinguish *Din* and that are absent in his case, namely: the failure of the RPD to consider "extensive evidence put forward by Mr. Din to rebut the presumption of reavailament", including evidence that "he was always in hiding while in Pakistan, he did not attend the mosque or the graveyard and he lived in constant fear" (*Chokehli* at para 50). Such evidence is absent in this case.

[61] In sum, the RPD reasonably determined that the Applicant actually re-availed himself of Pakistan's protection. The RPD considered the entirety of the Applicant's evidence, including evidence of his religious beliefs as an Ahmadi, but found that the Applicant's actions demonstrated an actual re-availment of that country's protection.

VI. Conclusion

[62] The application for judicial review is dismissed.

[63] There is no question for certification.

JUDGMENT in IMM-2145-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

Appendix A – Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27**
***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**

Inadmissibility **Cessation of refugee protection — foreign national** **40.1 (1)** A foreign national is inadmissible on a final determination under subsection 108(2) that their refugee protection has ceased.	**Interdictions de territoire** **Perte de l'asile — étranger** **40.1 (1)** La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant la perte de l'asile d'un étranger emporte son interdiction de territoire.
Loss of Status **Permanent resident** **46 (1)** A person loses permanent resident status … **(c.1)** on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d); …	**Perte du statut** **Résident permanent** **46 (1)** Emportent perte du statut de résident permanent les faits suivants : … **c.1)** la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile; …
Cessation of Refugee Protection **Rejection** **108 (1)** A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances: **(a)** the person has voluntarily reavailed themself of the protection of their country of nationality; **(b)** the person has voluntarily reacquired their nationality; **(c)** the person has acquired a new nationality and enjoys the protection of the country of that new nationality; **(d)** the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or	**Perte de l'asile** **Rejet** **108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants : **a)** il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité; **b)** il recouvre volontairement sa nationalité; **c)** il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité; **d)** il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;

(e) the reasons for which the person sought refugee protection have ceased to exist.	**e)** les raisons qui lui ont fait demander l'asile n'existent plus.
Cessation of refugee protection	**Perte de l'asile**
(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).	**(2)** L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).
Effect of decision	**Effet de la décision**
(3) If the application is allowed, the claim of the person is deemed to be rejected.	**(3)** Le constat est assimilé au rejet de la demande d'asile.
Exception	**Exception**
(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.	**(4)** L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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