

Federal Court



Cour fédérale

Date: 20221110

Docket: IMM-9132-21

Citation: 2022 FC 1532

Montréal, Quebec, November 10, 2022

PRESENT: Mr. Justice Gascon

BETWEEN:

SANDORNE KOVACS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Sandorne Kovacs, is a citizen of Hungary. She was granted refugee protection in Canada in April 2013. However, following a trip she made to Hungary in 2020, the Minister of Citizenship and Immigration [Minister] applied for the cessation of Ms. Kovacs' refugee status pursuant to subsection 108(2) of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [IRPA]. In a decision dated November 15, 2021 [Decision], the Refugee Protection Division [RPD] granted the Minister's application and terminated Ms. Kovacs' refugee protection. The RPD concluded that Ms. Kovacs had re-availed herself of the protection of Hungary by obtaining a Hungarian passport and a Hungarian National Identity Card, and by returning to her country of nationality.

[2] Ms. Kovacs now seeks judicial review of the RPD's Decision. She submits that the RPD erred in finding that she voluntarily and intentionally re-availed herself of the protection of her country of nationality pursuant to paragraph 108(1)(a) of the IRPA. She claims that the Decision is unreasonable and maintains that the RPD ignored relevant evidence and relied on immaterial facts to cease her refugee protection. She asks this Court to quash the RPD's Decision and to return it to the RPD for reconsideration.

[3] The only issue to be determined is whether the RPD's Decision is unreasonable.

[4] For the following reasons, Ms. Kovacs' application for judicial review will be dismissed. Having considered the Decision, the evidence before the RPD, and the applicable law, I conclude that the Decision is reasonable and that the evidence amply supports the RPD's conclusions regarding Ms. Kovacs' re-availment. I am satisfied that the RPD's reasons have the qualities that make its analysis logical and consistent in relation to the relevant legal and factual constraints.

II. Background

A. *The factual context*

[5] In April 2013, Ms. Kovacs obtained refugee protection in Canada and became a Convention refugee. At the time, she indicated that she was fearing persecution in Hungary due to her Roma ethnicity. Ms. Kovacs received a Canadian travel document on November 28, 2019.

[6] Between August 18, 2020 and September 7, 2020, Ms. Kovacs travelled to Europe to attend her son's wedding in Germany. At the hearing before the RPD, she admitted she went to Hungary for approximately three weeks — almost the whole duration of her trip — when she learned her mother had been hospitalized. During her stay in Hungary, she applied for and obtained a Hungarian passport and a Hungarian National Identity Card, which were issued on August 24, 2020 and August 25, 2020, respectively.

[7] In light of those facts, the Minister made an application to cease Ms. Kovacs' refugee protection.

B. *Decision*

[8] In the Decision, the RPD allowed the Minister's application and terminated Ms. Kovacs' refugee protection.

[9] At the hearing, the RPD found many inconsistencies between Ms. Kovacs' testimony before the RPD and her declarations made to an officer of the Canada Border Services Agency [CBSA] at the "point of entry" interview that took place upon her return from Europe. Examples from the CBSA officer's notes were provided to demonstrate how Ms. Kovacs lied about her return to Hungary. She first denied going back to her country of nationality, then said she returned only for two days, to finally admit at the hearing that she had been in Hungary for about three weeks, from August 19, 2020 to September 6, 2020. The RPD further explained how Ms. Kovacs repeatedly changed her answers to questions that were asked about her travel to Europe, how she had travelled from Germany to Hungary, why she returned to Hungary, and what she did while in Hungary. The RPD further noted that Ms. Kovacs did not mention her mother's illness to the CBSA officer when she came back to Canada.

[10] The RPD accepted part of Ms. Kovacs' testimony relating to her mother's serious health concerns and her hospitalization during the period of time Ms. Kovacs went to Hungary. However, because of inconsistencies between the evidence and Ms. Kovacs' testimony, the RPD determined that the extent of her mother's illness and required care was uncertain. According to the RPD, Ms. Kovacs' explanations were insufficient to demonstrate that her return to her country of nationality constituted exceptional circumstances for which no other options were available to ensure her mother would receive proper care. The return of Ms. Kovacs in Hungary was therefore voluntary, said the RPD.

[11] The RPD further noted that "the simple act of applying for and obtaining a passport, is often not a determining issue." However, because Ms. Kovacs obtained her new Hungarian

passport and her National Identity Card while she was in Hungary, the presumption that she had the intention of re-availing herself of the protection of that country was established.

[12] In the Decision, the RPD also considered Ms. Kovacs' explanation of her Roma ethnicity as the reason for renewing her Hungarian identification documents, but concluded that this explanation was insufficient to rebut the presumption of re-availment, considering the issues with Ms. Kovacs' credibility.

C. *The relevant provisions*

[13] The relevant provision is section 108 of the IRPA. It reads in part as follows:

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 themselves of the protection of their country of nationality;

...

Cessation of refugee protection

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased

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;

[...]

Perte de l'asile

(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

for any of the reasons described in subsection (1).

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.

D. *The standard of review*

[14] It is not disputed that a finding of cessation of refugee protection under section 108 of the IRPA is reviewable under the reasonableness standard (*Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo FCA*] at para 39; *Siddiqui v Canada (Citizenship and Immigration)*, 2016 FCA 134 at para 11; *Chowdhury v Canada (Citizenship and Immigration)*, 2021 FC 312 [*Chowdhury*] at para 5). This is confirmed by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], which establishes that reasonableness is the presumptive standard that reviewing courts must apply when conducting judicial review of the merits of an administrative decision.

[15] Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome of the decision (*Vavilov* at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine 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). The

reviewing court must therefore consider whether the “decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99).

[16] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with “respectful attention,” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13).

[17] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for a reviewing court to overturn an administrative decision. It must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100). When the reasons contain a fundamental gap or an unreasonable chain of analysis, a reviewing court may have grounds to intervene.

III. Analysis

[18] Ms. Kovacs argues that the RPD’s Decision is contradictory in that it concludes that her testimony is not credible, but still acknowledges her mother’s illness. She submits that her actions were reasonable and “in no way demonstrate an intended or actual re-availment.” Considering the reasons given for obtaining her Hungarian identification documents and for

going back to Hungary, Ms. Kovacs claims that the RPD erred in concluding that she had the intention of re-availing herself of the protection of her country of nationality.

[19] With respect, and despite the regrettable situation she now finds herself in, I am not persuaded by Ms. Kovacs' arguments.

[20] I am instead satisfied that the RPD could reasonably conclude that Ms. Kovacs had not rebutted the presumption established by her renewal of Hungarian passport and National Identity Card and by her travel to Hungary. In fact, the RPD effectively considered many of the factors summarized by the Federal Court of Appeal in *Camayo FCA* at paragraph 84, despite not having the benefit of that judgment at the time of its Decision. In its reasons, the RPD carried out a detailed, individualized assessment of all evidence that was available before determining that Ms. Kovacs had not rebutted the presumption of re-avilment triggered by her actions. I find the RPD's reasoning transparent, intelligible, justified, and internally coherent. None of the errors alleged by Ms. Kovacs lead me "to lose confidence in the outcome reached by the decision maker" (*Vavilov* at para 122).

[21] It is not disputed that three conditions must be met in order to determine whether a person has re-availed the protection of his or her country of nationality under paragraph 108(1)(a) of the IRPA: "(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-avilment: the refugee must actually obtain such protection" (*Nsende v Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 at para 13; see also *Camayo FCA* at para 18;

Norouzi v Canada (Immigration, Refugees and Citizenship), 2017 FC 368 at para 9; *Cerna v Canada (Citizenship and Immigration)*, 2015 FC 1074 at para 12). These criteria are cumulative (*Canada (Public Safety and Emergency Preparedness) v Bashir*, 2015 FC 51 at para 40).

[22] Each of these three elements was thoroughly analyzed by the RPD.

[23] On the voluntariness of Ms. Kovacs' actions, the RPD found no evidence to demonstrate that Ms. Kovacs' return to Hungary was not voluntary. The RPD considered the sickness of her mother, but found that the explanations provided by Ms. Kovacs were insufficient to justify an involuntary return and that her reasons for returning did not constitute exceptional circumstances. Inconsistencies between Ms. Kovacs' testimony and the evidence she adduced failed to convince the RPD that she had no other choice but to return to Hungary to care for her mother. Since Ms. Kovacs mentioned that her family came to visit her at her mother's house during her stay in Hungary, it was open to the RPD to conclude that Ms. Kovacs had family in Hungary that could have possibly cared for her mother, despite the fact that Ms. Kovacs' sister was also sick. In sum, Ms. Kovacs had other options. This Court has established that, where other family members are available to take care of a sick parent, the presumption of re-availment is not rebutted (*Jing v Canada (Citizenship and Immigration)*, 2019 FC 104 at para 24; *Tung v Canada (Citizenship and Immigration)*, 2018 FC 1224 at para 41).

[24] The RPD concluded that Ms. Kovacs entered Hungary and approached the Hungarian authorities of her own volition, and that she was not constrained by any circumstances outside her control. I underline that the RPD had serious credibility concerns regarding the reasons of

Ms. Kovacs' trip to Hungary and doubted that it was instigated by the sudden illness and hospitalization of her mother. Given the continuous variations in Ms. Kovacs' testimony about the circumstances of her trip to Hungary, I am not persuaded that the RPD's findings on the voluntariness of her actions are unreasonable.

[25] Turning to intention, it is well accepted that a refugee's intention to re-avail themselves of the protection of their country of nationality is presumed when applying for or renewing a passport. This presumption becomes strong when the refugee effectively uses that passport to travel to their country of nationality (*Camayo FCA* at paras 23, 63; *Chowdhury* at para 9, citing *Abechkhrishvili v Canada (Citizenship and Immigration)*, 2019 FC 313 at para 23; *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 16; *Canada (Citizenship and Immigration) v Nilam*, 2015 FC 1154 at para 25). The presumption may be rebutted in exceptional circumstances, but the onus is on the refugee to adduce sufficient evidence (*Camayo FCA* at para 65; *Chowdhury* at para 12).

[26] In this case, the RPD found that Ms. Kovacs had the implied intention to re-avail herself of the protection of Hungary as, while visiting the country, she actively proceeded to renew her Hungarian passport and National Identity Card. The RPD further determined that the presumption was not rebutted by Ms. Kovacs' explanation that she feared difficulties with Hungarian authorities due to her Roma ethnicity. I am satisfied that in the circumstances of Ms. Kovacs, it was reasonable for the RPD not to give much weight to her alleged fear of persecution if she were to be stopped by the Hungarian authorities having only her Canadian travel document. The RPD considered her explanations, but concluded that in actively renewing her

Hungarian identification documents, Ms. Kovacs actually had the intention to re-avail herself of the protection of Hungary. I observe that Ms. Kovacs had been able to enter Hungary with her Canadian travel document without any problems, and that she certainly did not fear the Hungarian authorities when she went to them to obtain her passport and National Identity Card and agreed to provide her biometrics in the process.

[27] With respect to the actual re-availment, it is not disputed that Ms. Kovacs had no difficulties to enter or to leave Hungary during her trip, that she did not hide from her agents of persecution while in Hungary, and that she had activities while in her country of nationality — visiting the Hungarian authorities twice and having at least one banking transaction. She did not suffer any hardship at the hands of the Hungarian authorities during her return to Hungary, even when she actively approached them. Moreover, she did not take any measures to protect herself from her former agents of persecution during her stay in Hungary.

[28] All of Ms. Kovacs' actions reflected her confidence in the ability of the Hungarian government to protect her. All things considered, I am satisfied that the RPD examined all of the relevant circumstances and arguments brought forward by Ms. Kovacs. The RPD drew conclusions from the facts presented, while being cautious in light of its finding that Ms. Kovacs lacked credibility.

[29] At paragraph 84 of *Camayo FCA*, the Federal Court of Appeal identified relevant factors that the RPD needs to consider in a cessation hearing. Although this decision was not available

when the RPD ruled on the present case, those factors should be noted as they were all covered by the RPD's Decision, where applicable, in Ms. Kovacs' case:

1. The provisions of subsection 108(1) of the IRPA, which operate as a constraint on the RPD in arriving at a reasonable decision;
2. The provisions of international conventions such as the *Refugee Convention* and guidelines such as the *Refugee Handbook*, as international law operates as an important constraint on administrative decision makers such as the RPD;
3. The severity of the consequences that a decision to cease refugee protection will have for the affected individual;
4. The submissions of the parties;
5. The state of the individual's knowledge with respect to the cessation provisions;
6. The personal attributes of the individual such as her age, education and level of sophistication;
7. The identity of the agents of persecution, and their relationship to the country's governmental authorities;
8. Whether the obtaining of a passport from the country of origin is done voluntarily;
9. Whether the individual actually used the passport for travel purposes;
10. The purpose of the travel;
11. What the individual did while in the country in question;
12. Whether the individual took any precautionary measures while she was in his or her country of nationality;

13. Whether the actions of the individual demonstrate that he or she no longer has a subjective fear of persecution in the country of nationality such that surrogate protection may no longer be required; and
14. Any other factors relevant to the question of whether the particular individual has rebutted the presumption of re-availment.

[30] The Federal Court of Appeal also stated that when dealing with cessation cases, the RPD must provide “reasoned explanation concerning the relevant evidence and key issues, including the key arguments made by the parties” (*Camayo FCA* at para 82, citing *Sexsmith v Canada (Attorney General)*, 2021 FCA 111 at para 36). This is precisely what the RPD did in this case, and Ms. Kovacs did not point to any of her arguments that the RPD would have neglected to address.

[31] In sum, Ms. Kovacs has failed to demonstrate serious shortcomings in the RPD’s Decision and reasoning. The RPD’s reasons are clear, they address every key element, and they demonstrate an internally coherent reasoning. Ms. Kovacs’ arguments essentially amount to a disagreement with the RPD’s assessment of the evidence, but this is not a valid reason to justify the Court’s intervention. On judicial review, a reviewing court must not re-weigh and reassess the evidence brought before the decision maker. A reviewing court is only permitted to interfere with factual findings of an administrative decision maker in exceptional circumstances (*Vavilov* at para 125; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). As long as all the evidence has been properly examined, the question of the weight remains entirely within the expertise of the RPD. This is the case here. This is not a

situation where the administrative decision maker has ignored the evidence on the record and the general factual matrix that bears on its decision, or “fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para 126).

[32] At the hearing, counsel for Ms. Kovacs insisted on the fact that Ms. Kovacs’ trip only lasted three weeks, that she did not leave her mother’s house while in Hungary, and she did not actually use her Hungarian passport to travel. She claimed that these actions do not substantiate a voluntary, intended, or actual re-availment. With respect, I do not agree. In this case, the RPD had serious issues with Ms. Kovacs’ credibility given the half-truths and ever-changing answers she repeatedly relayed to the Canadian immigration authorities about her trip and activities. Moreover, while Ms. Kovacs may not have used her Hungarian passport to travel, the fact remains that she took the highly unusual step, for a Convention refugee having claimed past persecution in Hungary based on her Roma ethnicity and having obtained status as a protected person in Canada, of presenting herself to the Hungarian authorities in order to obtain national identity documents. Ms. Kovacs thereby actively sought the diplomatic protection of the country allegedly at the source of her persecution. In the circumstances, I am not persuaded that it was unreasonable for the RPD to conclude that Ms. Kovacs had re-availed herself of the protection of Hungary.

[33] It is true that Ms. Kovacs did not acquire her Hungarian passport to travel to that country, and that this is what normally triggers the presumption of re-availment. However, I am of the view that the presumption must also apply when a person decides to apply and obtain a passport from their country of nationality while being in that country. This certainly strongly suggests that

the person intended to avail themselves of the protection of their country of nationality (*Camayo FCA* at para 63).

[34] I am mindful of the fact that the loss of refugee or protected person status has serious consequences for the affected individual, including losing the permanent resident status and being barred from certain options under Canadian immigration laws. However, in this case, Ms. Kovacs' own actions justified the conclusions reached by the RPD.

IV. Conclusion

[35] For the above-mentioned reasons, Ms. Kovacs' application for judicial review is dismissed. The Decision constituted a reasonable outcome based on the law and the evidence, and it has the requisite attributes of transparency, justification, and intelligibility. According to the reasonableness standard, it is sufficient for the Decision to be based on an internally coherent and rational analysis, and to be justified having regard to the legal and factual constraints to which the decision maker is subject. This is the case here with respect to the RPD's conclusions rejecting Ms. Kovacs' refugee protection.

[36] There are no questions of general importance to be certified.

JUDGMENT in IMM-9132-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.
2. No question of general importance is certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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