

Federal Court



Cour fédérale

Date: 20221125

Docket: IMM-4801-21

Citation: 2022 FC 1626

Ottawa, Ontario, November 25, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MUTHANA ABDULZA ATI

Applicant

and

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

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Muthana Abdulza Ati (“Mr. Ati”), is a citizen of Iraq. He came to Canada over twenty years ago and was granted refugee protection. He then became a permanent resident of Canada. In June 2021, the Refugee Protection Division [RPD] granted the Minister of

Citizenship and Immigration's application to cease Mr. Ati's refugee protection under paragraph 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*] because it found that Mr. Ati had voluntarily reavailed himself of the protection of Iraq [Cessation Decision]. The Cessation Decision has profound consequences for Mr. Ati. As a result, he lost both his refugee status and his permanent resident status. Mr. Ati challenges the Cessation Decision in this judicial review.

[2] Mr. Ati makes three arguments on judicial review. First, Mr. Ati argues that the RPD unreasonably evaluated whether the Minister had established that Mr. Ati had reavailed himself of Iraq's protection under paragraph 108(1)(a) of *IRPA*. Mr. Ati asserts that the RPD failed to consider his explanations for travelling to Iraq. Further, Mr. Ati argues that the RPD's evaluation is inconsistent with the guidance of the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*] and particularly the requirement to consider his subjective intention to reavail. I do not agree that the RPD failed to consider the relevant factors that are set out in *Camayo*; nor do I agree that the RPD failed to consider Mr. Ati's evidence, including his explanations for travelling to Iraq.

[3] Second, Mr. Ati claims that the RPD breached procedural fairness by finding that he made no effort to marry in a third country, nor to organize family visits or his children's births outside of Iraq, without first putting these findings to Mr. Ati at the hearing. I do not agree that there is any breach of fairness. Mr. Ati testified at the RPD hearing that it was necessary that he be in Iraq but failed to provide any information as to why a third country would not have been a possible option. In any case, Minister's Counsel raised Mr. Ati's failure to address the possibility

of marrying and visiting his family in a third country in their closing submissions to no objection by Mr. Ati's counsel. Further, this finding is not a key ground on which the RPD relies to make its determination.

[4] Lastly, Mr. Ati argues that the RPD erred in its treatment of his abuse of process application to stay the cessation proceedings due to the Minister's six-year delay in bringing the cessation application to the RPD. I do not agree. Based on the limited evidence and arguments on this issue before the RPD, I see no basis to disturb the RPD's finding that Mr. Ati had not established that there had been an abuse of process requiring a stay of proceedings.

[5] Based on the reasons below, I dismiss the application for judicial review.

II. Background

[6] Mr. Ati is a citizen of Iraq. On December 5, 2001, the RPD granted his refugee claim. The RPD no longer has the records of Mr. Ati's refugee claim. Mr. Ati stated that his claim was based on his fear of Saddam Hussein, the former dictator of Iraq who was deposed in 2003 and executed in 2006.

[7] In May 2003, Mr. Ati became a permanent resident. In 2008, he obtained a Canadian refugee travel document, which allowed him to travel internationally except to Iraq. He also applied for and received an Iraqi passport. He used his Iraqi passport to travel to Iraq and between different regions within Iraq. Between the years of 2008 and 2016, Mr. Ati travelled to Iraq on his Iraqi passport on at least ten occasions. A number of these trips were for lengthy

periods of time. He also travelled to Syria, Iran, and Jordan using this passport. During this time, he married his wife in Iraq and was present for the births of two of his children in Iraq. On at least three occasions, Mr. Ati was questioned at the airport by Canada Border Services Agency [CBSA] officials about his travel to Iraq.

[8] Mr. Ati filed a sponsorship application for his wife and two children. In April 2013, Mr. Ati's wife and two children became permanent residents of Canada. Mr. Ati's third and youngest child was born in Canada.

[9] Mr. Ati applied to renew his permanent residence card in 2013. In that application, he disclosed absences from Canada but did not indicate on the form that he was in Iraq during some of those absences. Immigration, Refugees and Citizenship Canada [IRCC] eventually renewed Mr. Ati's permanent resident card in 2014 and informed Mr. Ati that his file was transferred for review for possible cessation. After this referral, Mr. Ati travelled back to Iraq on at least one occasion.

[10] In April 2015, Mr. Ati applied for Canadian citizenship. Mr. Ati did not disclose on his citizenship application form that he had been in Iraq during some of his absences from Canada.

[11] In April 2020, the Minister filed an application to cease Mr. Ati's refugee protection. The RPD heard the Minister's cessation application on June 18, 2021 and granted it in a written decision dated June 29, 2021.

III. Issues and Standard of Review

[12] Mr. Ati raises three distinct issues on judicial review: i) the RPD's reavaiement determination; ii) procedural fairness in the RPD hearing, and iii) abuse of process.

[13] On the procedural fairness issue, both parties agree that the general presumption of a reasonableness standard of review does not apply (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77). The question I need to ask is whether the procedure was fair in all the circumstances (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). On the reavailment determination, the general presumption applies and I will review the RPD's determination on a reasonableness standard.

[14] Both parties argue in their written submissions that I should review the abuse of process issue on a standard of correctness. Neither party provided extensive submissions or arguments on this point. I note that this Court has taken different approaches to this question (see for example: *Chabanov v Canada (Minister of Citizenship and Immigration)*, 2017 FC 73 at para 23 and *Pavicevic v Canada (Attorney General)*, 2013 FC 997 at para 29 as compared to *Cerna v Canada (Minister of Citizenship and Immigration)*, 2021 FC 973 at paras 27-33 and *Akram v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1024 at para 18).

[15] I need not decide this issue given the limited submissions provided and that I have found that the result would be the same no matter which standard I apply. As I explain below, I do not

find that Mr. Ati has established that there has been an abuse of process requiring a stay of the cessation proceeding. I am also satisfied that the RPD's consideration of this issue is reasonable.

IV. Analysis

[16] A finding that a protected person's status has ceased under section 108 of *IRPA* has severe consequences: loss of refugee protection status, loss of permanent resident status, inability to apply for a pre-removal risk assessment or an application for permanent residence on humanitarian and compassionate grounds for one year following the decision, and removal from Canada "as soon as possible" (*IRPA*, ss 25(1.2)(c)(i), 46(1)(c.1), 48(2), 63(3), 101(1)(b), 108(3), 112(2)(b.1)). The severity of these consequences increases the obligation on the RPD to justify its decision to the person concerned (*Camayo* at para 51; *Vavilov* at paras 133-135).

A. *Camayo is Relevant*

[17] Just prior to this judicial review hearing, the Federal Court of Appeal released its decision in *Camayo*. I issued a direction to the parties prior to the hearing, asking that they be prepared to address the relevance of the *Camayo* decision.

[18] The Respondent took the position that *Camayo* is irrelevant because i) the RPD issued its decision before the Federal Court of Appeal decided *Camayo*; ii) *Camayo* may be appealed due to its internal inconsistencies and factual errors; and iii) the facts in *Camayo* are distinct from the facts in Mr. Ati's case.

[19] I do not agree that *Camayo* is irrelevant to this judicial review. Even though the RPD did not have the benefit of the Federal Court of Appeal's guidance in *Camayo*, it remains binding on me in considering the RPD's cessation analysis. I also note that this Court has considered *Camayo* in several judicial reviews evaluating the reasonableness of RPD decisions issued prior to the Federal Court of Appeal's decision in *Camayo* (see for example: *Hamid v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1541 at para 12 [*Hamid*]; *Caballero v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1143 at paras 14, 35; and *Singh v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1481 at para 30 [*Singh*]). On the Respondent's second point, *Camayo* in fact has not been appealed, but in any event jurisprudence from the Federal Court of Appeal is binding on me unless it is overturned. On the Respondent's last point, the general guidance in *Camayo* about the considerations engaged in cessation applications based on reavilment is applicable regardless of factual distinctions between *Camayo* and this case.

[20] Further, I agree with Justice Go's recent observations in *Hamid* at paragraph 14 about the impact of *Camayo*:

Camayo represents a considerable development in the law of cessation by mapping out a clearly-articulated, *albeit* non-exhaustive, set of factors that decision-makers must assess to determine whether someone has reavailed themselves of the protection of their country of nationality, and whether that presumption can be rebutted.

[21] For these reasons, I will apply *Camayo* to my assessment of the issues in this judicial review.

B. *The Reavailment Determination is Reasonable*

[22] Like *Camayo*, this case involves a protected person who obtained and relied on a passport from their country of nationality to travel to that country. Where an application to cease a protected person's status under paragraph 108(1)(a) is based on these circumstances, there is a presumption that the protected person intended to avail themselves of their country of nationality's protection (*Camayo* at para 63). The onus is on the protected person to rebut the presumption (*Camayo* at paras 65-66). The RPD must conduct an individualized assessment of the evidence, including "any evidence relating to the protected person's subjective intent in obtaining, relying on a passport and/or travelling to their country of nationality" (*Singh* at para 27, citing *Camayo* at paras 65-66).

[23] On this issue, Mr. Ati makes two arguments. First, he argues that the RPD failed to consider the reasons he provided regarding the necessity of his travel to Iraq. Second, he argues that the RPD's decision is inconsistent with *Camayo* because the RPD failed to consider his subjective intention in travelling to Iraq on his Iraqi passport and specifically whether he understood the consequences of his actions.

[24] There is no merit to Mr. Ati's argument that the RPD failed to consider his explanations for the necessity of his travel to Iraq. The RPD examined his various explanations in its decision. The RPD noted the inconsistencies in Mr. Ati's evidence regarding his mother's health and the lack of relevant corroborative evidence to support this explanation. The RPD also considered Mr. Ati's other explanations for his travel, including his marriage and his children. The RPD

considered his lack of candour about his travel to Iraq in his applications for permanent resident card renewal and Canadian citizenship. The RPD also considered Mr. Ati's evidence about being wealthy and his ability to conduct his business from anywhere abroad in relation to his need to be in Iraq with his family and not in a third country. The RPD also considered the frequency and duration of his trips to Iraq. In short, the RPD conducted an individualized assessment of this evidence, considering and weighing many of the non-exhaustive factors set out as guidance in *Camayo* at paragraph 84. There is no basis for me to find that the RPD failed to consider Mr. Ati's evidence on the necessity of his travel to Iraq.

[25] With respect to subjective intention and knowledge of the consequences, the RPD found that Mr. Ati made his trips to Iraq on his Iraqi passport "in full knowledge that returning to Iraq using an Iraqi passport could risk his status in Canada." Mr. Ati does not make any specific challenge to this finding. Mr. Ati does not point to any evidence in the record to dispute this finding. Mr. Ati bears the burden of showing 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). He has not met that burden.

[26] I have reviewed the recording of the RPD hearing, the record filed at the RPD, and the RPD's decision and reasons. I do not see a basis to find, given the record before the RPD, that the RPD failed to conduct an individualized assessment or failed to consider any of the relevant factors set out in paragraph 84 of *Camayo*.

C. *No Procedural Fairness Breach*

[27] Mr. Ati takes issue with the RPD's finding that he presented no evidence on his inability to get married or visit his family in a third country. He argues that if the RPD wanted to rely on this lack of evidence, it was required to ask him why he did not present such evidence. I do not accept that the RPD breached procedural fairness in these circumstances. Mr. Ati was attempting to rebut the presumption that he intended to reavail himself of Iraq's protection by travelling to Iraq multiple times for lengthy periods. He was trying to establish that these trips were necessary. The RPD did not breach procedural fairness by noting that Mr. Ati presented no evidence as to why some of his activities could not have taken place in a third country. This finding is part of the narrow inquiry as to whether the travel was necessary and it should not have come as a surprise to Mr. Ati. In any case, this finding was a minor point in the RPD's evaluation of the evidence and cannot be a basis to set aside the decision.

D. *The Applicant Did Not Establish Abuse of Process*

[28] At the judicial review hearing, Mr. Ati withdrew the argument that he made in his written materials with respect to abuse of process and issue estoppel. His remaining abuse of process arguments are limited to the Minister's delay in bringing the cessation application.

[29] Mr. Ati argues that the RPD ought to have stayed the cessation proceedings because of the Minister's six-year delay in bringing the application. Mr. Ati calculates the delay from when IRCC referred his file to the Minister for possible cessation in October 2014 to when the Minister filed the application for cessation at the RPD in April 2020. In making his request for a

stay, Mr. Ati's counsel referred to this Court's decision in *Godinez Ovalle v Canada (Minister of Citizenship and Immigration)*, 2015 FC 935 which was about the suspension of citizenship application processing while the Minister was investigating the applicant for possible cessation. I note that at issue here is not a request for the Minister to process his citizenship application but rather he is arguing that the RPD should stay the cessation proceedings before it because of the Minister's delay in bringing the application.

[30] The Supreme Court of Canada in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at paragraph 101 held that in the administrative context, where delay has not affected the fairness of the hearing, the following three steps determine whether a delay amounts to an abuse of process:

1. First, the delay must be inordinate. This is determined on an assessment of the context overall, including the nature and purpose of the proceedings, the length and causes of the delay, and the complexity of the facts and issues in the case; and
2. Second, the delay itself must have caused significant prejudice;
3. When these two requirements are met, the court or tribunal should conduct a final assessment as to whether abuse of process is established. This will be so when the delay is manifestly unfair to a party to the litigation or in some other way brings the administration of justice into disrepute.

[31] The RPD did not find that the delay had been inordinate. The RPD found that Mr. Ati contributed to the delay with his inaccurate representations about his time spent in Iraq in both

his permanent resident card renewal application and his citizenship application. On judicial review, Mr. Ati did not challenge this specific finding regarding his contribution to the delay.

[32] The RPD's determination on the abuse of process argument must be understood within the context of the submissions and evidence before it on this issue. Mr. Ati first raised the abuse of process argument at the RPD hearing in his counsel's closing submissions, following the Minister's counsel's submissions. There was no prior indication that Mr. Ati would raise this issue at the hearing. Mr. Ati did not provide evidence about the prejudice he experienced due to the Minister's delay in bringing the cessation application.

[33] In these circumstances, I do not see any basis to disturb the RPD's determination on abuse of process.

V. Conclusion

[34] For the reasons above, the application for judicial review is dismissed. Neither party raised a serious question of general importance and I agree that none arises.

JUDGMENT IN IMM-4801-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4801-21

STYLE OF CAUSE: MUTHANA ABDULAZA ATI V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION ET AL

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