Federal Court  Cour fédérale

Date: 20230525

Docket: IMM-3939-22

Citation: 2023 FC 710

Ottawa, Ontario, May 25, 2023

PRESENT: Madam Justice St-Louis

BETWEEN:

SIMON WAGDY MALAK IBRAHIM

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Simon Wagdy Malak Ibrahim seeks judicial review of the April 12, 2022 decision of the Refugee Protection Division [RPD] that allowed the Minister of Public Safety and Emergency Preparedness Canada [Minister]'s application for cessation of Mr. Ibrahim's refugee protection pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [Immigration Act].

[2] Mr. Ibrahim is an Egyptian national and a Coptic Christian by faith. In June 2013, he claimed refugee protection in Canada based on his religion, as he feared for his safety resulting from threats and mistreatments from Muslim extremists. In July 2013, the RPD accepted his claim and determined he was a Convention refugee.

[3] On August 13, 2020, the Minister applied to the RPD for the cessation of the grant of refugee protection to Mr. Ibrahim pursuant to section 108 of the Immigration Act and rule 64 of the *Refugee Protection Division Rules*, SOR/2012-256. In his application to cease Mr. Ibrahim's refugee protection, the Minister alleged that Mr. Ibrahim had voluntarily returned to his country of nationality, Egypt, on at least two occasions since having been found to be a Convention refugee and that he was in possession of Egypt passport #Al 5446636 which he used to travel multiple times, to Egypt and to other countries. The Minister submitted that Mr. Ibrahim should be found, accordingly, to have reavailed himself of Egypt's diplomatic protection.

[4] The Minister essentially raised the following as support for his application to cease Mr. Ibrahim's refugee protection:

- On April 18, 2016, Mr. Ibrahim submitted an application to sponsor his wife's entry to Canada. The application stated that Mr. Ibrahim had returned to Egypt on two occasions. The first was for his engagement ceremony on June 13, 2015 and the second was for his marriage ceremony and reception which occurred November 22, 2015. It was noted that engagement ceremony had approximately 75 people in attendance and the marriage ceremony and reception hosted 400 and 250 attendees respectively. The application further stated that Mr. Ibrahim honeymooned in Alexandria for four nights before travelling to Thailand for nine days.

- On February 12, 2020, Mr. Ibrahim applied to renew his Canadian Permanent Resident card and reported having been absent for 42 days. His application also indicated Mr. Ibrahim was in possession of Egyptian passport #Al5446636, issued on June 11, 2015 with an expiration date of June 10, 2022.

- ICES Traveller History indicates that Mr. Ibrahim has entered Canada seven times since he made his claim for protection in 2013.

[5] The Minister asserted that Mr. Ibrahim travelled back to Egypt on a passport he obtained after gaining status in Canada, that he voluntarily contacted Egyptian officials to voluntarily disclose his personal information and circumstances, and that there were no exceptional circumstances noted to rebut the presumption that he intended to reavail.

[6] On March 2, 2022, the RPD heard the Minister's application, where Mr. Ibrahim testified. On April 12, 2022, the RPD allowed the application for cessation and rejected Mr. Ibrahim's claim for refugee protection.

[7] In its analysis, the RPD considered section 108 of the Immigration Act and each of the three elements of the analytical framework for reavailment set out in paragraph 119 of the UNHCR Handbook (*Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, NCR/IP/4/REV.1, Reedited, Geneva, January 1992, UNHCR 1979). The RPD outlined the three elements of the analytical framework, or test, as (1) voluntariness; (2) intention; and (3) actual reavailment. The RPD concluded that

Mr. Ibrahim had been found to have acted voluntarily both in his acquisition of a new passport and regarding his return travels to Egypt, that he had not rebutted the presumption and had the requisite intention to reavail himself of the protection of his country of nationality, and that he had actually reavailed himself of the diplomatic protection of his country of nationality.

[8] Before the Court, Mr. Ibrahim submits that (1) the RPD's finding that he had not rebutted the presumption is unreasonable as the RPD did not weigh the relevant factors reasonably, or failed to consider them; and (2) the RPD erred in failing to consider the severity of the consequences for him if the cessation application was granted.

[9] The respondent submits that the RPD correctly applied the law as it relates to cessation, and reasonably concluded that Mr. Ibrahim acted voluntarily, that his actions evinced an intent to reavail himself of the Egyptian protection, and that he actually did reavail. The respondent adds that the RPD also considered Mr. Ibrahim's explanations for why he acted as he did and reasonably found that they did not constitute compelling reasons for traveling to Egypt. The respondent rejects Mr. Ibrahim's argument that the RPD ought to have considered the severe impact on him of finding that he has ceased to a refugee and thus ignore the strictures of section 108 of the Immigration Act.

[10] For the reasons outlined below, the application for judicial review will be dismissed.

II. Issues

[11] Given the arguments Mr. Ibrahim raised and the applicable standard of review, the Court must determine whether (1) the RPD finding that Mr. Ibrahim had not rebutted the presumption is unreasonable; and (2) the RPD erred in failing to consider the severity of the consequences for Mr. Ibrahim if the cessation application was granted.

A. *Standard of review*

[12] It is not contentious that the RPD decision must be reviewed against the reasonableness standard per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Recently, in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*], the Federal Court of Appeal outlined what makes a decision reasonable at paragraphs 46 to 52.

[13] The burden is on the party challenging the decision to prove that it is unreasonable. For the reviewing court to set aside an administrative decision, it must be satisfied that there are sufficiently serious shortcomings to render the decision unreasonable (*Vavilov* at para 100).

[14] More generally, I am guided by the Supreme Court of Canada's words in *Vavilov* and in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as *Vavilov*:

> [31] 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). Accordingly, when conducting

> reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

B. *The RPD's finding that Mr. Ibrahim had not rebutted the presumption is reasonable*

(1) Parties' position

[15] In his Memorandum, Mr. Ibrahim notes that the RPD found that he had failed to rebut the presumption that he intended to reavail himself of the protection of the Egyptian state, that he did not keep a low profile during the entire time spent in Egypt, and that he took the time and effort to become publicly engaged in June 2015 and then again in November 2015 to be married in a public ceremony and reception. He submits that the RPD's determination of whether or not he had rebutted the presumption he intended to reavail himself of the protection of the state of Egypt was based upon one consideration, the number of attendees at the engagement, wedding ceremony and reception of his marriage, and that this is unreasonable.

[16] Mr. Ibrahim submits that the RPD's finding he had failed to rebut the presumption was not rational or logical. Mr. Ibrahim initially submitted that the RPD had not engaged with the factors as set out in paragraph 84 of the decision in *Camayo* to assess whether or not he had rebutted the presumption of reavailment, and that there were a number of factors that the RPD failed to analyze in reaching its conclusion, namely (1) the identity of the agent of persecution, i.e., Islamic Extremists and not the Egyptian state; (2) how passport of country of nationality was

used; (3) the purpose of travel and what he did while in Egypt; (4) the precautionary measures taken while he was in Egypt; and (5) his subjective fear.

[17] At the hearing, Mr. Ibrahim acknowledged that in fact, the RPD had considered the factors he highlighted in his Memorandum, but asserted that the RPD, although it mentioned the factors, failed to *weigh* or properly balance them and failed to consider that he travelled to Lebanon once precisely to avoid Egypt.

[18] The respondent argues that the RPD correctly applied the law as it relates to cessation and that its decision is reasonable. More specifically, the respondent opines that (1) Mr. Ibrahim's travel on his Egyptian passport is indicative of intent to reavail; (2) there was a lack of compelling reason for returning to Egypt as returning to a persecutory country or environment for the purpose of getting married, irrespective of the familial or social pressure, does not qualify as a compelling reason and Mr. Ibrahim does not cite anything to support the contrary; (3) the RPD reasonably found Mr. Ibrahim did not keep "low profile" in Egypt; and (4) subjective fear is not determinative.

(2) Discussion

[19] As the respondent outlines, refugee protection is a temporary measure. It is destined to provide surrogate protection for refugees until they can either reclaim the protection of their home state or secure an alternative form of enduring protection.

[20] Article 1C of the 1951 *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 [Convention] sets out criteria for determining whether refugee protection, although it may have once been warranted, is no longer appropriate as a result of a person's own conduct indicates they no longer have a subjective fear (for example, when a person reavails to the protection of their home state, implemented by way of paragraph 108(1)(a) of the Immigration Act).

[21] Subsection 108(1) of the Immigration Act states that:

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:	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) the person has voluntarily reavailed themself of the protection of their country of nationality;	a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
(b) the person has voluntarily reacquired their nationality;	b) il recouvre volontairement sa nationalité;
(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
(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	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.

[22] Paragraph 108(1)(a) is the one in play in this discussion. As the Federal Court of Appeal observed in *Camayo* at paragraph 64:

> As the Federal court observed in *Ortiz Garcia v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 1346, "[r]eavailment typically suggests an absence of risk or a lack of subjective fear of persecution. Absent compelling reasons, people do not abandon safe havens to return to places where their personal security is in jeopardy": at para. 8. [Emphasis added]

[23] The parties do not contest that the Minister bears the burden to prove reavailment on the balance of probabilities, and that there are three requirements for reavailment: (a) voluntariness: the refugee must act voluntarily; (b) intention: the refugee must intend by his action to reavail himself of the protection of the country of his nationality; and (c) reavailment: the refugee must actually obtain such protection (*Nsende v Canada (Citizenship and Immigration)*, 2008 FC 531). These are thus the three branches of the appropriate test.

[24] Mr. Ibrahim does not contest that he acted voluntarily in obtaining his passport and traveling to Egypt.

[25] In regards to intent, the fact that a refugee applies for and obtains a passport from their country of nationality, creates a presumption that the individual intends to reavail themself of the diplomatic protection of that country. This presumption is particularly strong where the individual actually uses the passport to travel to their country of nationality (*Camayo* at para 63; *Canada (Citizenship and Immigration) v Nilam*, 2015 FC 1154 at para 25 [*Nilam*]).

[26] The Federal Court of Appeal in *Camayo* (at para 65) stressed that constraining case law from the Federal Court suggests that the presumption is a rebuttable one. The Federal Court of Appeal in *Camayo* cited *Nilam* at paragraph 26 and *Li v Canada (Minister of Citizenship and Immigration)*, 2015 FC 459 at paragraph 42 [*Li*].

[27] Paragraph 42 of the *Li* decision outlines that:

> The Minister has the burden of proving re-availment on the balance of probabilities. In doing so, the Minister is entitled to rely on the presumption of re-availment by proving that the refugee obtained or renewed a passport from his or her country of origin. Once that has been proved, the refugee has the burden of showing that that he or she did not actually seek re-availment. As stated in the UNHCR Handbook, where there is proof that a refugee has obtained or renewed a passport "[i]t 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" (para 121).

[28] There is thus no indication that the Federal Court of Appeal, in *Camayo*, changed the overarching principles guiding the analysis that must be conducted under paragraph 108(1)(a) of the Immigration Act.

[29] Furthermore, at paragraph 84 of *Camayo*, the Federal Court of Appeal stated that, in dealing with cessation cases, the RPD should have regard to certain factors, at a minimum, which may assist in rebutting the presumption of reavailment. It added that no individual factor will necessarily be dispositive, and all of the evidence relating to these factors should be considered and balanced in order to determine whether the actions of the individual are such that they have rebutted the presumption of reavailment.

[30] As the Federal Court of Appeal in *Camayo* stated at paragraph 82:

> As noted earlier, the RPD's reasons on the redetermination need not involve a microscopic examination of everything that could possibly be said on the matter. There need only be a reasoned explanation concerning the relevant evidence and key issues, including the key arguments made by the parties: *Sexsmith v. Canada (Attorney General)*, 2021 FCA 111 at para. 36.

[31] That is what the RPD has done in this case.

[32] First the RPD noted that the primary areas of the evidence before it where the parties have taken opposing positions concerned the nature and purpose of Mr. Ibrahim's travels to Egypt. It is therefore not surprising that the nature and purpose of his travels be particularly addressed in the decision.

[33] Specifically, the RPD noted that Mr. Ibrahim had used his passport twice to travel to Egypt and on four additional occasions to travel internationally to Mexico, Lebanon, Thailand and the Dominican Republic. The RPD accepted as reasonable some of the efforts made by Mr. Ibrahim to limit his public exposure to the former agents of persecution (e.g., secure venues, visit to homes, security guards posted outside the church, guests being vetted before being granted entry at the hotel by security staff) – the Islamic extremists, and thus did acknowledge the agents of persecution were not the state. The RPD also considered the purpose of the travel and what he did in Egypt and noted the following: (1) Mr. Ibrahim willingly attended an engagement ceremony in June 2015, attended by approximately 75 people; (2) he further attended his marriage ceremony and reception, where about 400 guests and family were present; and (3) there were strong culturally expectations placed upon Mr. Ibrahim to conform to the

norms imposed by his in-laws and there were risks that his marriage may have been prevented had he not returned in-person to Egypt.

[34] Ultimately, however, the RPD considered the evidence before it and, based on a balance of probabilities, found that Mr. Ibrahim did not keep a low profile during the entire time spent in Egypt. Rather, the evidence before the RPD indicated Mr. Ibrahim took the time and effort to become publicly engaged in June 2015 in his country of nationality, and then again in November 2015 to be married in a public ceremony and reception.

[35] As mentioned above, at the hearing before the Court, Mr. Ibrahim actually acknowledged that the RPD did consider the factors he had highlighted, which I find is accurate. He thus asserted that the issue before the Court was essentially to determine whether the factors had been reasonably assessed and weighed. Mr. Ibrahim is, in fact, asking the Court to reweigh the factors and the evidence to arrive at a different conclusion.

[36] As the respondent outlines, when the reasonableness standard applies, the task of the Court is not to conduct a *de novo* analysis, ask what decision it would have made, replace the decision with one it prefers, or attempt to ascertain the "range" of possible conclusions open to the decision maker. Rather, the Court must ask whether the RPD's decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision.

[37] The task of the Court, on judicial review, is not either to reweigh the evidence to arrive at a different conclusion (*Vavilov* at para 125; *Estrada Mejia v Canada (Citizenship and Immigration)*, 2020 FC 264 at para 36; *Oparaji v Canada (Citizenship and Immigration)*, 2022 FC 838 at para 9). The Court must rather 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" (*Vavilo*v at para 13), again without reweighing the evidence before it (*Vavilov* at para 125).

[38] Mr. Ibrahim has not shown that the RPD's finding that he had not rebutted the presumption of reavailment of the protection of the Egyptian state protection is unreasonable. I am satisfied that the RPD did consider the relevant factors (*Camayo*), and that its conclusion is reasonable based on the law and the evidence before it. It is not unreasonable for the RPD to consider that the reasons Mr. Ibrahim travelled to Egypt with his Egyptian passport were not compelling. The Court intervention is not justified.

C. *The RPD sufficiently justified its decision in light of the consequences*

(1) Parties position

[39] Mr. Ibrahim contends that the RPD erred in failing to consider the severity of the consequences on him if the cessation application was granted. He adds that there is nothing in the RPD's analysis that considered the severity of the consequences, which is not only the cessation of his Convention refugee status but also the loss of Permanent Resident status in Canada.

[40] Mr. Ibrahim cites paragraph 35 of *Hamid v Canada (Citizenship and Immigration)*, 2022 FC 1541 where the Court stated:

> Both Camayo at para 84 and Vavilov at paras 133 to 135 compel decision-makers to consider the severity of the consequences of their decisions. In the context of a cessation application, the consequences are severe. As I noted in *Omer v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1295 at para 39, a finding that the Applicant has voluntarily reavailed himself of the protection of his country of nationality will not only result in the cessation of his Convention refugee status, but also the loss of his PR status in Canada.

[41] The respondent rejects Mr. Ibrahim's argument that the RPD ought to have considered the severe impact on him of finding that he has ceased to be a refugee. The respondent asserts that, although administrative decision makers must be mindful of the impact of their decisions on those to whom they apply (*Vavilov* at paras 106, 133), that does not mean that the RPD could ignore the strictures of paragraph 108(1)(a) of the Immigration Act just because of the impact of its decision on Mr. Ibrahim.

(2) Discussion

[42] Where the impact of a decision on an individual is high, as is the case where the consequence of a decision is the loss of refugee protection and of Permanent Resident status, the level of responsiveness of the decision must reflect the stakes (*Vavilov* at para 133; *Camayo* at para 50).

[43] As the respondent highlights, in *Vavilov*, the Supreme Court of Canada was careful to note that what is required of administrative decision makers will always depend on the

constraints imposed by the legal and factual context of the decision under review. The Supreme Court stressed the high bar in terms of justification that administrative tribunals must provide when their decisions significantly impact individuals.

[44] The Federal Court of Appeal in *Camayo* did not say otherwise at paragraph 50 when it stated that "Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention: *Vavilov* SCC, above at para. 133. The failure to grapple with the consequences of a decision should thus be considered: *Vavilov* SCC, above at para. 134, citing *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3".

[45] Mr. Ibrahim fails to point out how exactly the RPD failed to take into account the severity of the consequences in providing its justification and reasons, per the evidence that was adduced. Additionally, the Federal Court of Appeal decision in *Camayo* stated that this failure should "be considered", it does not say that it is determinative.

[46] Paragraph 108(1)(a) of the Immigration Act mandates the cessation of refugee protection when the evidence shows that a person has voluntarily reavailed, while paragraph 46(1)(c.1) of the Immigration Act mandates loss of Permanent Resident status 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). The RPD acted within the legal constraints imposed by the

Immigration Act, and Mr. Ibrahim has not demonstrated that the RPD's decision lacks justification, intelligibility or transparency.

III. Conclusion

[47] Mr. Ibrahim has not convinced me that the RPD decision is unreasonable. The RPD 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.

[48] The application for judicial review will therefore be dismissed.

JUDGMENT in IMM-3939-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

3. No costs are awarded.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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