Federal Court  Cour fédérale

Date: 20230927

Docket: IMM-3093-22

Citation: 2023 FC 1303

Montreal, Quebec, September 27, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JOHNSON ADEGBAYI ADEBANJO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Johnson Adebanjo (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the "RPD"), allowing the application of the Minister of Citizenship and Immigration (the "Respondent"), pursuant to subsection 108(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"). In that application, the Respondent sought a determination that the refugee protection granted to the Applicant had ceased.

[2] The Applicant, a citizen of Nigeria, received refugee protection in Canada on February 11, 2009. He was granted permanent residence status on December 7, 2009.

[3] On December 18, 2015, the Applicant was convicted of the offence of possession of counterfeit marks. This conviction led to a hearing before the Immigration and Refugee Board, Immigration Division which issued a removal order. Upon appeal to the Immigration and Refugee Board, Immigration Appeal Division ("IAD"), the removal order was found to be legally valid and a plea for relief on humanitarian and compassionate grounds was dismissed. The IAD issued its decision on March 19, 2019.

[4] In the meantime, the Applicant obtained Nigerian passports on three occasions. He was issued a passport by the passport office in Osogbo, Nigeria on March 1, 2011. He received a second passport from the Nigerian High Commission in Ottawa on March 15, 2016. Finally, he testified that he was issued a new passport from the Nigerian Embassy in Ottawa in August 2021.

[5] The Applicant travelled to Benin, using a passport issued by the Nigerian government. He travelled on April 22, 2013, and December 7, 2016.

[6] The Respondent filed his "cessation" application on October 13, 2020. A "virtual" hearing proceeded before the RPD on February 3, 2022. The RPD issued its decision on March 9, 2022.

[7] In its decision, the RPD addressed paragraph 108(1)(a) of the Act which provides as follows:

Rejection	**Rejet**
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;

[8] The RPD considered the relevant passages of the United Nations' *High Commission Handbook on Procedures and Criteria for Determining Refugee Status*. At paragraph 9 of its decision, the RPD referred to the test for reavailment as follows:

> 118. A refugee who has voluntarily re-availed himself of national protection is no longer in need of international protection. He has demonstrated that he is no longer "unable or unwilling to avail himself of the protection of the country of his nationality."
>
> 119. This cessation clause implies three requirements:
>
> 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;
>
> c) re-availment: the refugee must actually obtain such protection.

[9] The RPD acknowledged that the use of a passport, issued by the country against whom refugee status was granted, gives rise to a rebuttable presumption that the user of such passport had voluntarily reavailed of the protection of that country. It found that the Applicant had failed to rebut the presumption.

[10] The Applicant now argues that the RPD's decision is unreasonable. Among other things, he submits that the RPD failed to address the issues set out in paragraph 84 of the decision of the Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50.

[11] The Respondent submits that the RPD reasonably determined that the Applicant had failed to rebut the presumption of reavailment.

[12] The decision of the RPD is reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[13] In considering reasonableness, the Court is to ask if the decision under review "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"; see *Vavilov*, *supra* at paragraph 99.

[14] I am satisfied that the RPD reasonably found that the Applicant acted voluntarily in applying for and using a Nigerian passport for his travels to Benin.

[15] The Applicant argues that the RPD unreasonably "conflated" the elements of voluntariness and intention, and ignored the guidance of the Federal Court of Appeal in *Camayo*, *supra*, to consider the subjective perspective of a person who may be in danger of losing protected person status. He notes that his ignorance of Canadian immigration law, including travelling upon a passport issued by his country of nationality, undermines any reasonable consideration of his intentions.

[16] For his part, the Respondent submits that the Applicant's travel history and possession of counterfeit marks in the name of the Canada Border Service Agency imply a high degree of knowledge of immigration processes in Canada.

[17] I am not persuaded by the argument that the RPD failed to assess the Applicant's evidence, including the evidence of his subjective intention. It appears that the RPD inferred the Applicant's intention from his actions, that is in obtaining passports from Nigeria and using them for international travel.

[18] The RPD was aware of the guidance set out in the Handbook for assessing reavailment and the necessary elements of the test for reavailment. In my opinion, the recent decision of the Federal Court of Appeal in *Camyao, supra* particularizes those elements but does not create a new legal test.

[19] I refer to the recent decision of Justice Brown in *Ali v. Canada (Citizenship and Immigration)*, 2023 FC 383 at paragraphs 45 to 50, in dealing with the issue of "intention". I note in particular paragraph 47, which provides in part as follows:

> [47] … Intention is primarily a factual determination and lies within the purview of the trier of fact. The tried [*sic*] of fact in this case are the RPD and RAD and in criminal cases, for example it is the jury if there is one, or the trial judge if there is no jury. The rules of evidence in terms of determining intention are generally the same across all fields of law, absent legislative or judicial intervention. In this connection, it is well established that a party's intent may be determined based on the inference a trier of fact may draw from the evidence that people "intend the natural and probable consequences of their actions." This is a rule of evidence and a matter of common sense as stated by Cory J for the Supreme Court of Canada in *R v Seymour*, 1996 CanLII 201 (SCC), [1996] 2 SCR 252 at paragraph 19:
>
> > [19] When charging with respect to an offence which requires proof of a specific intent it will always be necessary to explain that, in determining the accused's state of mind at the time the offence was committed, jurors may draw the inference that sane and sober persons intend the natural and probable consequences of their actions. Common sense dictates that people are usually able to foresee the consequences of their actions. Therefore, if a person acts in a manner which is likely to produce a certain result it generally will be reasonable to infer that the person foresaw the probable consequences of the act. In other words, if a person acted so as to produce certain predictable consequences, it may be inferred that the person intended those consequences.
> >
> > [Emphasis added]

[20] The Applicant's arguments about the RPD "conflating" the issue of voluntariness with intention to reavail are unclear. In my opinion, the RPD reasonably considered the voluntariness of the Applicant's actions in obtaining a Nigerian passport and using it for international travel.

[21] The Applicant challenges the finding of the RPD that he travelled at least once to Nigeria. That finding is based upon the fact that a passport was issued to the Applicant in Nigeria on March 11, 2011.

[22] The RPD found that the Applicant travelled several times internationally, using a Nigerian passport. This means that he obtained the benefit of diplomatic protection from his use of such passport. Upon the basis of the evidence presented, I am satisfied that the RPD made reasonable findings about the Applicant's use of the Nigerian passport.

[23] In the result, the Applicant has failed to show a reviewable error by the RPD. There is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-3093-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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