

Federal Court



Cour fédérale

Date: 20240314

Docket: IMM-3964-23

Citation: 2024 FC 423

Ottawa, Ontario, March 14, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

MAHSHID AHANGARANI FARAHANI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is an Iranian citizen, filmmaker and human rights activist, who came to Canada in 2004. She was granted refugee protection in 2005 based on her activities as a student activist in Iran, her gender and her affiliation to her mother and sister (who are both politically active and outspoken). The Applicant obtained permanent resident status in 2008. Since then, she has travelled back to Iran 16 times, as well as to other countries, using an Iranian passport renewed or obtained after she obtained her permanent resident status.

[2] In November 2019, the Minister of Public Safety and Emergency Preparedness [Minister] brought an application for cessation of her refugee status pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. On March 13, 2023, the Refugee Protection Division [RPD] of the Immigration and Refugee Board granted the cessation application. As a result, the Applicant's claim for refugee protection was rejected and she lost her permanent resident status.

[3] On this application, the Applicant challenges the RPD's cessation decision, asserting that the RPD made numerous errors in the manner in which they assessed her intention to reavail and whether she actually reavailed. Having considered the various grounds of review asserted by the Applicant, I am satisfied that the RPD's consideration of the Applicant's actual reavailing was unreasonable and on that basis alone, the matter should be remitted for redetermination by a different member of the RPD.

[4] The parties agree, and I concur, that the applicable standard of review is reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. 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 [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that

it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adejiji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

[5] Pursuant to paragraph 108(1)(a) of the *IRPA*, a cessation application turns on whether the person has voluntarily reavailed themselves of the protection of their country of nationality. The test for reavailment consists of three conjunctive elements: (i) the refugee must have acted voluntarily; (ii) the refugee must have intended to reavail themselves of the protection of the country of nationality; and (iii) the refugee must have actually obtained that protection [see *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 79].

[6] The presumption is that refugees who return to their country of nationality, using the passport of that country, intend to reavail themselves of that country's protection. The presumption is, however, rebuttable with sufficient evidence of compelling, fact-specific reasons [see *Camayo*, *supra* at paras 63, 65; *Wu v Canada (Citizenship and Immigration)*, 2023 FC 1071 at para 22].

[7] A decision to cease an individual's refugee protection has serious and particularly harsh consequences for the affected individual. Finding that an individual has voluntarily reavailed themselves of the protection of their country of nationality will not only result in the cessation of their Convention refugee status, but also the loss of their permanent residency in Canada [see *Camayo*, *supra* at paras 50-51(a); *Omer v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1295 at para 39]. Given the significant impact of a cessation decision, the RPD's reasons must "reflect the stakes" and thus, there is an increased duty to provide reasons that explain the decision-maker's rationale and meaningfully engage with the central issues and arguments: [see *Vavilov*,

supra at para 133; *Camayo, supra* at paras 49-51; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1481 at para 28].

[8] This case turns on the third element of the test — namely, whether the Applicant actually obtained the protection of the country of her nationality.

[9] The RPD determined that by returning to Iran on her Iranian passport, the Applicant obtained Iran's protection. In its reasons, the RPD stated:

[84] By applying for and using her national passport the Respondent has obtained the diplomatic protection of her country of nationality. In *Cerna*, the Federal Court held that when a refugee acquires a passport in order to return to his country of origin, the refugee has also obtained actual protection from that state. Protection was granted to the Respondent by Iran when she entered Iran using her national passport, and the fact that she returned to Iran on her national passport speaks to her intent to reavail.

[Citation omitted.]

[10] However, in reaching this conclusion, the RPD failed to grapple with the evidence put forward by the Applicant to rebut the presumption that she obtained actual diplomatic protection based on using her Iranian passport to travel to Iran. Specifically, the evidence before the RPD was that when the Applicant returned to Iran in September of 2018, the Iranian authorities seized her passport and prevented her from leaving the country due to her participation in a German documentary about Iran. The Applicant was unable to secure the release of her passport until 2020, during which time she was unable to leave Iran. As this evidence directly contradicted the RPD's finding that the Applicant had obtained the diplomatic protection of Iran, the RPD was required to address this evidence and explain why it did not amount to a denial of diplomatic protection. The

RPD's reasons do not engage with this evidence or the Applicant's arguments that she did not, in fact, obtain diplomatic protection.

[11] I am mindful that the seizure of the Applicant's passport by the Iranian authorities occurred in relation to only one of her 16 trips to Iran and, as argued by the Respondent at the hearing, "it only takes one" trip to Iran to reavail. However, the Minister advanced all 16 trips in support of their cessation application and the RPD chose to make a global finding in relation to each element of the test, rather assessing reavailment on a trip-by-trip basis. Whether or not the seizure of her passport in 2018 is relevant to the assessment of whether the Applicant actually obtained the diplomatic protection of Iran on her 15 other trips will be a matter for consideration on the redetermination of the Minister's application.

[12] Accordingly, I find that the RPD's assessment of the third element of the reavailment test was unreasonable. As such, the RPD's decision shall be set aside and the Minister's cessation application shall be remitted to the RPD for redetermination by a different member.

[13] The parties propose no question for certification and I agree that none arises.

JUDGMENT in IMM-3964-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted, the decision of the Refugee Protection Division dated March 13, 2023 is hereby set aside and the matter shall be remitted to the Refugee Protection Division for redetermination by a different member.
2. The parties proposed no question for certification and none arises.

"Mandy Aylen"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3964-23

STYLE OF CAUSE: MAHSHID AHANGARANI FARAHANI V THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 5, 2023

JUDGMENT AND REASONS: AYLEN J.

DATED: MARCH 14, 2023

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