

Federal Court



Cour fédérale

Date: 20240325

Docket: IMM-6266-22

Citation: 2024 FC 461

Ottawa, Ontario, March 25, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

TARIQ NAJEEB

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] dated June 9, 2022 [Decision], ceasing the Applicant's refugee protection pursuant to section 108 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 [IRPA].

[2] The Applicant alleges that the RPD breached procedural fairness by allowing the Minister to question him about travels that were not in the Minister's original application, a second travel to Pakistan after he received refugee protection. The Applicant was in Pakistan at the time of the cessation hearing and testified remotely from Pakistan. The Applicant further argues that the Decision was unreasonable in its finding that he re-availed himself to his country's diplomatic protection.

[3] The Respondent argues that there was no breach of procedural fairness in the RPD proceedings. The Applicant knew the case that he had to meet in a cessation application, the core of which is directly related to absences from Canada after receiving refugee protection. Furthermore, the Applicant sought an adjournment of the RPD hearing due to his travel plans to Pakistan, attaching his flight tickets to his request and cannot be surprised that this fact would be considered by the RPD. The Minister further states that the Decision was reasonable.

[4] For the reasons set out below, the application is dismissed. I do not find that the Decision was unreasonable. Furthermore, I do not find that there has been a breach of procedural fairness.

II. Issues and Standard of Review

[5] The issues in this application are whether there was a breach of procedural fairness with respect to the RPD hearing and whether the Decision that the Applicant voluntarily re-availed himself of the protection of Pakistan was reasonable.

[6] Both parties agreed that the standard of review with respect to the merits of the Decision is reasonableness. I also agree.

[7] The standard of review for decisions by the RPD with respect to cessation of refugee status is reasonableness (*Abbas v Canada (Citizenship and Immigration)*, 2023 FC 871 at para 20, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23, and *Camayo v Canada (Citizenship and Immigration)*, 2020 FC 213 at paras 17-18; *aff'd* 2022 FCA 50 [*Galindo Camayo*] at paras 39-43.).

[8] An allegation of procedural fairness is determined on the basis that approximates a correctness review. Ultimately, the question comes down to whether the Applicant knew the case to be met and had a full and fair chance to respond (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56).

[9] The reasonableness standard of review finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers (*Vavilov* at para 13).

[10] A reviewing court applying the reasonableness standard must focus on the decision actually made, including the reasoning process and the outcome. It does not ask what decision it would have made instead, does not attempt to ascertain the “range” of possible conclusions, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem (*Vavilov* at para 83).

[11] The decision maker may assess and evaluate the evidence before it and a reviewing court, absent exceptional circumstances, will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125).

[12] A reasonable decision is one 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. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85). Reasonableness review is not a “line-by-line treasure hunt for error” (*Vavilov* at para 102).

[13] A reviewing court “must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do “not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred” is not on its own a basis to set the decision aside” (*Vavilov* at para 91). Moreover, “even where elements of the analysis are left out and, in the whole scheme of the things, the decision is not undermined as a whole and must stand” (*Vavilov* at para 122).

[14] The burden of proof lies with the party claiming that the decision is unreasonable. The party must prove to the reviewing court that the decision is so seriously flawed that it cannot be said to meet the requirements of justification, intelligibility and transparency (*Vavilov* at para 100).

III. Background

[15] In April 2017, the Applicant, who is a citizen of Pakistan, arrived in Canada. He sought refugee protection alleging that he faced persecution in Pakistan due to his sexual orientation as a bisexual man.

[16] On August 27, 2017, the RPD accepted his refugee claim.

[17] On August 23, 2019, the Applicant became a permanent resident of Canada.

[18] On December 10, 2019, the Applicant travelled to Pakistan on his Pakistan-issued passport, where he remained until June 2020. The travel included a stop in Dubai, United Arab Emirates.

[19] On June 24, 2020, upon his return to Canada, the Applicant informed an officer of the Canada Border Services Agency [CBSA] that he returned to Pakistan to visit his ailing grandmother. He stated that he did not intend to stay for this period of time, but experienced flight cancellations caused by the COVID-19 pandemic. He told the officer that he no longer felt danger in Pakistan.

[20] On June 25, 2021, the Applicant was provided with the Minister's application to the IRB seeking to cease the Applicant's refugee protection in Canada under subsection 108(2) of the *IRPA*.

[21] On August 4, 2021, the RPD wrote to the Applicant acknowledging receipt of the Minister's application.

[22] On February 10, 2022, a scheduling conference was held to schedule the hearing of the Minister's application to cease the Applicant's refugee status. A hearing was set to take place on May 31, 2022.

[23] On April 24, 2022, the Applicant returned to Pakistan a second time on his Pakistan issued passport.

[24] On May 14, 2022, the Applicant's counsel wrote to the RPD to request a change of date of his cessation hearing. Counsel indicated that his client informed him that he had to leave the country urgently to attend his sick mother. As such, the Applicant would be out of the country during the hearing date. The Applicant requested that the RPD postpone the hearing until he was able to return to Canada. Attached to the request was a copy of medical documentation and a copy of an airline boarding pass indicating the Applicant had travelled to Islamabad, Pakistan on April 24, 2022.

[25] On May 18, 2022, the Minister responded to the application for a change of date or time. The Minister opposed the application because the Applicant had made a *sine die* postponement request and that the medical documentation provided was unclear.

[26] On May 18, 2022, the RPD Registry dismissed the application for a change of date or time. The medical documentation failed to indicate how the Applicant's mother's medical condition affected the Applicant's ability to participate in the hearing scheduled for May 31, 2022 and therefore insufficient to grant a change of date. The RPD Registry also noted that the Respondent's boarding pass was dated April 24, 2022, and the medical notes attached were dated March 8, 2022, April 2, 2022, and April 20, 2022. These documents pre-dated the Respondent's departure and pre-dated the request for a change of date of May 14, 2022. The RPD Registry inferred that the Applicant was aware of his mother's medical condition that prompted his departure as early as March 8, 2022. The RPD Registry found that the application for adjournment was delayed. The Applicant also did not provide alternate timelines as required under the *Refugee Protection Division Rules*, SOR/2012-256.

[27] On May 31, 2022, the RPD hearing proceeded virtually and the Applicant participated from Pakistan. During the hearing, he testified that he sought and obtained a one-month extension for his expired Pakistani passport from the Pakistani consulate in Toronto. This enabled him to travel from Canada to Pakistan in April 2022. He further testified that he applied to renew his Pakistani passport while he was in Pakistan, and intended to return to Canada on July 10, 2022 on this travel document.

[28] During the present hearing before the Court, the number of times the Applicant travelled to Pakistan after he received his Permanent Residence status was stated to be two or three. The record and the Decision reflected that the Applicant travelled twice after receiving his status in 2019: the first from December 2019 to July 2020 (6.5 months) and the second in April 2022.

IV. RPD Decision at Issue

[29] The RPD noted the elements of section 108(1) of the *IRPA* and outlined that it relied upon the United Nations High Commissioner for Refugees *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* [UNHCR Handbook] as well as the factors and three-part test set out in *Galindo Camayo*.

[30] With respect to the December 2019 to June 2020 trip to Pakistan, the RPD had doubts regarding the purpose of the trip claimed by the Applicant to the CBSA officer, being to visit his sick grandmother who died in February 2020. At the RPD hearing, the Applicant testified that his grandmother actually died on either June 22, 2020 or June 23, 2020, being either one or two days prior to his return to Canada.

[31] The RPD found that the Applicant offered no death certificate or credible evidence regarding when his grandmother allegedly died. The Applicant confirmed to the RPD that he told the CBSA officer that he was no longer in danger in Pakistan, and acknowledged that he did make conflicting statements regarding the timing of his grandmother's death. He explained that he was depressed and tired after his trip, and lacked an interpreter so this should not be held against him.

[32] The RPD did not accept the Applicant's explanations surrounding this trip. In particular, the RPD considered that the Applicant claimed, without any evidence, that he had scheduled a return flight for February 2020, which was cancelled due to the COVID-19 Pandemic. In

addition, the RPD noted a difference of four months in the recounting of his grandmother's death and that the alleged date changed from February 2020 to June 2020, just before his return to Canada. Further, the RPD found no reason to doubt the evidence taken by the CBSA officer and that the Applicant had no issues communicating in English. The contradiction was found to be significant.

[33] The RPD found that the Applicant's first trip to Pakistan was voluntary.

[34] The Applicant's second trip to Pakistan in April 2022 was allegedly to visit his mother. In support of his claim that his mother was ill, the Applicant relied on the same documents he submitted to support his request of the adjournment of the hearing. The RPD found these records to be unclear on his mother's medical condition. While the Applicant claims he feared for his safety during this second trip, the RPD noted that he returned to the family home in his village, left the house regularly, and went to a Pakistani government office to renew his passport.

[35] In light of these findings, the RPD found that the Applicant's second trip to Pakistan was also voluntary, and that his actions were inconsistent with a subjective fear of persecution.

[36] The RPD noted that the Applicant confirmed he renewed his Pakistani passport while he was in Pakistan during his second trip. This was found to be *prima facie* evidence of the Applicant's intent to reavail himself of the diplomatic protection of the Pakistani government.

[37] The RPD did not accept that the Applicant had no choice but to travel to Pakistan twice to care for sick family. The RPD found that there was little evidence to corroborate his explanations for the trips. In totality, the RPD found that the Applicant's trips were voluntary, that he demonstrated intent to reavail himself to Pakistan, and the evidence established that he did actually reavail himself to Pakistan. The RPD allowed the Minister's application for cessation of the Applicant's status as a refugee, and the Applicant's claim for protection was rejected pursuant to section 108(3) of the *IRPA*.

V. Analysis

A. *There was no breach of the duty of fairness*

[38] The Applicant takes issue that at the RPD hearing, the Minister was permitted to ask him questions about his travel to Pakistan in 2022. He states that the Minister knew in May 2022 that the Applicant had returned to Pakistan and that the Minister ought to have amended the notice before the RPD accordingly. Having not done so, he was caught by surprise at the hearing to be asked questions about his travel to Pakistan in 2022 and this was a breach of procedural fairness.

[39] The Minister in turn, states that the very subject matter of the hearing relates to his post-refugee claim travels to the country of his nationality. He was in Pakistan at the time of the hearing and testified virtually from Pakistan. To accept the Applicant's argument that the RPD could not consider his absence from Canada at the time of the hearing elevates form over substance.

[40] I agree with the Respondent.

[41] In considering the Applicant's arguments on procedural fairness, I underline the well-established principle that every person has the right to have a chance to present their case fully and fairly (*Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at para 28).

[42] I find that in these circumstances, the Applicant knew the case that he had to meet and that he had a chance to defend himself fully and fairly.

[43] On May 14, 2022, the Applicant notified the RPD and the Minister of his travel in April 2022 to visit his sick mother. This notification was made in the context of requesting an adjournment of the hearing scheduled to take place on May 31, 2022.

[44] Counsel for the Applicant submitted a letter to the RPD stating:

“Please be advised that I represent the above respondent.

Mr. Najeeb informed me that he had to leave the country urgently to attend his sick mother. As such he will be out of the country during the hearing date. Please see attached documents.

Mr. Najeeb requests to postpone his hearing until he returns safely from Pakistan.

Should you have any questions or concerns please do not hesitate to contact me at your earliest convenience.”

[45] As referenced in counsel's letter, the Applicant provided documents in support of his request for an adjournment of the hearing consisting of a copy of his boarding pass

demonstrating travel from Canada to Pakistan on April 24, 2022 and a copy of his mother's medical documents dated from March and April 2022.

[46] The Applicant objects to being asked about his travel in April 2022 at the hearing, despite himself placing the fact of his departure from Canada and evidence of this before the RPD. In effect, the Applicant is asking to have it both ways. On the one hand, he seeks to rely on his departure to Pakistan to ask the RPD for an adjournment of his hearing but, on the other hand, argues that the RPD could not consider this fact.

[47] In January 2021, the Applicant had received notice of the cessation proceedings. He testified that he travelled to Pakistan in April 2022 against the advice of legal counsel, who discussed with him the potential consequences to his permanent residence status. It cannot be said that he would have been caught by surprise that the circumstances around his April 2022 travel would be an issue in his proceedings before the RPD.

[48] In the Applicant's Memorandum of Argument in support of his Notice of Application seeking leave and for judicial review dated July 10, 2022, he stated that he "travelled to Pakistan again on April 24, 2022, where he remains today, taking care of him (*sic*) mother."

[49] In the Applicant's case, the issue before the RPD is a cessation of refugee protection based on the Applicant's post-refugee claim travel. It is reasonable that a respondent in this type of proceeding should expect to be asked about travel undertaken after receiving refugee status from Canada during the hearing itself.

[50] In any event, it was abundantly clear and obvious at the hearing on May 31, 2022 that the Applicant was not in Canada, and was participating virtually from Pakistan. The RPD must be able to take note that a second travel had taken place at that point in time. To preclude questions inquiring about how he came to be attending the hearing from Pakistan would not have been reasonable. The Applicant's arguments that the Minister should have amended the application in these circumstances are untenable.

[51] I do not agree with the Applicant's characterization to be a breach of procedural fairness. The questions he was asked at the RPD hearing are an expected outcome and the consequence of the Applicant's actions.

[52] I now turn to the Decision on reavilment.

B. *The Decision was reasonable*

[53] 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 is no longer appropriate as a result of a person's own actions and/or changed country conditions. These criteria include whether the person concerned has re-availed himself or herself of the protection of their home state.

[54] The *IRPA* reflects the provisions of the Convention. Paragraph 108(1)(a) of the *IRPA* provides that a claim for refugee protection shall be rejected, and a person is not a Convention

refugee or a person in need of protection, where the person has voluntarily reavailed themselves of the protection of their country of nationality.

[55] The Federal Court of Appeal in *Galindo Camayo*, at paragraph 18 affirmed the three-part test for reavilment set out by the Federal Court in *Canada (Public Safety and Emergency Preparedness) v Bashir*, 2015 FC 51 at paragraph 46 and citing the UNHCR Handbook as follows:

Voluntariness: The claimant must act voluntarily;

Intention: The claimant must intend by their actions to reavail themselves of the protection of the country of their nationality; and

Reavilment: The claimant must actually obtain such protection.

[56] These three elements related to the test for reavilment are conjunctive, that must all be met (*Wu v Canada (Citizenship and Immigration)*, 2023 FC 1071 at para 21, citing *Galindo Camayo* at para 79).

[57] The factors when weighing reavilment in a cessation case were set out in *Galindo Camayo* at paragraph 84. Of note, the Federal Court of Appeal instructed 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 reavilment.

[58] The Minister has the burden of proving reavilment on the balance of probabilities. In doing so, the Minister is entitled to rely on the presumption of reavilment by proving that the

refugee obtained or renewed a passport from his or her country of origin. Once that has been proven, the burden of proof is reversed. The refugee then has the burden of showing that he or she did not actually seek reavilment (*Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 [*Abadi*] at para 17; *Li v Canada (Citizenship and Immigration)*, 2015 FC 459 [*Li*] at para 42). It is then presumed that the refugee intended to reavail themselves of the protection of the country in question. It is also presumed that the refugee has obtained the actual protection of the country when the Minister establishes that the refugee has used that passport to travel (*Canada (Citizenship and Immigration) v Safi*, 2022 FC 1125 [*Safi*] at para 33).

[59] I will consider the RPD's analysis regarding the three factors for reavilment.

(1) Voluntariness

[60] The RPD considered paragraph 120 of the UNHCR Handbook that a refugee who does not act voluntarily will not cease to be a refugee.

[61] The Applicant travelled to Pakistan in December 2019 and stayed until June 2020. At the hearing, he indicated his travel to Pakistan was not voluntary because he had to tend to sick family members, his grandmother and his mother. The Respondent argued that the travel was voluntary as there were doubts about the credibility of the Applicant's claims given contradictions on the record.

[62] The contradictions related to information he gave to the CBSA officer in June 2020 and his testimony at the hearing in May 2022.

[63] On June 24, 2020, the Applicant stated to the CBSA officer that he went to see his family, specifically his grandmother who was sick and died in February 2020. At the hearing, the Applicant testified that his grandmother died either on June 22 or on June 23, 2020. He also added that he was also tending to his mother who was sick. However, the Applicant did not previously raise his mother's illness until the hearing.

[64] The Applicant claimed he provided his counsel with his grandmother's death certificate. However, no evidence was produced and no reason was provided to the RPD to explain the failure to produce this document.

[65] The Applicant claimed he was scheduled to return to Canada in February 2020, but was delayed due to the onset of COVID-19. The RPD did not accept this argument. The Applicant argues that the RPD did not consider whether the onset of disruptions to travel in March 2020 would have applied to Pakistan, using time posts for Canada. However, other than these assertions, there was nothing in the record or evidence tendered to demonstrate how the Applicant's travel was affected, such as evidence of delays or cancellation of his scheduled flights.

[66] The CBSA's interview with the Applicant took place on June 24, 2020 when the Applicant returned. It was open to the RPD to prefer the reliability of the contemporaneous information that the Applicant provided to the CBSA officer at that time in light of the contradiction in his testimony. Furthermore, the RPD considered the contradictions in light of the

Applicant's evidence that he was very close to his grandmother, whom he considered a "second mother."

[67] In the absence of any corroborating evidence to support his assertions, it was open to the RPD to find that the reasons he gave to justify travel to Pakistan in 2019 and the length of his stay of 6.5 months to be insufficient.

[68] At the RPD hearing, counsel for the Applicant also stated that he travelled against counsel's explicit advice as it may jeopardize his Canadian permanent residence status. He argued that his decision to travel despite that advice demonstrated the importance of being with his family members and that he was willing to sacrifice his new life in Canada to do so. The RPD considered this argument but did not accept this argument in context with his other justifications and in light of the contradictions on the record.

[69] There is no dispute that the RPD, a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony and assess the evidence in these matters (see *Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC) at paras 19-23). Credibility findings are entitled to considerable deference on judicial review, and should not be overturned unless they are perverse, capricious, or made without regard to the evidence (see *Siad v Canada (Secretary of State)* (CA), 1996 CanLII 4099 (FCA), [1997] 1 FC 608 at para 24; *Desir v Canada (Citizenship and Immigration)*, 2019 FC 1164 at para 25).

[70] Contradictions in the evidence, particularly in a refugee claimant's own testimony, will usually afford the RPD a reasonable basis to find a claimant lacks credibility. However, these contradictions must be real as opposed to truly trivial or minute contradictions (see *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 43; *Lalegbin v Canada (Citizenship and Immigration)*, 2015 FC 1399 at para 26).

[71] When evaluating a claimant's credibility with respect to the difference between written statements and oral testimony, this Court has long recognized that "a person's first story is usually the most genuine, and therefore the one to be believed" and that contradictions between the two justify a negative credibility finding (*Navaratnam v Canada (Citizenship and Immigration)*, 2011 FC 856 at paras 11-12).

[72] In this case, the Applicant's discrepancies are central to the reasons that he claims justify that he did not return voluntarily to Pakistan. The RPD's conclusions that the Applicant's travel was voluntary was also based on his testimony about his activities while in Pakistan, the duration of his stays in Pakistan, and the fact that there was insufficient evidence to support many of the assertions that the Applicant has made. I cannot find that these conclusions were unreasonable and I see no circumstances warranting the Court's intervention.

[73] While the Applicant may disagree with the RPD's credibility findings, the Applicant's arguments are akin to asking the Court to review the evidence before the RPD and come to a different and more favourable conclusion. This is not the Court's role on judicial review.

(2) Intention

[74] The RPD considered the Respondent's intentions during his trips to Pakistan and whether his intentions constituted reavilment. The RPD found that the fact that the Applicant applied for an extension of the validity of his existing Pakistani passport to facilitate his travel to Pakistan, and applied to renew the passport at a Pakistani passport office while he was in the country to be *prima facie* evidence of his intention to avail himself of the protection of Pakistan.

[75] In support of this conclusion, the RPD cited Justice Mactavish in *Canada (Citizenship and Immigration) v Nilam*, 2015 FC 1154 [*Nilam*] at paragraph 11 and Justice O'Reilly in *Cerna v Canada (Citizenship and Immigration)*, 2015 FC 1074 at paragraph 13 [*Cerna*], where it was found that a refugee who travels using a passport issued by their country of origin has submitted themselves to the protection of that country and has obtained protection from that state.

[76] As Justice Strickland stated in *Safi*, this Court has characterized the presumption of reavilment as "particularly strong" when the refugee has used his or her passport to travel to the country of nationality (*Safi* at para 33, citing *Seid v Canada (Citizenship and Immigration)*, 2018 FC 1167 [*Seid*] at para 14 and *Mayell v Canada (Citizenship and Immigration)*, 2018 FC 139 at para 12).

[77] Reavilment brings into question a refugee's fear of returning to their country of origin. "Reavilment 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.” When a refugee applies for and obtains a passport from their country of nationality, it is presumed that they intended to reavail themselves of the diplomatic protection of that country (*Safi* at para 34, citing *Seid* at para 14; *Abadi* at para 16; *Galindo Camayo* at para 63).

[78] The presumption of reavailment may be rebutted and the onus is on the refugee to adduce sufficient evidence to rebut the presumption (*Safi* at para 35, citing *Nilam* at para 26; *Li* at para 42; *Galindo Camayo* at para 65).

[79] It is uncontested that the Applicant used his Pakistani passport to travel to Pakistan in 2019. As such, the onus shifted from the Minister to the Applicant. In other words, in the case before the RPD, it was the Applicant’s onus to adduce sufficient evidence to demonstrate that he did not intend to reavail himself.

[80] Justice Brown in *Ali v Canada (Citizenship and Immigration)*, 2023 FC 383 at paragraphs 45 to 50 addresses the issue of “intention,” whereby an individual’s intent may be determined based on the inference that a trier of fact may draw from the evidence that people intend the natural and probable cause of their actions. An individual’s intention is a finding of fact that is within the purview of the trier of fact. This is a rule of evidence and a matter of common sense.

[81] The issue was the Respondent’s motivation for returning to Pakistan. Given the finding of a contradictory account regarding his grandmother’s death, the failure of providing evidence of

that event, and sufficient evidence regarding his mother's health, the RPD was not persuaded that this travel was borne out of necessity to care for ailing members.

[82] The Applicant took issue with the use of the term "necessity" to state that the RPD applied the wrong consideration in the analysis. The Respondent argues that the Applicant is misinterpreting this section, and that the RPD considered the Applicant's reasons justifying his travel to Pakistan, and found that the reasons were contradictory and not compelling.

[83] With respect, I cannot read the decision in the narrow way that the Applicant suggests. Reasons should be read holistically and contextually to understand the basis on which a decision was made (*Vavilov* at para 97). The Court cannot consider the Decision with only one cited phrase, term or word in isolation from the rest of the Decision.

[84] Having considered the assessment of the Applicant's intention, I cannot find the RPD's conclusion to be unreasonable.

(3) Reavailment

[85] The RPD found that the Respondent actually reavailed himself of the protection of Pakistan by travelling there on his Pakistani passport, remaining in Pakistan without taking any precautions, and by approaching the authorities while he was in Pakistan to renew his passport.

[86] At the hearing, the Applicant argued that the RPD erred by ignoring the test set out in *Galindo Camayo*, and what was expected to be assessed in cessation applications. The

Applicant's argument focuses on the measures he took to protect himself, including leaving at night to get groceries, and not using his phone or car while in Pakistan. The Applicant argues that he thought that his permanent residence status gave him protection.

[87] While the RPD did not make a list of the factors described in the Federal Court of Appeal's decision, I do not agree that the RPD did not assess the factors or did not follow the guidance in *Galindo Camayo*.

[88] It bears repeating that an individual factor will not 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 (*Galindo Camayo* at para 84).

[89] The Applicant argues that the RPD should have applied the Court's analysis in *Canada (Citizenship and Immigration) v Antoine*, 2020 FC 370 [*Antoine*] that cited *Cerna*. However, *Cerna* is distinguishable from the Applicant's case in important ways. In *Cerna*, the refugee in that case had been able to establish the purpose of his trips to visit his elderly and ailing father, the trips were of short duration, and the protective measures he took indicated a subjective fear on his part.

[90] The outcome in each cessation proceeding will be largely fact-dependent, with a focus on whether the refugee's conduct and the inferences that can be drawn from it can reliably indicate that they intended to waive the protection of the country of asylum (*Galindo Camayo* at para 83).

[91] I do not find the Applicant's reference to *Antoine* and *Cerna* to be helpful. The RPD's finding in *Cerna* does not mean that the RPD had to come to the same conclusion in the Applicant's case.

[92] In this case, the RPD concluded that the Applicant's reasons to return to Pakistan, in addition to the other factors and arguments he presented, did not rebut to the presumption of reavilment. To follow the Applicant's arguments would require me to reweigh and reassess the evidence that was before the RPD. This is not the Court's role on judicial review.

[93] I cannot find that the Decision was unreasonable. Rather, I find that it is justified in relation to the facts and law that constrained the decision maker (*Vavilov* at para 83).

VI. Conclusion

[94] For the reasons stated above, the Applicant has not persuaded me that there has been a reviewable error with the Decision. The application for judicial review is dismissed.

[95] Both parties confirmed that they had no questions for certification. I agree that none arises.

JUDGMENT in docket IMM-6266-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There are no questions for certification.

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6266-22

STYLE OF CAUSE: TARIQ NAJEEB v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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DATE OF HEARING: MARCH 11, 2024

JUDGMENT AND RESONS: NGO J.

DATED: MARCH 25, 2024

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