

Federal Court



Cour fédérale

Date: 20240617

Docket: IMM-3122-23

Citation: 2024 FC 923

Ottawa, Ontario, June 17, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

SYED MUHAMMAD SIDDIQUE SHAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Syed Muhammad Siddique Shah [Applicant], makes this application for judicial review of the decision of the Refugee Protection Division [RPD] dated February 2, 2023, ceasing his refugee protection following an application from the Respondent, the Minister of Citizenship and Immigration, pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [IRPA] on the basis that the Applicant had voluntarily reavailed himself of the protection of his country of nationality under section 108(1)(a) of the IRPA [Decision].

[2] For the reasons that follow, this application for judicial review is dismissed.

II. Background

[3] In this case, the Respondent applied to cease the refugee protection previously granted to the Applicant. The Applicant, a Pakistani national, initially claimed refugee protection in Canada in February 2018. He claimed to be an active member of the Pakistan Tehreek-e-Insaf [PTI] party and reported being violently attacked and threatened at his family home by political opponents, specifically members of the Muttahida Qaumi Movement [MQM] and the Pakistan Muslim League Nawaz [PML-N] parties. The Applicant and his family sought protection from the Pakistani police but were allegedly denied assistance.

[4] The Applicant was granted refugee protection by the RPD on July 9, 2019. Subsequently, he became a permanent resident of Canada on September 16, 2021. Shortly after gaining permanent residency, the Applicant applied for and was issued a Pakistani passport on September 17, 2021. Using this passport, the Applicant traveled to Pakistan on October 5, 2021, and remained there until March 15, 2022. During his stay in Pakistan, the Applicant got married and lived at his family home.

[5] Upon returning to Canada on March 15, 2022, the Applicant was interviewed by an immigration officer. He admitted to having stayed in Pakistan for six months, during which he

got married and resided with his family. Based on this information, the Respondent filed an application to cease the Applicant's refugee protection, arguing that the Applicant had voluntarily reavailed himself of the protection of his country of nationality under subsection 108(1)(a) of the IRPA. The Respondent also argued, in the alternative, that the Applicant had voluntarily re-established himself in Pakistan under subsection 108(1)(d) of the Act.

III. Decision Under Review

[6] The RPD relied on leading jurisprudence such as *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*], and was alive to the legal and regulatory framework relevant to their analysis. The RPD also considered *Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 884 [*Ahmed*] and *Starovic v Canada (Citizenship and Immigration)*, 2012 FC 827 [*Starovic*]. While I could summarize the Decision's key findings, it is more productive to simply reproduce the RPD's own summary of its findings on the three requirements for reavilment:

Voluntariness

...

[24] In summary, based on the evidence before me, I find on a balance of probabilities that in October 2021, flights were operating from Pakistan to Canada and that the Respondent had the ability to book a flight by seeking assistance from his Canadian friend. I find on a balance of probabilities that the Respondent failed to return to Canada earlier – resulting in a lengthy stay in Pakistan – because the Respondent lacked a sense of urgency. I therefore do not accept that the Respondent remained in Pakistan for 5.5 months for reasons outside of his control. Consequently, although the Respondent's initial return to Pakistan was not voluntary, I find that his subsequent lengthy stay in Pakistan was voluntary, and that the requirement of "voluntariness" under section 108(1)(a) of the Act is therefore met.

Intention

...

[36] In summary, given that the Respondent acquired a Pakistani passport and used this passport to return to Pakistan, there is a strong presumption that he intended to reavail himself to Pakistan's protection. As stated above, I find that the Respondent's subjective knowledge that his actions jeopardized his refugee status is a neutral factor because his desire to visit his sick father was a compelling reason for his return. While the identity of the agents of persecution as non-state actors carries some weight against the presumption, I find that this factor is outweighed by the Respondent's lengthy stay in Pakistan and his activities which, for the reasons provided above, placed him at serious risk of being found by his agents of persecution. As a result, I find that the fact that the agents of persecution are non-state actors is insufficient to rebut the strong presumption that the Respondent intended to reavail himself of Pakistan's protection. Given that the Respondent returned to Pakistan on a Pakistani passport, had a wedding that was attended by 30 to 35 people, and then remained in the same family home where the agents of persecution attacked/threatened him in the past, I find on a balance of probabilities that the Respondent's actions demonstrate an assertion of his Pakistani citizenship and an intention to reavail himself of Pakistan's protection.

Actual Reavailment

...

[39] As stated above, the Respondent testified that throughout his 5.5-month stay in Pakistan, he remained confined to his family home and the home of his father-in-law located next door. The Respondent testified that he only went out on one occasion when he visited travel agencies in the hope of booking a return flight to Canada. However, the Respondent also testified that on October 25, 2021, he got married and that approximately 30 to 35 people attended the wedding. For the reasons provided above, I find that in holding a wedding of this size, the Respondent exposed himself to a serious risk that the agents of persecution would learn of his return and come looking for him. The Respondent further exacerbated this risk by remaining in his family home – a location that is known to the agents of persecution – for a further 4.5 months after the wedding. As the Respondent exposed himself to the agents of persecution in this manner, I find that the Respondent's actions demonstrate that he lacked subjective fear

and that he was accepting of, and relied on, the protection of his country of nationality. For these reasons, I find that the Respondent's precautions during his time in Pakistan are negated by his action in holding a wedding with 30 to 35 guests and remaining in a location that was known to the agents of persecution for an extended period. I thus find that the Respondent's precautions during his time in Pakistan are insufficient to rebut the strong presumption of actual reavailment in this case.

IV. Issue & Standard of Review

[7] The Applicant raises one issue in his application: whether the Decision was unreasonable in light of the applicable legal test for reavailment in the refugee cessation context.

[8] The parties agree the applicable standard of review is that of reasonableness. I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25).

V. Analysis

[9] As will be explained in detail below, the determinative issue in this matter is the RPD's evaluation of the Applicant's intention to reavail, which the Applicant submitted was problematic and unreasonable.

[10] Before delving into the analysis, and as the Respondent helpfully pointed out, Justice Zinn in *Veerasingam v Canada (Citizenship and Immigration)*, 2024 FC 639 [*Veerasingam*] recently consolidated the three-part test for cessation and the related legal framework as follows:

[12] In assessing cessation, this Court has adopted the test set out in the UNHCR Handbook: *Nsende v Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 at paras 12–14. In particular, paragraph 119 of the UNHCR Handbook outlines the three conjunctive elements required to establish that an individual has reavailed themselves of diplomatic protection under paragraph 108(1)(a) of the Act:

1. Voluntariness: The refugee must have acted voluntarily;
2. Intention: The refugee must have intended to reavail themselves of the protection of their country of nationality; and
3. Reavailment: The refugee must have actually obtained that protection.

[13] On voluntariness, an applicant is deemed to have acted voluntarily where their actions are free from administrative or government compulsion: paragraph 120 of the UNHCR Handbook.

[14] On intention, there is a presumption that an applicant intended to reavail themselves when they apply for and obtain a passport from their country of nationality: paragraph 121 of the UNHCR Handbook. This presumption is “particularly strong” where a refugee uses their national passport to travel to their country of nationality: *Camayo* at para 63; *Seid v Canada (Citizenship and Immigration)*, 2018 FC 1167 at para 14; *Mayell v Canada (Citizenship and Immigration)*, 2018 FC 139 at para 12. It is only in “exceptional circumstances” that an applicant’s travel to their country of nationality on a passport issued by that country will not result in termination of refugee status: *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 [*Abadi*] at para 18. Importantly, the question of intention to reavail “has nothing to do with whether the motive for travel was necessary or justified.” *Camayo* at para 72.

[15] On actual reavailment, the focus is on whether the applicant received the diplomatic protection of their country of nationality, rather than state protection. This Court has held that obtaining and travelling on a passport issued by the applicant’s country of nationality is sufficient to constitute actual reavailment: *Peiqrishvili v Canada (Minister of Immigration, Refugees and Citizenship)*, 2019 FC 1205 [*Peiqrishvili*] at para 22; *Lu v Canada (Citizenship and Immigration)*, 2019 FC 1060 [*Lu*] at para 60; *Chokheli v Canada (Citizenship and*

Immigration), 2020 FC 800 at para 71; *Aydemir v Canada (Citizenship and Immigration)*, 2022 FC 987 at paras 47-48.

[16] The initial burden falls on the Minister to prove reavilment on the balance of probabilities: *Abadi* at para 17. However, once the Minister establishes that a presumption of reavilment exists, the burden of proof reverses. The onus then falls on the individual to adduce sufficient evidence to rebut the presumption of reavilment. In considering whether an individual has rebutted the presumption of reavilment, the RPD should have regard to the various factors outlined in *Camayo* including the purpose of the travel to the country of nationality and any precautionary measures the applicant took while there. Importantly, the Federal Court of Appeal cautions that “[n]o 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:” *Camayo* at para 84.

(*Veerasingam* at paras 12-16).

[11] Despite their dancing around the subject, the Applicant did not contest that the Respondent had met their initial burden to establish a presumption of reavilment, although at the hearing of this application the Applicant did draw attention to the fact that it was only one reavilment. The Applicant did not contest the voluntariness requirement. The RPD reasonably applied *Starovic* in finding that the Applicant’s initial return to Pakistan for the purpose of visiting a sick parent is relevant to the voluntariness of a refugee’s return and found that the Applicant’s initial return to Pakistan was not voluntary. Likewise, the RPD considered the Applicant’s subsequent lengthy stay of 5.5 months and reasonably determined it was voluntary. The RPD carefully considered the Applicant’s testimony and the evidence and reasonably found there was no flight restriction that would have prevented the Applicant from returning to Canada during his 5.5 months’ stay in Pakistan surpassing his initial 10-to-15 day visit.

[12] On the criterion of actual reavailment, while there is half a sentence at the end of their Further Memorandum of Argument claiming that the RPD “never explored nor addressed...whether actual protection was granted to the Applicant by Pakistan, when the Applicant had testified that he never had intention to seek protection of Pakistan”, the Applicant did not substantiate any rationale for this allegation other than the allegation that the RPD did not explore nor address the issue. The Respondent highlights that the RPD is not required to conduct a forward-looking risk analysis in the context of a cessation decision, citing *Ahmed* at paragraph 59, which commented and I agree that:

[59] The Respondent notes, and I agree, that the Applicant conflates state protection at the refugee claim stage and the protection at issue at the re-availment context. The preponderant jurisprudence has held that whether an applicant would be at risk in their country of nationality is not a relevant consideration in a cessation hearing (*Chokheli* at para 65 citing *Cerna* at para 13; *Al-Habib v Canada (Citizenship and Immigration)*, 2020 FC 545 at para 14). This principle was not addressed or altered by the decision in *Camayo (FCA)*.

[13] With respect, the RPD offered a full page of analysis just on the question of actual reavailment under the heading “Actual Reavailment”, a portion of which I reproduced above at paragraph 5. I fundamentally disagree with the Applicant that the RPD neither “explored nor addressed” the issue of whether there was actual reavailment. With that said, the Applicant relies on Justice Russell’s decision of *Din v Canada (Citizenship and Immigration)*, 2019 FC 425 [*Din*], where the judicial review was granted on the basis that the RPD did not consider whether by giving the Applicant a passport, the Applicant’s home country was also granting him actual protection. The Respondent rightfully distinguishes *Din* on the facts. In that matter, the RPD was found to have failed to consider the applicant’s efforts to hide from authorities, avoid his family members, and conceal his Ahmadi faith in its assessment. Those are not the circumstances here,

as no evidence was overlooked, and the RPD clearly considered the relevant factors as set out in *Camayo*. The only criterion of the factors elucidated by Justice Zinn for the cessation of refugee protection that the Applicant has sufficiently argued is that of intention, and so that is where the Court shall focus.

[14] In respect of intention, the Applicant submits that the RPD failed to “engage with the evidence that arguably went to possibly defeating that presumption makes the decision unreasonable.” This allegation’s unhealthy amount of qualification aside, their principal argument is that the RPD never addressed the Applicant’s perceived level of risk of fear of persecution within the context of the circumstances of his return to his country. Again, with respect, the RPD conducted a lengthy (3.5 page) analysis of not just the Applicant’s submissions on intention, but the relevant jurisprudence that influences these decisions. The RPD cited *Ahmed* for the proposition that “if a refugee returns to his country of nationality on a passport issued by that country, there is a strong presumption that he has intentionally and actually reavailed himself of that country’s protection” (*Ahmed* at para 37). As the Applicant returned to his country of nationality, Pakistan, on a passport issued by Pakistan (coincidentally, only one day after becoming a permanent resident of Canada), this strong presumption was established. It was not for the RPD to demonstrate intent, it was for the Applicant to *rebut the presumption* of intent, and this is what the RPD analyzed.

[15] The RPD also cited *Camayo*, which held that, in assessing a refugee’s intention to reavail, the RPD should consider the refugee’s subjective knowledge concerning the consequences of their actions. In other words, *Camayo*’s teaching is that the RPD should

consider whether the refugee knew that acquiring the passport from their country of nationality and using the passport to return to their country of nationality would place their refugee status in jeopardy. The RPD grappled with the Applicant's submissions on intention, including the following, which were related to *Camayo*'s factors including what the refugee did while in their country of nationality, whether the refugee took any precautionary measures to minimize their risk of persecution during their stay:

- A. The Applicant testified that in October 2021, he knew that returning to Pakistan on a Pakistani passport would jeopardize his refugee status in Canada, but that he felt compelled to do so because his father was ill;
- B. The Applicant fears members of rival political parties (MQM and PML-N), which were non-state actors at the time of the Respondent's return to Pakistan in 2021;
- C. The Applicant testified that during his stay in Pakistan, he resided at his family home along with his parents and younger brother. He testified that he stayed at home caring for his father, and that sometimes he went next door to the home of his uncle;
- D. The Applicant's wedding took place at his family home, and that approximately 30 to 35 family members attended the wedding;
- E. The Applicant testified he only went out on one occasion to attend two travel agencies with the hope of booking a return flight to Canada, after which he followed up with the agencies by phone; and,

F. The Applicant remained within the confines of his family home and the neighbouring home of his father-in-law for nearly the entirety of his 5.5 month stay in Pakistan.

[16] The RPD accepted the Applicant's testimony that he remained within the confines of the family home and the neighboring home of his father-in-law for nearly the entirety of his stay. However, in weighing the evidence, the RPD reasonably found the Applicant's actions did not reflect the actions of someone who took reasonable precautions to minimize his risk of persecution. The Applicant stayed at the same family home where his agents of persecution previously attacked and threatened him, and held a wedding at his family home with 30 to 35 guests raising a serious risk that word of the Applicant's return would spread throughout the community and reach the agents of persecution, and stayed in that same location after the wedding for 4.5 months further exposing himself to risk.

[17] In the RPD's summary on intention, as reproduced above at paragraph 5, the RPD was not satisfied on a balance of probabilities that the Applicant had rebutted the strong presumption of intention to reavail himself of Pakistan's protection. The RPD clearly did not overlook but considered all the evidence related to the precautionary measures taken by the Applicant and provided a clear, rational explanation for its findings on subjective intention. What the Applicant now essentially argues is that the RPD improperly weighed their evidence and submissions, and this Court will not engage in an improper reweighing exercise on the basis that the Applicant disagrees with the Decision.

[18] Finally, the Applicant submits the RPD erred in failing to consider the severity of consequences to him, which will not only result in the cessation of his Convention refugee status, but also the loss of his permanent resident status in Canada. The Applicant cites paragraph 51 of *Camayo* that stated “[i]n this case, the seriousness of the impact of the decision on [the Applicant] increases the duty on the RPD to explain its decision”. Where the impact of a decision on an individual’s rights is severe, the reasons provided to that individual must reflect the stakes (*Vavilov* at para 33). Here, the seriousness of the impact of the Decision on the Applicant increased the duty on the RPD to explain its Decision. The RPD provided a clear and sufficient explanation for its Decision, which shows that this matter was not taken lightly.

[19] In addition, the Respondent also pointed out to the Court that the Applicant did not make any submissions to the RPD about specific personal hardship related to a cessation finding. Nor did the Applicant articulate to this Court in any specific terms what evidence or submissions, if any, might have been overlooked by the RPD on this point. I agree with the Respondent that the Applicant’s submissions are vague and general, and these are an insufficient basis on which to impugn the Decision.

VI. Conclusion

[20] For the foregoing reasons, this application for judicial review is dismissed. The outcome of this case is a function of the particular facts, and accordingly no question of general importance is certified for appeal.

JUDGMENT IN IMM-3122-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Ekaterina Tsimberis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3122-23

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