

Federal Court



Cour fédérale

Date: 20250410

Docket: IMM-15835-23

Citation: 2025 FC 668

Ottawa, Ontario, April 10, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

RAUF AHMAD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] By order of this Court dated January 4, 2023, the decision of the Refugee Protection Division [RPD] to cease Mr. Rauf Ahmad's [Applicant] refugee protection due to his reavailing of the protection of Pakistan was found to be unreasonable and sent back to a differently constituted panel for redetermination.

[2] On November 3, 2023, on redetermination, the RPD once again allowed the Minister's application to cease the Applicant's refugee protection. The Applicant now seeks judicial review of the RPD's redetermination decision.

[3] For the following reasons, this application for judicial review is dismissed.

II. Background Facts

[4] The Applicant arrived in Canada in July 2005 and made a refugee claim as a Shia Muslim facing persecution due to accusations of blasphemy by a fundamentalist Sunni Imam and some members of the police force in his village. The refugee claim was granted in April 2006, and the Applicant gained permanent residency in February 2007.

[5] Shortly thereafter, in July 2007, the Applicant acquired a new Pakistani passport. The Applicant extended the passport twice in 2009 and 2012, obtained a second passport in 2013, and obtained a third passport in 2018. Between 2008 and 2014, he returned to Pakistan on five different occasions, using his Pakistani passports. Each trip to Pakistan lasted between one and four months.

[6] In addition, between 2017 and 2023, the Applicant used his Pakistani passports to travel several times to the United States [US] for employment purposes as a long-haul trucker.

[7] In September 2018, the Minister applied to the RPD for a cessation of the Applicant's refugee protection on the ground that he had reavailed himself of the protection of Pakistan.

[8] The RPD allowed the Minister's application by a decision dated November 12, 2021. It found that the Applicant's use of his Pakistani passports, acquired after he was granted refugee protection in Canada, to travel back to Pakistan on five occasions constituted voluntary reavilment of the protection of Pakistan within the meaning of section 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Accordingly, and pursuant to section 108(3) of the IRPA, the Applicant's claim for refugee protection was deemed to have been rejected.

[9] On judicial review Justice Pamel (then of the Federal Court) determined that the RPD's decision was unreasonable and remitted it for reconsideration (*Ahmad v Canada (Citizenship and Immigration)*, 2023 FC 8 [*Ahmad*]).

[10] Justice Pamel noted that the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*] (released after the RPD's first cessation decision) re-asserted, without considering itself bound to, the United Nations High Commissioner for Refugees Handbook's three-part test to determine whether cessation has occurred: voluntariness, intention to reavail, and actual reavailment.

[11] His analysis was guided by the "presumption that refugees who acquire and travel on passports issued by their country of nationality to travel to that country or to a third country have intended to avail themselves of the protection of their country of nationality" (*Camayo* at para 63). He further noted that the presumption of reavailment is particularly strong when a refugee travels to their country of nationality on the strength of the passport issued by that country (citing *Abadi v Canada (Citizenship and Immigration)* 2016 FC 29 at para 16), but that the presumption

is nevertheless rebuttable where an applicant shows through proof to the contrary, and on a balance of probabilities, that they did not intend to reavail (citing *Li v Canda (Citizenship and Immigration)*, 2015 FC 459 at paras 39, 42-43).

[12] Justice Pamel took no issue with the RPD's finding that the presumption of reavailment arose on the facts, but considered its assessment of whether the presumption was rebutted to be unreasonable. Specifically, he found the RPD's analysis to be unintelligible and speculative because it:

- A. failed to engage with the Applicant's assertion that he did not have a subjective intention to reavail, but that he felt compelled to travel to Pakistan to protect his family while their Canadian visa applications were pending due to administrative delay;
- B. found that, had his family been in danger, the Applicant would have returned to Pakistan more than only five times – despite the fact that additional travel to Pakistan would have actually strengthened the argument against him with respect to reavailment; and
- C. made an unreasonable credibility finding against the Applicant related to the timing of his application for his family's permanent residency, which prevented it from properly assessing the purpose of the Applicant's travels and related intent to reavail, if any.

[13] In all, Justice Pamel concluded that these errors prevented the RPD from properly assessing the Applicant's subjective intent, as required by *Camayo*. He found this constituted a failure to meaningfully grapple with the key issues or central arguments raised by the Applicant, contrary to the Supreme Court of Canada's guidance in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 128 [*Vavilov*].

III. Decision Under Review

[14] The RPD redetermined and again granted the Minister's cessation application by decision dated November 3, 2023.

A. *Voluntariness*

[15] The RPD began its analysis by noting that, absent an explanation or pressing need, reavilment is considered voluntary and calls an individual's subjective fear into question, citing this Court in *El Kaissi v Canada (Citizenship and Immigration)*, 2011 FC 1234 at paragraph 29.

[16] With respect to the Applicant's first trip to Pakistan from January to May 2008, the RPD accepted that it was not voluntary because he went to represent himself before the Panchayat in a land-related dispute with his brother, he had to ensure his entitlement to the land where his wife and children lived. It was a situation the RPD found to be beyond his control because he said no one could appear on his behalf.

[17] However, the RPD found that the remaining four trips to Pakistan were voluntary in nature.

[18] The Applicant submitted to the RPD that he took the second trip, from January to April 2009, to support his wife who was depressed and receiving treatment in March of that year. The RPD noted that, in the initial cessation hearing, the Applicant testified that his elder sister and her son were assisting his wife before, during and after his trip. It also noted that he had testified to staying in a different location than his wife for some of the time he was in Pakistan.

[19] The Applicant's third trip, from June to September 2010, also concerned his ailing wife. Again, he had testified at the first cessation hearing that other members of his family could have obtained her medication and taken her to treatments, and that her doctors had not asked him to return. He also admitted to spending a significant portion of this trip at a location 75 km away from where his wife was receiving care.

[20] On this basis, the RPD found both the second and third trips to be voluntary.

[21] With respect to the fourth trip from October to November 2012, the Applicant testified that he travelled to assist his family in coming to Canada, specifically with obtaining certain documents from his children's school and transportation to the airport. He also testified in the first hearing that his sister, brother-in-law, and father-in-law had accompanied them to the airport. The RPD therefore found it was not necessary for the Applicant to travel to Pakistan to assist his family in their departure to Canada.

[22] The Applicant stated that the fifth and final trip to Pakistan from May to June 2014, after his family had joined him in Canada, was for the purpose of seeing his daughter married. His wife had to stay in Canada with their son, who had broken his arm, and his daughter did not want to travel to Pakistan alone. The RPD sympathized with the daughter's desire not to travel alone, but found that as a 23 or 24-year-old adult at the time, who had lived in Pakistan most of her life and had relatives there, she had support in the country and the Applicant was not compelled to travel with her for reasons outside of his control.

B. *Intention to Reavail*

[23] The RPD acknowledged that, while simply obtaining a passport is not determinative of an intention to reavail, actually travelling with it can further strengthen the presumption of reavailment (*Canada (Citizenship and Immigration) v Mohamed Nilam*, 2015 FC 1154 at para 25). It noted that this is particularly so when a refugee uses their national passport to travel to their country of nationality (*Camayo* at para 63).

[24] Although it accepted that the Applicant's alleged lack of knowledge regarding the consequences of his travel to Pakistan using a Pakistani passport weighed in favour of rebutting the presumption of an intention to reavail, the RPD noted that the Applicant continued to travel to the US with a Pakistani passport as late as 2023, even after he was made aware of the Minister's application in 2018 and attended the first cessation hearing in 2021. Therefore, it found that his further travels to a third country using a Pakistani passport, for a period of more than three years after he had knowledge that such travel could come with consequences, weighed in favour of the presumption of an intention to reavail.

[25] The RPD also noted that, in his refugee claim, the Applicant alleged fear of not only the Imam that accused him but also the state via the police. It therefore found it problematic for the Applicant to have applied for three Pakistani passports, extending their validity on two occasions, and to have returned to Pakistan voluntarily on four occasions, while claiming to be fearful of the Pakistani police. To provide personal information and disclose his whereabouts to the very state he feared was found to be of higher consequence than if he had done the same while only fearing harm from the Imam, a non-state actor.

[26] While the RPD acknowledged that the Applicant described taking certain precautions on the four trips it deemed to be voluntary, suggesting a continued subjective fear, it found that his testimony nevertheless indicated he was attending public places, such as the hospital and medical appointments where he accompanied his wife, his children's school, and his daughter's wedding, held 11 km from his home village. It therefore concluded that, although he took some limited precautions while in Pakistan, the Applicant also put himself in the public eye in non-emergency situations.

[27] Finally, the RPD noted the length of the Applicant's visits to Pakistan, spanning from one to four months each. It considered these to be long trips, wherein the Applicant spent extra weeks on tasks not related to the stated purpose of his travel. The RPD weighed in favour of the presumption of an intention to reavail. However, it also noted he has not renewed the 2018 Pakistani passport since it expired in 2023, weighing in favour of rebutting the presumption.

[28] Given the foregoing, the RPD found that the Applicant ultimately failed to refute the presumption that he intentionally availed himself of the protection of Pakistan.

C. *Actual Reavailment: Obtaining Protection*

[29] The RPD concluded that, on a balance of probabilities, the Applicant actually obtained protection because he was allowed to freely enter and exit Pakistan using his Pakistani passports, portraying himself as a Pakistani national and experiencing no issues doing so.

[30] On this basis it found the presumption of obtaining protection, which arose from his use of the passports to return to Pakistan, was not rebutted.

IV. Issue and Standard of Review

[31] The only issue on this application is whether the RPD's decision to allow the Minister's cessation application is unreasonable.

[32] The parties agree and I concur that reasonableness is the applicable standard of review (*Veerasingam v Canada (Citizenship and Immigration)*, 2024 FC 639 at paras 7-10 [*Veerasingam*]; *Vavilov* at paras 16-17, 23-25).

V. Relevant Provisions

[33] As noted by the RPD, the relevant provision for cessation of refugee protection is section 108 of the IRPA:

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)** il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
- b)** il recouvre volontairement sa nationalité;
- c)** il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
- 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;

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:

- (a)** the person has voluntarily reavailed themselves of the protection of their country of nationality;
- (b)** the person has voluntarily reacquired their nationality;
- (c)** the person has acquired a new nationality and enjoys the protection of the country of that new nationality;
- (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

e) les raisons qui lui ont fait demander l'asile n'existent plus.

(e) the reasons for which the person sought refugee protection have ceased to exist.

(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de la protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

(3) Le constat est assimilé au rejet de la demande d'asile.

(3) If the application is allowed, the claim of the person is deemed to be rejected.

(4) L'alinéa (1)e ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

VI. Submissions and Analysis

[34] As previously noted, the tri-partite conjunctive test for reavilment when assessing cessation is: voluntariness, intention, and actual reavilment (obtaining protection) (*Veerasingam* at para 12).

A. *Voluntariness*

[35] The Applicant submits that the RPD erred in finding that four of his five trips to Pakistan were voluntary.

[36] With respect to the second and third trips, the Applicant argues that the RPD erred by undermining the essential role he played for his wife as her life partner, and that the nature of their relationship is such that others could not have been reasonably expected to fill his shoes.

[37] I cannot accept this argument. The Applicant has not identified a legal or factual error in the RPD's analysis – rather, he disagrees with the RPD's conclusion that the role he played in supporting his wife was not a sufficiently pressing need, such that he was compelled by circumstances beyond his control. This Court has held that, “[d]isagreeing with the decision maker's considerations and conclusions does not establish a reviewable error and the Court should not accept the Applicant's invitation to reweigh the evidence” (*Zabihiseasan v Canada (Attorney General)*, 2023 FC 1119 at para 114). Put another way, “the reasons provided by an applicant to justify his or her return to the country against which they claimed protection does not alter the voluntariness of the act...Camayo (FCA) has not altered this legal principle” (*Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 884 at para 32, citing *Cabrera Cadena v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 67 at para 22).

[38] The Applicant does not suggest that the RPD misapprehended the nature of the assistance he provided, or that it was incorrect in finding that there were other family members in Pakistan who could have and were in fact supporting his wife, only that it failed to properly appreciate the importance of their relationship such that he had to care for her. He has not put forth a valid basis for impugning the finding of voluntariness.

[39] With respect to the fourth trip, the Applicant asserts that he did not only escort his family to the airport as the RPD suggested, but that he played a culturally central role as the head of his

family. Again, this is a disagreement with the RPD's assessment of the necessity of his travel, based on his own evidence and testimony. Once again I find that this does not challenge the finding of voluntariness made by the RAD.

[40] The Applicant further maintains that there was nothing in the evidence to support the RPD's view that his family could have prepared for their departure from Canada without his help. However, the RPD did not simply suggest that the family could have prepared for their departure on their own; rather, it found that there were other family members who could have assisted, and in fact did accompany the Applicant's family to the airport. It was therefore of the view that the Applicant's trip to Pakistan in this instance was not necessary.

[41] Regarding the fifth and final trip to Pakistan, the Applicant argues that the RPD mentioned his submissions without truly considering them, because a trip to one's country of nationality for a daughter's wedding is not as frivolous as a vacation or visit with friends. It was inconceivable, according to the Applicant, that neither he nor his wife attend their daughter's wedding. As with his submissions concerning the second and third trips to Pakistan, the Applicant takes no issue with the RPD's assessment of the evidence or its legal analysis and has failed to identify a reviewable error.

[42] Finally, the Minister rightly notes that in his first judicial review before Justice Pamel, the Applicant "concede[d] that the application for and receipt of his Pakistani passport, as well as his travels to Pakistan, were voluntary," and it was on this basis Justice Pamel concluded that "the first aspect of the test for reavailment has been satisfied" (*Ahmad* at para 26). Therefore, the determinative issue in the first judicial review became the intention to reavail, and actual

reavailment was not assessed (*Ahmad* at paras 27, 49). I proceed to consider both branches in turn.

B. *Intention to Reavail*

[43] The Applicant asserts that his subjective intention in applying for a Pakistani passport was not to obtain protection, but to attend urgent family matters. He points out that he did not openly practise his faith, and took precautions which he argues the RPD downplayed. He also notes that the only reason he was not pursued by agents of persecution while in Pakistan was because he did not practise his religion.

[44] While the Applicant says he had no subjective intention to reavail, the fact that he travelled on a Pakistani passport to Pakistan, and to a third country (the US), gives rise to the presumption that he intended to avail himself of the protection of Pakistan (*Camayo* at paras 61, 63). It is therefore the Applicant's burden to rebut the presumption of intentionality with some evidence (*Camayo* at para 65).

[45] Contrary to the Applicant's contention, I find that the RPD did not downplay his evidence of taking precautions while in Pakistan. Evidence of some precautions taken goes to the issue of intention to reavail but is not determinative of it, and the RPD can choose to reject the evidence if it considers it properly (*Camayo* at para 78). The RPD credited the Applicant with taking some precautions, but also acknowledged that he put himself in the public eye in some non-emergency situations. It was open to the RPD to make this observation. While the Applicant submits that the only reason he was not pursued was his precaution of not openly practising his

religion, this does not detract from or contradict the RPD's conclusion that although he took some precautions, they were limited in nature and spoke to the level of subjective fear he felt.

[46] The Applicant argues that he cannot be found to have intended to reavail by travelling to Pakistan, *unless* he actually understood the consequences of his actions. This overstates the principle found in *Camayo*, where the Federal Court of Appeal stated at paragraph 70 that “[a]n individual’s lack of actual knowledge of the immigration consequences of their actions may not be determinative of the question of intent. It is, however, a key factual consideration that the RPD must either weigh in the mix with all of the other evidence, or properly explain why the statute excludes its consideration” (emphasis in original).

[47] In my view, the RPD in this case explicitly took account of the Applicant’s actual knowledge of the immigration consequences of his five trips to Pakistan. However, it also noted that, even after being served with the Minister’s cessation application in 2018 and attending the 2021 hearing in which he was represented, the Applicant nevertheless continued to use his Pakistani passports to travel to the US. The Applicant submits that these trips to the US were for work, but that does not undermine the fact that they were voluntary trips during which the Applicant had knowledge of the potential consequences and nevertheless used his Pakistani passports to enter the US, even after he was advised about alternative travel documents he could use at the 2021 hearing.

[48] The Applicant argues that the RPD mischaracterized his fear of the police. He says he never claimed fearing the institution, but only certain individuals in the police force. The distinction appears to be one without a difference for the purpose of establishing fear of a state

actor. It was open to the RPD to find it problematic that the Applicant feared certain state actors, yet risked providing them with personal information and potentially disclosing his whereabouts to them.

[49] The Applicant asserts for the first time on judicial review, and without any supporting evidence, that it could be reasonably assumed the individuals in the police force whom he feared would not be put on notice when he renewed his passport and travelled with it, because the police force in Pakistan is even less sophisticated than in Canada, where this would not occur. With respect, this is an unproven assumption, and it was open to the RPD to find that the risk the Applicant took in repeatedly applying for, renewing, and travelling on a Pakistani passport to be inconsistent with an alleged fear of members of the Pakistani police.

C. *Actual Reavailment: Obtaining Protection*

[50] The Applicant maintains that he has already demonstrated that the Pakistani state was and is still not able to protect him, hence his refugee status in Canada. Therefore, he argues, there must be evidence that actual state protection was available to him, and not simply diplomatic protection which, in his view, “amounts to nothing” in practice.

[51] As the Respondent notes, state protection is different than diplomatic protection (*Veerasingam* at para 15, citing, *inter alia*, *Aydemir v Canada (Citizenship and Immigration)*, 2022 FC 987 at paras 47-49, *Chokheli v Canada (Citizenship and Immigration)*, 2020 FC 800 at para 71, and *Lu v Canada (Citizenship and Immigration)*, 2019 FC 1060 at para 60 [*Lu*]).

[52] Actual reavilment is concerned only with diplomatic protection, which is established when an applicant is actually issued a passport by their country of nationality (*Veerasingam* at para 21).

[53] It is not disputed that the Applicant used the Pakistani passports he obtained to travel to both Pakistan and the US. The jurisprudence provides that, in so doing, he relied on the international diplomatic protection of his country of origin (*Lu* at para 60).

[54] Therefore, it was not unreasonable for the RPD to find that the third part of the test for reavilment was met.

VII. Conclusion

[55] The Applicant has not demonstrated that the RPD erred in finding that the presumption of reavilment arose on the facts of this case, or in assessing whether he adduced evidence to successfully rebut the presumption. The RPD's reasons were responsive to the evidence that may have militated against the presumption, and it was open to the tribunal to conclude that the presumption was not ultimately refuted.

[56] The application for judicial review is dismissed.

JUDGMENT in IMM-15835-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions to be certified.

"L. Saint-Fleur"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-15835-23

STYLE OF CAUSE: RAUF AHMAD v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL (QUÉBEC)

DATE OF HEARING: FEBRUARY 19, 2025

JUDGMENT AND REASONS: SAINT-FLEUR J.

DATED: APRIL 10, 2025

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