Federal Court  Cour fédérale

Date: 20220829

Docket: IMM-955-20

Citation: 2022 FC 1236

Ottawa, Ontario, August 29, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

ISMAIL JAMAL ABU OBAID

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application to review a decision made by the Refugee Protection Division (RPD) on January 14, 2020, rejecting the Minister's application to cease refugee protection for the Respondent (the Decision).

[2] The RPD determined that the Respondent acted involuntarily and did not intend to re-avail himself of the protection of Jordan.

[3] For the reasons that follow, this application is dismissed.

II. **Background facts**

[4] The Respondent is a Palestinian who is a citizen of Jordan.

[5] He received refugee protection in Canada on July 26, 2010, because he was being persecuted by members of a Jordanian indigenous tribe. They violently assaulted him and threatened him with death when they found he intended to marry their daughter with whom he had been having a secret romantic relationship.

[6] The Respondent was issued a Canadian refugee travel document on November 18, 2010, which was valid until September 7, 2012. He became a permanent resident on January 21, 2011.

[7] The Respondent was told by an Immigration, Refugees and Citizenship Canada (IRCC) officer, an IRCC supervisor, and an immigration support centre worker in St. Catharines that he could travel on his Jordanian passport for identification purposes without consequence.

[8] On August 17, 2011, the Respondent travelled to Jordan, using his Jordanian passport, to tend to his father who had suffered a debilitating stroke. He returned to Canada on October 24, 2011.

[9] While in Jordan, the Respondent renewed his Jordanian passport, which he received September 4, 2011.

[10] On August 9, 2012, the Respondent returned to Jordan, using his renewed passport, to see his mother who was very ill and approaching death.

[11] During the second trip, the Respondent's family arranged for him to be married as that was his mother's dying wish. When his mother died, the Respondent left Jordan and returned to Canada on November 27, 2012.

[12] Each time that he was in Jordan, the Respondent resided at his parents' home, in hiding, to avoid detection by the agent of persecution.

[13] The Minister brought an Application to Cease Refugee Protection on March 20, 2015.

III. **The Decision**

[14] The RPD noted that the salient facts, as set out in the background facts above, were not in dispute.

[15] The RPD found it was crucial that the Applicant's verification of his ability to travel with his Jordanian passport took place sometime in 2011.

[16] The RPD found that while in Jordan the Applicant kept a very low profile to avoid detection by the persecutors. As he continued to be fearful of them, he ventured out infrequently, fearing discovery.

[17] The RPD also noted that relatives delivered food to the Applicant.

[18] The Minister submitted to the RPD that the Respondent re-availed himself to Jordan by possessing a Jordanian passport and returning to Jordan which "conclusively proved cessation of his refugee status."

[19] The RPD reviewed the three requirements of paragraph 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], noting that they were cumulative.

[20] These requirements are that, on returning to their country of nationality, the refugee: (1) acted voluntarily; (2) intended by his action to seek to re-avail himself of the protection of his country of nationality; and (3) actually obtained such protection.

[21] The RPD noted that prior to December 15, 2012, when a legislative amendment changed the law, the Minister could cease refugee protection but the refugee's status as a permanent resident would not be affected.

[22] The RPD observed that when the Respondent returned to Jordan, the Minister was not legally entitled to take any cessation action that would have expunged his permanent residence

status. The RPD found that was consistent with the original advice given to the Applicant concerning travelling with his Jordanian passport.

[23] The RPD found the Respondent travelled to Jordan only on the strength of his belief that he enjoyed the security of having permanent residence status in Canada. That belief, coupled with the Respondent's continuing fear of his persecutors, the precautions he took of having food delivered to him, not venturing out and his wedding being an arranged marriage which was not consummated, plus his return to Canada once his familial duties were completed, was found by the RPD to be sufficient to rebut the presumption that he intended to obtain the protection of Jordan.

[24] The RPD also addressed the change in the law as of December 15, 2012 when the *IRPA* was amended by adding new section 40.1 and paragraph 46(1)(c.1). These amendments did not change the substantive elements of section 108 but the consequences were changed to be more severe as a loss of permanent residence would occur if cessation applied. The loss of permanent residence status would make the then former refugee inadmissible.

[25] The RPD found the Minister was entitled to bring the application for the reasons outlined by Justice O'Reilly in *Li v Canada (Citizenship and Immigration)*, 2015 FC 459, at paragraphs 24 – 25 [*Li*]: the change in the law causing people whose refugee status had ceased to lose their permanent residence status was not a retroactive application of the law; it was a change in the consequences flowing from a cessation finding.

[26] The RPD added, based on *Canada (Public Safety and Emergency Preparedness) v Bashir*, 2015 FC 51 at paragraphs 44 – 47, which considered the UNHCR Handbook provisions, that those statutory provisions should be interpreted restrictively.

IV. **Issues**

[27] The only issue is whether the Decision is reasonable.

V. **Standard of Review**

[28] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[29] A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker. It does not attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem: *Vavilov* at para 83.

[30] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court 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.

[31] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion”. To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Vavilov* at para 128.

VI. **Analysis**

[32] After the hearing of this application, the Federal Court of Appeal released its decision in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo FCA*]. The decision addresses how, when considering a cessation case, the RPD should assess the evidence it receives.

[33] The Minister submitted to the RPD, and argues in this application, that the Respondent voluntarily re-availed himself of the protection of Jordan by returning to it in 2011 and again in 2012, for a total of six months.

[34] The Minister urges the Court to find the Respondent acted voluntarily both in returning to Jordan and by obtaining a new passport in Jordan and then travelling there with it.

[35] The Minister states the Decision is unreasonable because the RPD conflated the test for cessation by wrongly considering the Respondent's subjective belief about the unimpeachability of his permanent resident status and, on that basis, rejecting the cessation application.

[36] The Minister appears to be making an argument similar to one rejected by Madam Justice Fuhrer at first instance in *Camayo v Canada (Citizenship and Immigration)*, 2020 FC 213 [*Camayo FC*] which was that the Respondent's use of a Jordanian passport in itself satisfied all the elements of cessation.

[37] As noted by the Respondent, Justice Fuhrer made the following important observation in *Camayo FC* at para 48:

> [48] Interpreting her use of her passport in itself as satisfying all three essential and conjunctive elements of reavailment (voluntary, intentional, and actual reavailment) leaves no room for Ms. Galindo Camayo to demonstrate that despite her acquiring and using her passport, she did not intend to avail herself of state protection. This approach was rejected in *Bashir*, above at paras 67-69, and as noted in para 67: "an additional, irrebutable presumption of intention of reavailment as soon as a refugee intends to travel abroad with a national passport, without any regard to the specific circumstances of each case… is not provided for in the UNHCR Handbook."

[38] *Camayo FCA* instructs that to make a reasonable decision, the RPD is required to take account of the Respondent's actual knowledge and intent before concluding that they intended to re-avail to obtain the protection of their country of origin. The Court of Appeal confirmed,

relying on *Camayo FC* and *Cerna v Canada (Minister of Citizenship and Immigration), 2015 FC 1074* [*Cerna*], that without such an analysis, a conclusion by the RPD on re-availment would not be defensible and would be unreasonable.

[39] The RPD found that the evidence before it suggested that the Respondent travelled to Jordan only on the strength of his belief that he enjoyed the security of having permanent residence status in Canada. He had no idea that travelling on his country of origin passport could fatally threaten his status.

[40] The RPD further found that nothing in the Respondent's actions indicated that he expected state protection against the agents of persecution as he took the precautions which were outlined previously in these reasons.

[41] The RPD observed that the same evidence was relevant to the Respondent's subjective intention and it could be used to argue that his efforts to hide from the agent of persecution went to the question of intention to re-avail.

[42] There is nothing unreasonable about the RPD considering, among other factors, the Respondent's understanding gained from his own proactive inquiries given that one of the prongs of the established cessation test is the person's subjective intention to re-avail: *Camayo FC* at para 43; *Mayell v Canada (Minister of Citizenship and Immigration),* 2018 FC 139.

[43] In this matter, the RPD considered both the subjective and the actual knowledge of the Respondent in determining that he did not re-avail.

[44] In summarizing the Decision the RPD noted that the Respondent did not intend to re-avail, his subjective belief about the unimpeachability of his permanent residence status was correct in law at the time and he endeavoured to keep a low profile while in Jordan which indicated both that the was not seeking or relying o country of origin protection, and his continued fear of his persecutors.

[45] Applying *Camayo FCA* and taking into account *Vavilov's* teaching that as a reviewing court I am not to interfere with the factual findings made by the RPD, I am satisfied on review that the Decision is reasonable.

[46] I am also satisfied the reasons meet the requirements set out in *Vavilov*. They are justified, transparent and intelligible. The RPD responded to the arguments it received and grappled with the evidence. I can discern no fatal flaw in the logic or reasoning.

VII. **Conclusion**

[47] This application is dismissed, for all the foregoing reasons.

[48] There is no serious question of general importance for certification.

JUDGMENT in IMM-955-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-955-20
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v ISMAIL JAMAL ABU OBAID
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 20, 2021
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	AUGUST 29, 2022

APPEARANCES:

James Todd	FOR THE APPLICANT
Leigh Salsberg	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE APPLICANT
Leigh Salsberg Barrister and Solicitor Toronto, Ontario	FOR THE RESPONDENT