Federal Court  Cour fédérale

Date: 20230509

Docket: IMM-3123-22

Citation: 2023 FC 654

Ottawa, Ontario, May 9, 2023

PRESENT: Madam Justice St-Louis

BETWEEN:

TANSEL KARASU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Tansel Karasu seeks judicial review of the March 24, 2022 decision of the Refugee Protection Division [RPD] that allowed the Minister of Public Safety and Emergency Preparedness Canada [Minister]'s application for cessation of Mr. Karasu's refugee protection pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [Immigration Act].

[2] For the reasons outlined below, Mr. Karasu's application for judicial review will be dismissed. In brief, Mr. Karasu has not convinced me that the RPD decision is unreasonable.

II. Context

[3] In 2009, Mr. Karasu, a Turkish citizen, arrived in Canada and claimed refugee protection. In support of his claim, Mr. Karasu alleged that he feared persecution in Turkey from state authorities on the basis of his Kurdish ethnicity, his political opinions and his conscientious objection to military service. He reported having been repeatedly tortured and threatened by police and state security in March 2007, April 2008, March 2009, and July 2009, and having been accused of being a member of a separatist organization. He alleged there was "no alternative to military service," and that he had no wish to participate in "militarism." He claimed that if he returned to Turkey, he would be perceived as a Kurdish separatist and political activist, he would be targeted for "detentions, beatings, torture and threats," and he would be forcibly made to perform compulsory military service which could result in his death.

[4] On June 30, 2011, Mr. Karasu was found to be a Convention refugee and on July 27, 2015, he was granted Canadian Permanent Resident status.

[5] On November 13, 2018, the Minister applied to the RPD for the cessation of the grant of refugee protection to Mr. Karasu, pursuant to section 108 of the Immigration Act and rule 64 of the *Refugee Protection Division Rules*, SOR/2012-256 [Rules]. In his application to cease Mr. Karasu's refugee protection, the Minister alleged that Mr. Karasu had voluntarily repeatedly returned to his country of nationality, Turkey, likely using a Turkish passport issued to him, after

he was found to be a Convention refugee seeking protection against that country. The Minister thus alleged that Mr. Karasu should accordingly be found to have voluntarily reavailed himself of the protection of his country of nationality pursuant to paragraph 108(1)(a) of the Immigration Act.

[6] The Minister essentially raised the following as support for his application to cease Mr. Karasu's refugee protection:

- Mr. Karasu obtained the return of his seized Turkish passport, Turkish family registry document and Turkish photo ID card from Immigration Refugees and Citizenship Canada (IRCC) Etobicoke on August 21, 2015.
- Mr. Karasu subsequently returned to Turkey where he met his now-wife, became engaged to and where, on April 15, 2016 he married his now wife at the municipality marriage office.
- On May 19, 2016, Mr. Karasu initiated an application for spousal sponsorship.
- The Minister's records of the Integrated Customs Enforcement System indicate Mr. Karasu entered Canada in December 2015, February 2016, May 2016, June 2017, September 2017, November 2017, and October 2018. Several of these re-entries to Canada appear to directly correspond with Mr. Karasu's known trips to Turkey.
- Given that he obtained the return of his documents from IRCC Etobicoke in August 2015, just months before he traveled to Turkey in November 2015, the Minister considers it likely that Mr. Karasu used a Turkish passport to do so - either no. 066316, renewed within Canada, or a new passport obtained with the return of that passport to the Turkish Consulate.
- There was no indication that Mr. Karasu feared any agents of the Turkish state during these trips, nor that he took any efforts to avoid them or to travel

surreptitiously. He was married at a municipal office, clearly recording vital personal information with the state. When visiting his wife in late 2017, they appear to have openly traveled to tourist destinations, and her feelings at the time do not seem to reflect any measure of concern for her husband's safety. Similarly, Mr. Karasu himself had previously publicly recorded his travel plans on Facebook for all to see.

- Mr. Karasu recorded on Facebook that he visited the Turkish Consulate in Toronto in 2016, apparently to resolve the matter of his failure to perform military service. It is unclear how this was resolved, but Mr. Karasu's comment that "Money talks" suggests that he may have paid a fine or administrative fee in order to be excused. Again, given the open nature of these comments, it is unlikely that he was concerned his actions might prompt him to be targeted by agents of the Turkish government in the future.

[7] Before the RPD, Mr. Karasu argued that the facts of the matter landed themselves to a finding under paragraph 108(1)(e) of the Immigration Act rather than under its paragraph 108(1)(a), because the reasons for which Mr. Karasu had sought refugee protection had ceased to exist. Mr. Karasu stressed that this alternate finding under paragraph 108(1)(e) has the benefit of not putting his Canadian Permanent Resident status at risk by operation of paragraph 46(1)(c.1) of the Immigration Act. He added that the RPD has discretion to make a finding under any paragraphs of subsection 108(1) and that where the RPD choses to make a finding under paragraph 108(1)(a) it must give reasons to do so, citing *Ravandi v Canada (Citizenship and Immigration)*, 2020 FC 76.

[8] The Minister responded that in this case, there was insufficient evidence to support a finding under paragraph 108(1)(e) (*Lu v Canada (Citizenship and Immigration)*, 2019 FC 1060). In particular, the Minister submitted that Mr. Karasu has failed to adduce adequate

documentation about country conditions in Turkey to satisfy the panel that there had been substantial changes that are both effective and durable (*Winifred v Canada (Citizenship and Immigration)*, 2011 FC 827 [*Winifred*]).

[9] The RPD considered Mr. Karasu's request to have the cessation applied under paragraph (e) rather than under paragraph (a) of subsection 108(1), hence whether there has been a change in circumstances such that paragraph 108(1)(e) of the Immigration Act is engaged. The RPD noted it was not a trivial matter because of the consequences and it proceeded to examine the three reasons Mr. Karasu had raised in support of his claim for refugee protection, hence: (1) he feared mandatory military service; (2) he was perceived to be a member of the Democratic Society Party [DTP], a separatist and terrorist supporter of the outlawed Kurdistan Workers' Party [PKK]; and (3) his Kurdish identity.

[10] The RPD noted that the wording of paragraph 108(1)(e) being plural ("reasons" for which the person sought refugee protection) means it had to look at the reasons conjunctively, and that only if all the reasons for which a person sought refugee protection had now ceased to exist could a paragraph 108(1)(e) claim can be sustained. The RPD confirmed it was sensitive to the fact that the loss of Convention refugee status under paragraph 108(1)(e) does not carry a loss of Permanent Resident status, that it has discretion to choose among the subsections (a) through (e) of subsection 108(1) when assessing an application to cease refugee protection, and that reasons must be given to outline why the alterative was chosen. However, ultimately, the RPD considered that of all the alleged changes in circumstances, none could be said to be substantial, effective or durable. A finding under paragraph 108(1)(e) could thus not be entertained.

[11] The RPD therefore assessed the Minister's application under paragraph 108(1)(a) of the Immigration Act and structured its analysis on the three requirements outlined in paragraphs 118 to 125 of the United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR, 2019, UN Doc HCR/1P/4/ENG/REV (Geneva, 2019) [UNHCR Handbook] for its definition of "voluntariness, intention and reavailment," affirmed by the Federal Court in *Nsende v Canada (Citizenship and Immigration)*, 2008 FC 531 [*Nsende*]. The RPD analyzed the three elements of reavailment – namely, whether Mr. Karasu: (1) acted voluntarily; (2) intended to reavail himself of Turkey's diplomatic protection; and (3) actually reavailed himself of Turkey's diplomatic protection.

[12] With respect to the first element, the RPD noted that Mr. Karasu admitted he had renewed his passport in September 2015 with the Turkish Consulate in Toronto, admittedly so he could secure a postponement of his military services and to visit Turkey, in particular his father who was ill. This part of the decision is not at play in these proceedings, hence suffice to say that the RPD determined that the evidence established that Mr. Karasu had acted voluntarily as he was not compelled by any exceptional circumstances and that his decision to return on all seven occasions to Turkey was entirely voluntary.

[13] With respect to the second element, the RPD first noted the presumption created by Mr. Karasu's renewal of his Turkish passport, which is made even stronger when a refugee uses his passport to travel back to his country of nationality, citing paragraph 121 of the UNHCR Handbook, as well as *Norouzi v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 368

at paragraph 21, *Canada (Citizenship and Immigration) v Nilam*, 2015 FC 1154 at paragraph 25 [*Nilam*], and *Canada (Minister of Citizenship and Immigration) v Galindo Camayo*, 2020 FC 213 at paragraph 25 [*Camayo FC*].

[14] It is useful to pause here and note that it was only on March 29, 2022, hence after the RPD rendered its decision that is the subject of this proceeding, that the Federal Court of Appeal issued its decision in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo FCA*], dismissing the Minister's appeal of *Camayo FC*.

[15] The RPD noted particularly that the presumption of reavailment may be rebutted with evidence to the contrary, and that it will only be in "exceptional circumstances" that travel by a refugee to his or her country of nationality on a passport issued by that country will not constitute termination of his or her refugee status (*Nilam* at para 26).

[16] The RPD noted Mr. Karasu's submissions and then analyzed whether he had rebutted the presumption of reavailment. Particularly, the RPD noted that Mr. Karasu asserted that: (1) he did not have the requisite intention to reavail and did not understand the consequences of his actions and that this is a very important consideration, citing *Camayo FC* at paragraph 52; and (2) he and his brother took precautions on their return to Turkey.

[17] The RPD found that the evidence did not support a conclusion that Mr. Karasu took precautions that were in any way serious and that there was little evidence that he took effective measures to avoid contact with the police or security forces while in Turkey. Citing *Camayo FC*,

the RPD agreed that whether Mr. Karasu was aware of the consequences of his actions was a relevant factor to consider, but also stated that it was not the only one to be considered and that it also considered that Mr. Karasu returned to Turkey voluntarily and repeatedly. The RPD also noted that notwithstanding the illness of his father, Mr. Karasu appeared to have been singularly motivated by his desire to find a wife and to marry and start a family.

[18] The RPD noted that Mr. Karasu's repeated trips to Turkey combined with his renewal of his Turkish passport which was predicated in part on his desire to travel to Turkey demonstrated a clear intent to reavail himself of Turkey's protection. The RPD found that Mr. Karasu failed to rebut the presumption of reavailment.

[19] Finally, with respect to the third element, the RPD found that Mr. Karasu actually obtained the diplomatic protection of Turkey as he used his passport to travel to Turkey, entered freely into Turkey, travelled from Istanbul to his home community and then to his wife's community where he also got married, all voluntarily and with intent. The RPD noted significantly that Mr. Karasu engaged the Turkish state when he applied for a postponement of, and subsequent exemption from, his military service which were granted by the Turkish consulate.

[20] Ultimately, and relevant to these proceeding, the RPD found Mr. Karasu failed to rebut the presumption of reavailment and rejected Mr. Karasu's claim for refugee protection pursuant to subsection 108(3) of the Immigration Act.

III. Issues

[21] Before the Court, the parties agree that the RPD decision must be reviewed against the reasonableness standard. Mr. Karasu submits that: (1) the RPD's paragraph 108(1)(a) reavailment finding is unreasonable as the RPD unreasonably assessed Mr. Karasu's awareness of immigration consequences and his subjective intent; and (2) the RPD's paragraph 108(1)(e) analysis is unreasonable.

[22] These are thus the issues before the Court.

A. *Standard of review*

[23] It is not contentious that the RPD decision must be reviewed against the reasonableness standard per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[24] Recently, in *Camayo FCA,* the Federal Court of Appeal outlined what makes a decision reasonable at paragraphs 46 to 52. The Federal Court of Appeal noted particularly that the impact of the RPD's decision on the individual (loss of refugee status, loss of Permanent Resident status, the fact that the decision cannot be appealed, and the fact that the individual is barred from seeking a Pre-removal Risk Assessment) increased the duty on the RPD to explain its decision (*Camayo FCA*). At paragraph 57 of its decision, the Federal Court of Appeal stated that:

> In the end result, in cases where the administrative decision maker has to consider the proper meaning of a statutory provision, the reviewing court must be satisfied that the administrative decision maker is "alive [either implicitly or explicitly] to [the] essential

> elements" of text, context and purpose and has touched on at least "the most salient aspects of the text, context [and] purpose": *Vavilov* SCC, above at paras. 120-122; *Mason*, above at para. 42.

[25] The Federal Court of Appeal considered, in that case, that the RPD's decision was not reasonable as "[t]he RPD simply stated its own view of what section 108 requires, without any real analysis. In broad terms, it set out the text of section 108, fastened onto the Refugee Handbook, and then asserted its own views of what section 108 requires, without considering the text, context and purpose of section 108. It also failed to analyze and consider the Federal Court's jurisprudence in order to see whether its decision was legally constrained in any way. It then stated its conclusion on various issues, but did not provide a sufficient pathway of reasoning to explain how it got there" (*Camayo FCA* at para 58).

[26] More generally, I am guided by the Supreme Court of Canada's words in *Vavilov* and in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

B. *Paragraph 108(1)(a) reavailment finding*

(1) Parties' position

[27] Mr. Karasu submits the RPD's assessment of whether he possessed the requisite intention to reavail is inconsistent with the Court of Appeal's finding in *Camayo FCA*.

[28] He adds, particularly, that the RPD's paragraph 108(1)(a) reavailment finding is unreasonable as the RPD unreasonably assessed both his lack of awareness of the immigration consequences and his subjective intent.

[29] In regards to his lack of awareness of the immigration consequences of a paragraph 108(1)(a) reavailment finding, Mr. Karasu submits that the RPD's consideration of evidence is unreasonable. Mr. Karasu recognizes that the RPD acknowledged that the question of his knowledge of the immigration consequences of a reavailment finding was relevant to the assessment of intent – the second element of the three-part test – and cites paragraph 67 of the RPD decision. However, he faults the RPD for failing to engage with this consideration, to indicate the weight that should be attached to it, or to explain how it balanced it against other factors. Mr. Karasu notes that the RPD acknowledged that he was "lacking the specific intention to re-avail," but went on to find that this was outweighed by the evidence that his returns were repeated and voluntary which, per Mr. Karasu's arguments is a reasoning irreconcilable with the teachings in *Camayo FCA*.

[30] Mr. Karasu thus argues that the RPD's analysis is especially problematic for two reasons. First, it displays a lack of justification – particularly considering the severity of the consequences for Mr. Karasu in play. Second, it conflates the concept of intention (second element of the three-part test), with that of voluntariness (first element of the three-part test) by treating his repeated voluntary trips as evidence that overcomes the evidence establishing that he did not know of the collateral legal consequences of reavailment, and by impermissibly giving weight to his motive for travel, which, he asserts, the Federal Court of Appeal held in *Camayo FCA* at paragraph 72, is irrelevant to the assessment of the refugee's intent.

[31] Mr. Karasu stresses that, before the RPD, he testified that he was unaware that travelling to Turkey could risk his Permanent Resident status, and it was only after he became a refugee in 2011 that the 2012 *Protecting Canada's Immigration System Act* was put in force, whereas a section 108 cessation finding (other than paragraph 180(1)(e)) is deemed to make the refugee inadmissible and results in an automatic loss of Permanent Resident status. Mr. Karasu submits that he was unaware of the legislation change, that no other Turkish refugee had mentioned this possibility, and that he was never advised of the consequences by Canadian immigration authorities who interviewed him at the airport in Canada following his returns from Turkey.

[32] Hence, Mr. Karasu takes issue with the RPD's unreasonable treatment of the evidence relating to his awareness of collateral consequences and submits it justifies the intervention of the Court. Mr. Karasu stresses that it does not follow from the observation that such a "key factual consideration" is not necessarily "determinative," that an adjudicator is free to simply dismiss the consideration as not determinative, without giving a justification for doing so.

[33] In regards to the assessment of subjective intent, Mr. Karasu submits that the RPD erroneously assessed the seriousness of his precautions on an objective standard by discounting the evidence of precautions he took, while it did not doubt his sincerity in his belief in his cousin's help. Mr. Karasu also submits the RPD unreasonably discounted his evidence regarding the confidence he gained from the military postponement and exemption, and the confidence he gained from the knowledge of the demise of the DTP, when considering his intention. Instead, Mr. Karasu submits a subjective standard would be if he believed interventions were effectual, which depends on the individual's state of mind, as observed in *Camayo FCA*.

[34] The respondent submits the RPD reasonably assessed how Mr. Karasu reavailed himself voluntarily per paragraph 108(1)(a) in light of the standard of review and the teachings of the Federal Court of Appeal in *Camayo FCA*, and stresses that the RPD provided a rational, thorough and lengthy explanation and consideration of evidence, weighing it alongside relevant factors.

[35] More specifically, the respondent submits, *inter alia*, that the RPD did consider: (1) Mr. Karasu's application for a passport and his repeated use of that passport to travel to Turkey; (2) Mr. Karasu's claim to fear the state authorities; (3) Mr. Karasu's military postponement and exemptions, and lack of any problems in that respect; (4) as one of the factors, that Mr. Karasu did not provide evidence that his return to Turkey was necessitated by exceptional circumstances as reasserted by *Camayo FCA*; (5) Mr. Karasu's claim that he took precautions when entering to and while in Turkey, as well as the lack of probative or persuasive evidence that Mr. Karasu took effective precaution measures to avoid state authorities, i.e., the agents of persecution; and (6)

Mr. Karasu's claim that he was unaware of the consequences of reavailing himself of the protection of Turkey and it also explained why Mr. Karasu's claim of a lack of knowledge was not determinative in itself in view of the other factors at play.

(2) Discussion

[36] As the respondent outlines, refugee protection is conceived of as a temporary measure. The intent is to provide surrogate protection for refugees until they can either reclaim the protection of their home state or secure an alternative form of enduring protection.

[37] Article 1C of the 1951 *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 sets out criteria for determining whether refugee protection, although it may have once been warranted, is no longer appropriate as the result of a person's own conduct indicates they no longer have a subjective fear (for example, when a person reavails to the protection of their home state, implemented by way of paragraph 108(1)(a) of the Immigration Act), or that the reasons for which they had been recognized as a refugee no longer exist (implemented by way of paragraph 108(1)(e) of the Immigration Act).

[38] Subsection 108(1) of the Immigration Act states that:

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:	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) the person has voluntarily reavailed	a) il se réclame de nouveau et volontairement de la

themself of the protection of their country of nationality;	protection du pays dont il a la nationalité;
(b) the person has voluntarily reacquired their nationality;	b) il recouvre volontairement sa nationalité;
(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
(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	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;
(e) the reasons for which the person sought refugee protection have ceased to exist.	e) les raisons qui lui ont fait demander l'asile n'existent plus.

[39] Paragraph 108(1)(a) is the one in play in this first discussion.

[40] The parties do not contest that the Minister bears the burden to prove reavailment on the balance of probabilities, and that there are three requirements for reavailment: (a) voluntariness: the refugee must act voluntarily; (b) intention: the refugee must intend by his action to reavail himself of the protection of the country of his nationality; and (c) reavailment: the refugee must actually obtain such protection (*Nsende*). These are the three elements of the test.

[41] Mr. Karasu does not contest that he acted voluntarily in obtaining his passport, in applying for military exemption and in returning to Turkey, and he makes no argument on actual reavailment. His challenge focuses on the second element of the test – intent.

[42] In regards to intent, the fact that a refugee applies for and obtains a passport from his or her country of nationality, creates a presumption that the individual intends to reavail themself of the diplomatic protection of that country. This presumption is particularly strong where the individual actually uses the passport to travel to his or her country of nationality (*Camayo FCA* at para 63; *Nilam* at para 25).

[43] As the Federal Court of Appeal observed in *Camayo FCA* at paragraph 64:

> As the Federal court observed in *Ortiz Garcia v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 1346, "[r]eavailment 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": at para. 8. [Emphasis added]

[44] In *Camayo FCA* (at paragraph 65), the Federal Court of Appeal stated that constraining case law from the Federal Court suggests that the presumption is a rebuttable one and that the onus is on the refugee to adduce sufficient evidence to rebut the presumption of reavailment. The Federal Court of Appeal specifically cited paragraph 26 of *Nilam* and paragraph 42 of *Li v Canada (Minister of Citizenship and Immigration)*, 2015 FC 459 [*Li*].

[45] Paragraph 42 of the *Li* decision outlines that:

> The Minister has the burden of proving re-availment on the balance of probabilities. In doing so, the Minister is entitled to rely on the presumption of re-availment by proving that the refugee obtained or renewed a passport from his or her country of origin. Once that has been proved, the refugee has the burden of showing that that he or she did not actually seek re-availment. As stated in the UNHCR Handbook, where there is proof that a refugee has obtained or renewed a passport "[i]t will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality" (para 121).

[46] There is thus no indication that the Federal Court of Appeal changed the overarching principles guiding the analysis that must be conducted under paragraph 108(1)(a) of the Immigration Act.

[47] Important to this proceeding, at paragraph 84 of *Camayo FCA*, the Federal Court of Appeal stated that, in dealing with cessation cases, the RPD should have regard to certain factors, at a minimum, which may assist in rebutting the presumption of reavailment, and listed the factors. It added 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 reavailment.

[48] Among the factors it listed among the factors which may assist in rebutting the presumption of one's intent to reavail, the Federal Court of Appeal specifically included some related to the individual's travels:

> […]
>
> Whether the individual actually used the passport for travel purposes. If so, was there travel to the individual's country of nationality or to third countries? Travel to the individual's country of nationality may, in some cases, be found to have a different significance than travel to a third country;
>
> What was the purpose of the travel? The RPD may consider travel to the country of nationality for a compelling reason such as the serious illness of a family member to have a different significance than travel to that same country for a more frivolous reason such as a vacation or a visit with friends;
>
> What the individual did while in the country in question;
>
> […]

[49] It is with this framework in mind that I must examine the RDP decision and the arguments raised by the applicant.

[50] First, the RPD could have done a more thorough job of explaining the weight given to the lack of knowledge of Mr. Karasu about the immigration consequences. This being said, I am satisfied any shortcomings is not fatal in this case as the RPD did note the submissions and addressed them, and as weight and sufficiency of evidence is a matter for the RPD not for the Court. Furthermore, the Federal Court of Appeal noted that an applicant's lack of knowledge of the immigration consequences of their action is not determinative, but a key factual consideration the RPD must either weigh in a mix of all other evidence and factors or properly explain why the statute excludes its consideration (*Camayo FCA* at para 70). The RPD here considered that Mr. Karasu's claim of a lack of knowledge was not determinative unto itself in light of the other factors in the mix.

[51] Namely, in this case, the RPD considered *inter alia* that: (1) Mr. Karasu could not establish haven taken any precautionary measures while he was in Turkey; (2) Mr. Karasu testified that he had obtained postponements and exemptions from military service, that he did not have any problems in that respect, and that he was no longer fearful of persecution based on his past association with the DTP; (3) what Mr. Karasu did while he was in Turkey, i.e., he was very active; (4) Mr. Karasu returned to Turkey on seven occasions; (5) Mr. Karasu voluntarily obtained a passport from his country of origin with the purpose to travel to Turkey – his country of nationality; and (6) Mr. Karasu's travel to Turkey was mostly motivated by his desire to find a wife and then to marry her and start a family.

[52] Mr. Karasu is now in fact asking this Court to reweigh the mix by placing a priority on his claimed lack of knowledge over how the RPD weighed the "mix" as a whole.

[53] As the Federal Court of Appeal in *Camayo FCA* stated at paragraph 82:

> As noted earlier, the RPD's reasons on the redetermination need not involve a microscopic examination of everything that could possibly be said on the matter. There need only be a reasoned explanation concerning the relevant evidence and key issues, including the key arguments made by the parties: *Sexsmith v. Canada (Attorney General)*, 2021 FCA 111 at para. 36.

[54] That is what the RPD has done in this case.

[55] Second, the Federal Court of Appeal stated that the measures one takes to protect oneself are to be assessed on the evidence. It is open for the RPD to assess the probative or persuasive value of the evidence, and this is a factor in considering whether the applicant met this onus in rebutting the presumption of reavailment with sufficient evidence (*Camayo FCA* at paras 65, 73, 74, 78, 83 and 84). In this case, Mr. Karasu was unable to explain how his cousin had arranged for the help at the border while his action demonstrated that he took no particular precautions within the country and did not remain in his hometown; it was reasonable for the RPD to give little weight to this consideration. While claims of taking precautions are relevant, the weight and consideration of the sufficiency of evidence to support such claims remain a matter for the RPD.

[56] Third, I am not convinced that the RPD improperly conflated the concepts of voluntariness and intention by treating Mr. Karasu's repeated voluntary trips to assess his intent, nor that it impermissibly gave weight to his motive for travel.

[57] Mr. Karasu relies on paragraph 72 of *Camayo FCA* to assert that the RPD improperly conflated the concepts of voluntariness (in the first element of the test) and intention (in the second element of the test). Paragraph 72 states:

> The RPD also conflated the question of voluntariness with that of intention to reavail and this led, in part, to an unreasonable decision. Much of RPD's analysis of the intention issue is taken up with an examination of the reasons cited by Ms. Galindo Camayo for returning to Colombia. I agree with Ms. Galindo Camayo that the question of whether one intended to reavail oneself of the protection of one's country of origin has nothing to do with whether the motive for travel was necessary or justified: Federal Court decision at para. 31.

[58] It is true that paragraph 72 of the Federal Court of Appeal's reasons in *Camayo FCA* seems to direct the decision maker to exclude the motive for one's travel from the assessment of the intent element of the test. However, as stated earlier, at paragraph 84 of the decision in *Camayo FCA*, cited above, the Federal Court of Appeal specifically includes, among the factors which may assist in rebutting the presumption of intention of reavailment, whether the individual used the passport to travel to his country of nationality, what was the purpose of the travel and what the individual did while in the country. The Federal Court of Appeal adds that the RPD may consider travel to the country of nationality for a compelling reason, such as the serious illness of a family member, to have a different significance than travel to that same country for a more frivolous reason such as a vacation or a visit with friends.

[59] Counsel could not help me reconcile those two paragraphs of the decision at the hearing. However, in light of the teachings of the Federal Court of Appeal at paragraph 84 of *Camayo FCA*, and without further clarification, I cannot conclude that the RPD erroneously or unreasonably considered the motive or the reasons for Mr. Karasu's travels to Turkey in its

assessment of his intention to reavail, or that it improperly conflated the concepts of voluntariness and intention by considering the motive or the reasons for Mr. Karasu's travels to Turkey.

[60] The applicant has not shown the RPD's reavailment findings to be unreasonable.

C. *The applicant has not shown the RPD's paragraph 108(1)(e) finding to be unreasonable*

(1) Parties position

[61] Mr. Karasu submits the RPD analysis in regards to paragraph 108(1)(e) is unreasonable.

[62] Mr. Karasu contends it was unreasonable for the RPD to find that his fears flowing from compulsory military service, a reason which he sought protection, had not been effectively neutralized by the military postponement as it depended on his Canadian status. Mr. Karasu adds that it was irrational for the RPD to posit that his status in Canada was not a durable change because the RPD speculates that he might lose his Permanent Resident status and be deported and thus forced into military service. Rather, Mr. Karasu's argument is that obtaining Permanent Resident status in Canada is a durable and enduring change of circumstances in his case.

[63] Mr. Karasu also finds the RPD's analysis that the DTP was succeeded by the Peace and Democracy Party [BDP], and would thus continue to be formally associated with the later group, did not amount to "ceasing to exist of one of the reasons that he sought protection" as *de facto* BDP associates unreasonable. Mr. Karasu submits that in the National Documentation Package

[NDP] for Turkey evidence, the BDP is no longer extant and has merged with the Peoples' Democratic Party [HDP], rendering his association with the DTP more remote, and that in the NDP it states "in general, simply being a member of or supporter of the HDP is not likely to result in a person facing persecution." He adds that it is not up to the RPD to identify hypothetical reasons he might still want to seek refugee protection, then fault him for failing to establish those reasons remain extant. Mr. Karasu submits it is inconsistent with the text of the provision, "the reasons for which the person sought protection," tied to the individual's original claim.

[64] Finally, Mr. Karasu submits that paragraphs 40 to 42 of the RPD decision is untenable, as he submitted his Kurdish identity factor was changed since he was no longer a young Kurd from the southeast of Turkey, as *Vilvarajah v Canada (Citizenship and Immigration)*, 2018 FC 349 (at paragraph 11) [*Vilvarajah*] establishes that it is an error to assess a refugee's profile by excising individual elements. He thus submits that the RPD erred by only focusing on the Kurdish element of his identity, and not that he was young and from the southeast parts of his original claim. Mr. Karasu points out that the information contained in NDP Item 13.6 notes the situations of Kurds in Turkey is highly variable and region-specific.

[65] The respondent responds that the RPD reasonably rejected that Mr. Karasu's refugee protection should be ceased under paragraph 108(1)(e).

(2) Discussion

[66] The jurisprudence of this Court has expressly indicated that it is open to the RPD to make a finding under any of the subsections of section 108 and even if cessation could be based on one particular subsection, the RPD should proceed to consider any other subsection that may be justified by the facts before it (*Canada (Citizenship and Immigration) v Al-Obeidi*, 2015 FC 1041; *Tung v Canada (Citizenship and Immigration)*, 2018 FC 1224).

[67] While there is no specific test for a change in circumstances contemplated in paragraph 108(1)(e) (*Yusuf v Canada (Minister of Employment and Immigration)* (1995), 179 NR 11 (FCA)), the jurisprudence has established that a change of circumstances is relevant for determining whether, after an absence from the country of nationality, there has been a "substantial," "effective" and "durable" change in country conditions or in the personal circumstances of the applicant, and if there has been, if the change in circumstances support a continuation of a risk on return today, see *Winifred* at paragraph 32 and *Mahdi v Canada (Citizenship and Immigration)*, 2022 FC 1576 at paragraph 16:

> The tripartite test for changed country conditions requires that (*Geda v Canada (Citizenship and Immigration)*, 2022 FC 952 at para 33, citing *Winifred v Canada (Citizenship and Immigration)*, 2011 FC 827 at paras 31-32):
>
> (a) the change must be of substantial political significance;
>
> (b) there must be reason to believe that the substantial political change is truly effective; and,
>
> (c) the change of circumstances must be shown to be durable.

[68] The RPD noted the postponement of Mr. Karasu military service was temporary and conditional, there was no evidence he was exempt prior to November 21, 2021, at which time he had already reavailed himself multiple times to Turkey, and that his political opinion was not dependent on the existence of a particular party (DTP) which had already been banned by the time he was granted refugee protection. It seems there was no substantive effective durable change in Mr. Karasu's own testimony during the cessation hearing as Kurds were still subject to persecution in Turkey, he was still fearful as a Kurd, and alleged he took precautions because he is a Kurd.

[69] In regards to the military service, the RPD did not err in noting that the postponement of Mr. Karasu's military service was not permanent at the time of some of his trips to Turkey. The RPD did not engage in speculation about the removal of Permanent Resident status as per the wording of paragraph 108(1)(e), which must show the reasons for refugee protection ceased to exist.

[70] The RPD also gave satisfactory reasons that Mr. Karasu's association was with political ideologies rather than a party in particular, especially since the party ceased to exist before he received his refugee status. The focus on the succession of the BDP is a microscopic analysis of the decision, which via *Vavilov* must be read in its entirety, and not a "line-by-line treasure hunt for error" (at paras 100, 102).

[71] In regards to his ethnic Kurdish identity, while Mr. Karasu was correct that, via *Vilvarajah*, a risk cannot be assessed by picking and choosing certain aspects of identity, that

case concerned a pre-removal risk assessment where the Court found the applicant was not at risk. Additionally, the NDP evidence of Mr. Karasu's submissions was insufficient to show that being Kurd, as part of the reasons (plural) for seeking refugee protection under paragraph 108(1)(e) was not entirely persuasive. Kurdish identity is well established as a reason for refugee protection, and it appears Mr. Karasu relied on this heavily in his RPD hearing.

[72] The RPD provided detailed reasons explaining why a determination under section 108(1)(e) was neither established nor the appropriate ground for cessation in regard to the facts of this particular matter. Mr. Karasu has not established that the conclusions of the RPD on all three reasons that supported his initial refugee claim are unreasonable.

IV. Conclusion

[73] Mr. Karasu has not convinced me that the RPD decision is unreasonable. The RPD's reasons are clear, cogent and comprehensive. The RPD decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrained the decision maker. Therefore, intervention by this Court is unwarranted.

[74] The application for judicial review will therefore be dismissed.

JUDGMENT in IMM-3123-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified;

3. No costs are awarded.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	TORONTO, ONTARIO
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