

Federal Court



Cour fédérale

**Date: 20230803**

**Docket: IMM-8138-21**

**Citation: 2023 FC 1071**

**Ottawa, Ontario, August 3, 2023**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**GUO YING WU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION AND THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS**

**Respondents**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant is a citizen of the People's Republic of China who became a permanent resident of Canada. She was granted refugee protection based on asserted persecution for belonging to an underground church that her husband built. Efforts to sponsor her husband were unsuccessful for misrepresentation. They eventually divorced.

[2] The Applicant renewed her Chinese passport shortly after becoming a permanent resident. Between 2011 and 2017, she travelled on this passport outside Canada eight times. Her travels included four trips to China for about one month each trip, ostensibly twice to care for or visit with an ill father-in-law and mother, and twice to see her spouse.

[3] The Respondent successfully brought concurrent applications to cease and to vacate the Applicant's permanent resident status under subsection 108(2) and section 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. These provisions are reproduced in Annex "A" below. The cessation application was premised on the Applicant's reavilment to China, while the vacation application was based on misrepresentation.

[4] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada heard both matters on the same date. The RPD subsequently issued its decisions on the same date, October 15, 2021, and they were served on the parties under cover of one letter from the RPD.

[5] The issue before this Court is the reasonableness of both the RPD decisions [individually, Cessation Decision and Vacation Decision].

[6] There is no dispute that the presumptive reasonableness standard applies to the Court's review of the RPD decisions: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25. To avoid judicial intervention, the challenged decisions must bear the hallmarks of reasonableness – justification, transparency and intelligibility (para 99). A

decision may be unreasonable if the decision maker misapprehended the evidence before it (paras 125-126). The party challenging the decisions has the onus of demonstrating they are unreasonable (para 100).

[7] For the reasons below, I find that the Applicant has not met her onus. I thus dismiss this judicial review application.

## II. Additional Background

[8] There is a preliminary issue regarding the Applicant's single Application for Leave and Judicial Review [ALJR] which identifies the cessation application in text but provides the RPD's file number for the vacation application. The Respondent's Further Memorandum of Argument raised for the first time in this proceeding the issue of whether both decisions properly were before the Court. The parties addressed this issue at the outset of the hearing of this matter.

[9] After a short break to consider the parties' submissions, I ruled from the bench that the ALJR would be deemed to include both decisions for several reasons. First, the ALJR references both RPD decisions, albeit in different ways. Second, the Applicant's Record contains both decisions. Third, both parties' memoranda of argument at the leave stage and post-leave contain submissions regarding the Vacation Decision, in addition to the Cessation Decision. Fourth, in my view it was in the interests of justice, court resources, timeliness and cost-effectiveness that the matter proceed covering both RPD decisions.

[10] Accordingly, I also ruled that the style of cause would be amended immediately to add the Minister of Public Safety and Emergency Preparedness as a Respondent, given the latter's responsibility for the *IRPA* s 109.

[11] I add that the Order granting leave to commence this judicial review does not refer to either decision specifically but rather the date of the decisions. In my view, the confusion in this matter occurred at least in part because the RPD issued two sets of reasons under one cover page.

### III. Analysis

[12] A unique aspect of this matter is that if one of the RPD decisions stands, the other essentially becomes moot. A decision to vacate or to cease refugee protection leads to the same result, that is a loss of protected person status and permanent resident status.

[13] Logically, if a refugee claim is deemed to have been vacated as a result of misrepresentation, then the issue of reavilment, which is central to a cessation application, becomes moot because the refugee protection would have been nullified (pursuant to *IRPA* s 109(3)).

[14] For example, in *Ede v Canada (Citizenship and Immigration)*, 2021 FC 804 [*Ede*], the Minister of Public Safety and Emergency Preparedness sought both to cease and to vacate the refugee protection status of one the applicants, Mr. Kemal Ede. The RPD heard both applications together, but granted only the application to vacate. As this Court noted in *Ede* (para 4), the consequence of granting the vacation application was to render the cessation application moot.

[15] The Minister of Public Safety and Emergency Preparedness in the matter before me asked the RPD to deal with the vacation application first. This is not what the RPD did, however, nor is there any evidence in the record that the RPD considered the Respondent's request. The Cessation Decision is first in time and in the record, and while the Vacation Decision is second.

[16] While the parties focussed their submissions on the Cessation Decision, they also addressed the Vacation Decision.

[17] The Court's Judgment and Reasons therefore cover both decisions. I deal first with the Cessation Decision, followed by the Vacation Decision.

(1) Cessation Decision

[18] Contrary to the Applicant's submissions, I am not persuaded that the RPD misconstrued the evidence on record.

[19] The Cessation Decision turns on whether the Applicant reavailed herself of China, further to the *IRPA* s 108(1)(a).

[20] As noted in *Ede* above, the cessation process is commenced by the Minister of Public Safety and Emergency Preparedness applying to the RPD under the *IRPA* s 108(2). If the application is allowed, the protected person's claim is deemed to be rejected: *IRPA* s 108(3).

[21] There are three conjunctive elements to test for reavailment, as follows: (a) the refugee must have acted voluntarily; (b) the refugee must have intended to reavail themselves to the protection of the country of nationality; and (c) the refugee must have actually obtained that protection: *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Galindo Camayo*] at para 79.

[22] When a refugee returns to their country of origin using the passport of that country, it can be presumed that the refugee intended to reavail themselves of the protection of that country: *Galinda Camayo*, above at para 63; *Aydemir v Canada (Citizenship and Immigration)*, 2022 FC 987 at para 47. The Applicant can rebut this presumption with sufficient evidence of compelling, fact-specific reasons: *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 17; *Abechkhrishvili v Canada (Citizenship and Immigration)*, 2019 FC 313 at para 20.

[23] The existence of a reason to return to one's country of origin, however, does not alter necessarily the voluntariness of the act: *Cabrera Cadena v Canada (Public Safety and Emergency Preparedness)*, 2012 FC 67 at para 22. That said, the Federal Court of Appeal guides that, absent credibility concerns, the administrative decision maker must take an applicant's subjective intention into account in assessing and weighing all the evidence before them on a cessation application: *Galinda Camayo*, above at paras 66 and 68.

[24] I find that the RPD reasonably explained the rationale for its determination that the Applicant made a voluntary and personal decision to return to China. For example, the RPD

concluded, based on the evidence before it, that there were relatives in China who could carry out caregiving functions, and there were other caregiver services available.

[25] Regarding the Applicant's trips to see her spouse, I find the RPD erred by concluding they were not essential or necessary: *Galindo Camayo*, above at para 72. In my view, however, this is not a reviewable error in the circumstances in light of the RPD's determination, based on a holistic review of the evidence before it, that the Applicant's trips were intentional and planned, especially given their length.

[26] I also find that the RPD reasonably considered the Applicant's efforts to maintain a low profile while in China, by limiting public appearances, and concluded that the nature of her travels, her actions and the circumstances of the trips were indicative, on a balance of probabilities, of a lack of genuine fear of persecution by Chinese authorities. The Applicant has not persuaded me that the RPD reached this conclusion in an unreasonable manner or that there are reviewable errors in the Cessation Decision.

[27] In the end, I find that the Applicant's arguments amount to a request to re-weigh evidence, which is not the role of this Court on judicial review: *Vavilov*, above at para 125. I agree with the Respondent that the Applicant has failed to rebut the presumption that she re-availed herself to China's protection, not only by renewing and using her Chinese passport, but also by visiting China on several occasions. While I am sympathetic to the Applicant's view that she felt she had an obligation to be with her father-in-law and her mother in connection with

their medical issues, ultimately the Applicant has not demonstrated to the Court any reviewable errors in the RPD's analysis of her circumstances.

(2) Vacation Decision

[28] I also am not persuaded that the Vacation Decision was unreasonable.

[29] The RPD considered whether there was enough evidence before the original RPD panel that granted the Applicant's refugee status to justify refugee protection despite the misrepresentation (which was not challenged). The RPD found that the evidence purporting to support her Christian practice and faith (i.e. photos of the Applicant's baptism, her baptism certificate, and a support letter from a Reverend), was insufficient to justify the conferral of Convention refugee status. The RPD concluded that if the original RPD panel had known that the Applicant's husband was in Japan during the time he allegedly was building the underground church in China and was arrested, the Applicant would not have been granted refugee protection.

[30] In my view, the RPD's analysis is justified based on the record before it, intelligible, and transparent. The Applicant has failed to pinpoint any reviewable errors in the RPD's Vacation Decision that is rooted in the record, and her arguments on this point amount again to an impermissible request to reweigh evidence.

IV. Conclusion

[31] For the above reasons, I therefore dismiss the Applicant's judicial review application.



[32] No party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

**JUDGMENT in IMM-8138-21**

**THIS COURT'S JUDGMENT is that:**

1. The Applicant's Application for Leave and Judicial Review is deemed to include both the decisions of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada dated October 15, 2021 to cease (RPD File TB9-30132) and to vacate (RPD File TB9-30131) the Applicant's refugee protection status and permanent resident status.
2. The style of cause is amended to add the Minister of Public Safety and Emergency Preparedness as a Respondent.
3. The Applicant's judicial review application is dismissed.
4. There is no proposed question for certification.

"Janet M. Fuhrer"

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Judge

**Annex “A”: Relevant Provisions**

***Immigration and Refugee Protection Act (S.C. 2001, c. 27)***  
***Loi sur l’immigration et la protection des réfugiés (L.C. 2001, ch. 27)***

**Cessation of Refugee Protection****Perte de l’asile****Rejection****Rejet**

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 themselves of the protection of their country of nationality;

a) il se réclame de nouveau et volontairement de la 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.

108 (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).

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

**Effect of decision****Effet de la décision**

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

### **Exception**

108 (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.

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

### **Exception**

108 (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.

## **Applications to Vacate**

### **Vacation of refugee protection**

109 (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

### **Rejection of application**

109 (2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

## **Annulation par la Section de la protection des réfugiés**

### **Demande d'annulation**

109 (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

### **Rejet de la demande**

109 (2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.

**Allowance of application**

109 (3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

**Effet de la décision**

109 (3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8138-21

**STYLE OF CAUSE:** GUO YING WU v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 30, 2023

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** AUGUST 3, 2023

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