

Federal Court



Cour fédérale

Date: 20231006

Docket: IMM-10709-22

Citation: 2023 FC 1339

Ottawa, Ontario, October 06, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

DON KINGSLY DUMARA EDIRIMANNA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of a decision by the Refugee Protection Division [RPD] ceasing the Applicant's Convention refugee status pursuant to subsection 108(2) of the

Immigration and Refugee Protection Act, SC 2001, c 27 [*IRPA*]. The RPD determined that by returning to Sri Lanka, the Applicant demonstrated a voluntary intention to reavail himself of the diplomatic protection of that country and, as a result, his claim for refugee protection was deemed rejected.

[2] I am allowing the application because the RPD failed to meaningfully grapple with the Applicant's stated purpose for returning to Sri Lanka in assessing voluntariness under subsection 108(1)(a) of the *IRPA*. The RPD did not consider whether the Applicant's return to Sri Lanka to respect his dying uncle's wishes amounts to an exceptional circumstance that militates against voluntariness. Further, the RPD erred in finding that the Applicant's renewal of his Sri Lankan passport, before he sought refugee status, was a relevant consideration in assessing voluntariness.

II. **Background**

[3] The Applicant, a citizen of Sri Lanka, came to Canada in 2011 on a visa as a spouse of a Sri Lankan consular employee. In December 2014, he renewed his Sri Lankan passport at the Sri Lankan Consulate in Toronto, Canada.

[4] In May 2015, the Applicant made a refugee claim based on a fear of persecution by the Sri Lankan authorities. According to his narrative, the Applicant's wife returned to Sri Lanka in late 2014 to assist with the upcoming presidential elections and to actively support the Sri Lanka Freedom Party. During this time, the Applicant and his family received threats from his wife's ex-husband, who said he would destroy them if the United National Party [UNP] came to power. The UNP won the election in January 2015.

[5] Between January and April 2015, several events occurred in Sri Lanka that prompted the Applicant and his family to seek refugee protection. On two occasions, armed individuals sought the Applicant and his family at their house in Colombo. In addition, his wife's ex-husband again threatened bodily harm to the Applicant's family.

[6] Following these events, the Applicant's wife returned to Canada and the family made refugee claims in May 2015. On August 12, 2015, the Applicant and his family were found to be Convention refugees and he received permanent resident status on June 6, 2016.

[7] In January 2020, the Applicant travelled to Sri Lanka using his Sri Lankan passport. The purpose of his travel was to visit his ailing uncle.

[8] Upon the Applicant's return to Canada in February 2020, he was intercepted and interviewed by a Canada Border Services Agency officer. In September 2021, the Minister of Public Safety and Emergency Preparedness [Minister] brought an application pursuant to subsection 108(2) of the *IRPA* seeking cessation of the Applicant's refugee status on the ground that the Applicant reavailed himself of Sri Lanka's protection by obtaining a new Sri Lankan passport in 2014 and using it to travel to Sri Lanka.

[9] On October 14, 2022, the RPD granted the Minister's application, finding that the Applicant had failed to rebut the presumption of voluntary reavailment by returning to Sri Lanka.

III. Issues and Standard of Review

[10] As a preliminary issue, the Respondent seeks an order amending the style of cause to name the Minister of Citizenship and Immigration as the Respondent, rather than the Minister of Public Safety and Emergency Preparedness. The Respondent asserts that the Minister of Citizenship and Immigration is the proper respondent as the Minister responsible for the administration of the *IRPA*, except in certain enumerated circumstances, none of which apply in this case: *IRPA*, ss 4(1), (2). The Applicant is in agreement with this amendment. I am satisfied that the Minister of Citizenship and Immigration is the proper respondent and amend the style of cause accordingly.

[11] The determinative issue on this application is whether the RPD erred in finding that the Applicant voluntarily availed himself of Sri Lanka's protection pursuant to paragraph 108(1)(a) of the *IRPA*. There is no dispute that the presumptive standard of reasonableness applies to the review of the RPD's decision on a cessation application: *Wu v Canada (Citizenship and Immigration)*, 2023 FC 1071 at para 6 [*Wu*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1481 at para 25 [*Singh*]; *Aydemir v Canada (Citizenship and Immigration)*, 2022 FC 987 at para 20; *Thapachetri v Canada (Citizenship and Immigration)*, 2020 FC 600 at para 10.

[12] Reasonableness is a robust form of review that considers whether an administrative decision is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12-13, 15, 99 [*Vavilov*]. A reasonable decision is based on an internally coherent and rational chain of analysis, and is justified in relation to the

facts and law that constrain the decision-maker: *Vavilov* at para 85. A decision-maker's reasons are not to be assessed against a standard of perfection, but rather should be read holistically and contextually in order to understand the basis on which a decision was made: *Vavilov* at paras 91, 97.

IV. Analysis

A. *General principles*

[13] A cessation application turns on whether the person has voluntarily reavailed themselves of the protection of their country of nationality: *IRPA*, s 108(1)(a). The test for reavailment consists of three conjunctive elements: (i) the refugee must have acted voluntarily; (ii) the refugee must have intended to reavail themselves of the protection of the country of nationality; and (iii) the refugee must have actually obtained that protection: *Canada (Minister of Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 79 [*Camayo*].

[14] The presumption is that refugees who return to their country of nationality, using the passport of that country, intend to reavail themselves of the protection of that country: *Camayo* at para 63. The presumption is, however, rebuttable with sufficient evidence of compelling, fact-specific reasons: *Camayo* at para 65; *Wu* at para 22.

[15] As recently recognized by the Federal Court of Appeal, a decision to cease an individual's refugee protection has serious and particularly harsh consequences for the affected individual: *Camayo* at paras 50-51. Finding that an individual has voluntarily reavailed

themselves of the protection of their country of nationality will not only result in the cessation of their Convention refugee status, but also the loss of their permanent residency in Canada:

Camayo at para 51(a); *Omer v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1295 at para 39.

[16] In accordance with *Vavilov*, when a decision involves the potential for significant impact or harm, the decision-maker's reasons must "reflect the stakes": *Vavilov* at para 133. In this context, there is an increased duty to provide reasons that explain the decision-maker's rationale and meaningfully engage with the central issues and arguments: *Camayo* at paras 49-51; *Singh* at para 28.

B. *The RPD erred in assessing the voluntariness element*

[17] In my view, the RPD erred in assessing the first element of the reavilment test – the voluntariness of the Applicant's travel to Sri Lanka – in two respects. First, the RPD failed to analyze the Applicant's stated reason for returning to Sri Lanka and failed to assess whether his purpose was sufficient to overcome the threshold of "exceptional circumstances" to rebut the presumption of reavilment. Second, the RPD erred in considering the Applicant's passport renewal as a relevant factor in assessing voluntariness.

[18] The RPD's errors in assessing the voluntariness of the Applicant's travel to Sri Lanka are determinative of the application. It is therefore unnecessary to address the RPD's consideration of the other two elements of the reavilment test.

(1) The RPD failed to analyze the Applicant's purpose for travelling to Sri Lanka

[19] The RPD's reasons on the voluntariness of the Applicant's visit to Sri Lanka do not pass muster. They do not meaningfully engage with the Applicant's reason for returning to Sri Lanka and do not determine whether his "motive for travel was necessary or justified": *Camayo* at para 72. The failure to meaningfully grapple with key issues and central arguments "may call into question whether the decision maker was actually alert and sensitive to the matter before it": *Vavilov* at para 128.

[20] I agree with the Applicant that the RPD's mere acknowledgment of the Applicant's reason for travelling to Sri Lanka does not establish that it meaningfully grappled with the evidence and arguments before it. Rather, the RPD's reasons simply consist of a recitation of the Applicant's position on voluntariness, with no analysis:

[21] Counsel for the Respondent argued that the issue of voluntariness is the critical issue in this case and that by virtue of his close, father/son-like relationship with his uncle, the Respondent had no choice but to return stating "If that is his perspective there is no voluntariness; he is being compelled to go." Counsel further submitted that "He did not go back to care for him, he felt compelled to honour his de facto father's wish" and "This is the same as someone with a gun to his head forcing him on an airplane" in terms of being compelled to travel.

[21] It was incumbent on the RPD to consider and assess the Applicant's stated purpose for returning to Sri Lanka to determine whether it was "probative or persuasive" and to explain why: *Camayo* at para 78. While there need not be "a microscopic examination of everything that could possibly be said on the matter", the RPD has to provide "a reasoned explanation concerning the relevant evidence and key issues, including the key arguments made by the parties": *Camayo* at

para 82. However, the RPD did not explain why it rejected the Applicant's position, simply concluding that it was not persuaded by his counsel's submissions: RPD Reasons and Decision dated October 13, 2022 at para 23 [RPD Reasons].

[22] The Applicant's evidence, namely that he felt compelled to return to Sri Lanka to respect his ailing uncle's wishes to see him before he passed away, was clear. The Applicant stated that his uncle was like a father to him, following his biological father's abandonment of his family. Instead of assessing the voluntariness of the Applicant's travel in light of these stated circumstances, the RPD focused its analysis on whether the Applicant actually cared for, or needed to care for, his uncle. The panel determined that the Applicant "was not providing any significant care for his uncle": RPD Reasons at para 22. However, the Applicant never claimed that he travelled to Sri Lanka to provide care for his uncle.

[23] The RPD may ultimately determine that the Applicant's purpose in returning to Sri Lanka is not compelling and does not amount to an exceptional circumstance that rebuts the presumption of reavailment. However, the RPD must consider and assess the evidence and explain its decision one way or the other.

(2) The RPD erred in considering the passport renewal in assessing voluntariness

[24] Furthermore, I agree with the Applicant that the RPD erred in considering the renewal of his Sri Lankan passport in December 2014 when assessing the voluntariness of the Applicant's actions:

[20] The Respondent travelled to Sri Lanka on the strength of his Sri Lankan passport. The panel notes that the Respondent applied for and received his new Sri Lankan passport in 2014 from the Consulate General of Sri Lanka in Toronto which required direct interaction with Sri Lankan government authorities, or representatives thereof. The panel also notes that the Respondent applied for this just two months after his initial arrival in Canada. The panel finds that there is no evidence the Respondent was instructed by any authority in Canada or Sri Lanka to apply for and use his new Sri Lankan passport for travel, nor was he constrained by circumstances beyond his control. [Emphasis added]

[25] I acknowledge that the circumstances in which a refugee acquires or renews a passport from their country of nationality may be a relevant factor in assessing voluntariness: *Camayo* at para 84. However, the Applicant's passport renewal in December 2014 was not a relevant consideration because it pre-dated his claim for refugee protection. The Applicant's fear of persecution only crystallized in April 2015, after he renewed his passport. Moreover, the RPD's analysis of his passport renewal was also factually incorrect. October 2014 was not the Applicant's "initial arrival in Canada", as he had been in Canada since October 2011 on a visa as the spouse of a consular employee.

[26] The Respondent concedes that the Applicant's passport renewal was not relevant, but argues that "even setting aside the issue of the Applicant's acquisition of his passport", the RPD reasonably concluded that his travel was voluntary: Respondent's Further Memorandum of Argument at para 25. I cannot accept this argument. The RPD's reasons make clear that the Applicant's renewal of his passport was a significant factor in its ultimate conclusion on the voluntariness of the Applicant's actions.

[27] In its concluding paragraph, after having summarized the renewal of the passport, the purpose of the Applicant's visit, and the Minister's position, the RPD found "the totality of these actions to be voluntary in nature" [emphasis added]. In that vein, "the totality of these actions" can only be understood as including the Applicant's 2014 passport renewal.

V. **Conclusion**

[28] Based on the foregoing, I find that the RPD failed to meaningfully grapple with the Applicant's evidence and submissions in its analysis of voluntariness and instead based its determination on irrelevant considerations. The application for judicial review is allowed, the RPD's decision is set aside, and the matter is returned to the RPD for determination by another member.

[29] The parties did not propose a question for certification and none arises in this case.

JUDGMENT in IMM-10709-22

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division dated October 13, 2022 is set aside and the matter is remitted for determination by a differently constituted panel.
3. The style of cause is amended so that the Minister of Citizenship and Immigration is the respondent.
4. No question is certified for appeal.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10709-22

STYLE OF CAUSE: DON KINGSLEY KUMARA EDIRIMANNA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 26, 2023

**JUDGMENT AND REASONS
FOR JUDGMENT:** TURLEY J.

DATED: OCTOBER 06, 2023

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