

Federal Court



Cour fédérale

Date: 20231208

Docket: IMM-7301-22

Citation: 2023 FC 1658

Ottawa, Ontario, December 8, 2023

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

TEKIN BIYIKLI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is the judicial review of a decision of the Refugee Protection Division (the “RPD”). On July 13, 2022, the RPD allowed the application the Minister of Public Safety and Emergency Preparedness (the “Minister”) presented pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”). The Minister had alleged that Tekin Biyikli (the “Applicant”) had voluntarily reavailed himself of the protection of his country of nationality,

Turkey, by renewing his Turkish passport and primarily using this document to travel to Turkey 12 times for a total of 15 months between 2013 and 2022, per paragraph 108(1)(a) of the *Act*.

[2] The RPD ceased the Applicant's status as a Convention refugee and deemed his claim for refugee protection rejected (the "Decision"). The Applicant requests the Decision be set aside and remitted for re-consideration.

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

II. Factual Background

[4] The Applicant was determined to be a Convention refugee on July 27, 2011 and was granted permanent resident ("PR") status in Canada on August 1, 2012. His refugee claim was based on a fear of persecution in Turkey resulting from his Alevi faith, political opinions, and conscientious objection to military service.

[5] In 2012, the Applicant's father had a mental health episode, and required full-time care in Gokcetoprak-Nevsehir, Turkey. The Applicant's mother was also facing medical issues and was unable to provide full-time care to the Applicant's father. The Applicant was therefore compelled to go to Turkey to care for his family.

[6] Due to his protected status, the Applicant was unable to obtain a Canadian travel document to travel to Turkey. He obtained a one-time Turkish travel document and travelled to Turkey in October 2012. With the help of his uncle while in Turkey, the Applicant obtained a

Turkish passport without having to go to the passport office in person. He used the Turkish passport to return to Canada in March 2013.

[7] The Applicant travelled to Turkey again on April 4, 2013 to look after his father while his mother recovered from back surgery. During this trip to Turkey, the Applicant and his wife-to-be, Hacer Biyikli, took part in a religious ceremony in Istanbul on April 15, 2013, and stayed at a friend's home for a couple days.

[8] The Applicant took a third trip to Turkey to care for his father's psychological condition, during which the Applicant proposed to Ms. Biyikli on July 28, 2013.

[9] On his fourth trip to Turkey, the Applicant participated in a formal marriage ceremony at his family home in Turkey on December 10, 2014, with approximately 100 guests, and spent approximately two weeks in Istanbul on a honeymoon at a friend's home.

[10] Between August 2015 and September 2021, the Applicant made eight more trips to Turkey. The Applicant alleges to have been in Turkey during the following periods:

1. August 06, 2015 – August 26, 2015 (20 days);
2. November 15, 2016 – December 01, 2016 (16 days);
3. March 03, 2017 – March 19, 2017 (16 days);
4. August 03, 2017 – August 19, 2017 (16 days);
5. November 01, 2017 – November 17, 2017 (16 days);
6. July 25, 2018 – August 13, 2018 (18 days);

7. November 05, 2018 – November 25, 2018 (20 days);
8. August 15, 2021 – September 22, 2021 (37 days).

[11] On these shorter trips, the Applicant was allegedly providing psychological and spiritual support to his parents, such as improving his father's morale, and spending time with his wife.

[12] The Applicant obtained a second Turkish passport on February 14, 2017. Between 2013 and 2018, the Applicant entered Canada by air on 11 occasions. During 9 of those occasions, the Applicant presented his Canadian Permanent Resident Card for inspection. Twice he presented a Turkish passport for inspection.

[13] On November 23, 2018, the Minister made an application to cease the Applicant's refugee protection, which the Applicant was made aware of.

[14] The Applicant made at least one further trip to Turkey in August 2021 for 37 days, the longest of the 8 shorter trips, despite the Minister's application to cease his refugee protection.

III. Decision under Review

[15] In the Decision dated July 13, 2022, the RPD allowed the Minister's application for cessation of the Applicant's refugee status. The RPD found the Applicant had voluntarily reavailed himself of the protection of Turkey, pursuant to s 108(1)(a) of the *Act*. In making this determination, the RPD applied the *United Nations' High Commission on Refugees Handbook*

on *Procedures and Criteria for Determining Refugee Status* (the “UNHCR Handbook”), which sets out three requirements for reavailment:

- the refugee has acted voluntarily;
- the refugee has exhibited an intention to re-avail himself of the protection of the country of his nationality;
- the refugee has actually obtained such protection.

[16] In its Decision, the RPD cited the Federal Court of Appeal (the “FCA”) decision in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*], and reproduced the *Camayo* factors that the RPD should consider at a minimum in its assessment of reavailment (see *Camayo*, at para 84).

[17] The RPD found that the Applicant met all three requirements for reavailment.

[18] In considering whether the Applicant acted voluntarily, the RPD found that the first three trips (between 2012 and December 2014) should not be considered voluntary as they were made under exceptional circumstances beyond his control. However, the RPD found that the Applicant failed to rebut the presumption that the last nine trips to Turkey were not voluntary, since the Applicant had not established that there were no immediate health concerns relating to this parents or that they were in urgent need of full-time care, as was the case beforehand.

[19] As for the Applicant’s intention to re-avail himself of the protection of Turkey, the fact that the Applicant had obtained a Turkish passport showed intent to avail himself of the

diplomatic protection of his country. The RPD considered the fact that the Applicant could only travel to Turkey to visit his parents if he had a Turkish passport, but ultimately found that regardless of his motive, the Applicant's intention was to avail himself of the diplomatic protection of Turkey.

[20] Finally, in considering whether the refugee had obtained diplomatic protection, the RPD found that the Applicant ultimately lacked subjective fear of persecution in Turkey, demonstrated through the acts of applying for and receiving two passports, participating in a civil marriage, and travelling on a Turkish passport on eleven occasions.

IV. Issues

[21] The Applicant frames the issues as:

1. Did the RPD err in its assessment/analysis of the Applicant's knowledge with respect to the cessation provisions?
2. Did the RPD err in its assessment/analysis of the Applicant's purpose of travel with respect to the cessation provisions?
3. Did the RPD err in its conclusion that the Applicant had intention to avail himself of the protection of Turkey when he applied for his Turkish passport/one time travel document?
4. Did the RPD err in its conclusion that the Applicant actually reavailed of protection of Turkey?
5. Did the RPD err in its analysis/conclusion about the severity of consequences to the Applicant?

[22] The sole issue in this application for judicial review is whether the RPD's Decision is reasonable.

[23] I will address each of the five alleged errors by the Applicant when considering the reasonableness of the RPD's Decision on each of the three requirements for reavilment.

V. Standard of Review

[24] The parties agree that the standard of review of reasonableness applies in this case. I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*) at para 25).

VI. Analysis

[25] I have considered the Applicant's submissions in regards to the three requirements for reavilment (voluntariness; intention to re-avail; actual protection) and found that the Applicant has not demonstrated that the RPD's Decision was unreasonable.

A. *The Refugee Acted Voluntarily*

[26] The Applicant submits the RPD erred in its analysis of the Applicant's purpose of travel with respect to the cessation provisions. Citing *Camayo*, which suggests the RPD "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" (*Camayo* at para 84), the Applicant submits the

RPD arbitrarily distinguished between the Applicant's first three returns to Turkey and the subsequent nine trips.

[27] I do not agree. The RPD did not “arbitrarily” distinguish between the Applicant's first three trips to Turkey and the subsequent nine trips when considering whether or not the Applicant voluntarily reavailed himself of Turkey's protection. The RPD reasonably concluded that the Applicant's main motivation for entering Turkey during the last nine trips was not an exceptional circumstance beyond his control. The evidence of the medical reports for the Applicant's parents did not show that there were immediate health concerns relating to his parents or that they were in need of urgent full-time care as they had been during the first three trips. The evidence showed that, during the last nine trips, the Applicant did not keep a low profile during his stay, was visiting with his then-wife at his parents' home, and attending public tea shops. The Applicant admitted during his testimony that he never accompanied his father to the hospital, as it was his uncle who took him while he would get out of the car and wait at tea shops.

[28] As noted by the Respondent who cited *Caballero v. Canada (Citizenship and Immigration)*, 2022 FC 1143[*Caballero*], “it is not enough for the Applicant to provide reasons for his travel – these reasons must explain why the circumstances surrounding the [...] visits [...] were exceptional” (para 34). The Decision engages with the Applicant's circumstances and evidence in considering the last nine trips, and the RPD reasonably found the Applicant's explanations were unsatisfactory and did not amount to the level of exceptional as required by the jurisprudence.

[29] During oral submissions, counsel for the Applicant was adamant that the Applicant could return to Turkey as many times as he wanted without voluntarily reavailing himself of the protection of his country of nationality based on the facts of his case. I do not agree. The jurisprudence is clear that it is not enough for an Applicant to provide reasons for his travel such that any number of return visits to his country of nationality would not lead to reavilment. The reasons must explain why the circumstances surrounding *each* visit were exceptional (*Caballero* at para 34).

[30] Furthermore, the Applicant submits the RPD erred by importing a “high burden/standard/test” by concluding that the last nine trips were not “under exceptional circumstances” and were not “beyond his control” rather than the “compelling” reasons test suggested in *Camayo*. The RPD did not err. The Courts have consistently held that if a refugee returns to his or her country of origin on a passport issued by that country, he or she will have to prove that the trip was necessary due to “exceptional circumstances” to rebut that presumption (see *Seid v Canada (Citizenship and Immigration)*, 2018 FC 1167 [*Seid*] at para 15; *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 18 citing the UNHCR Handbook; *Al-Habib v Canada (Citizenship and Immigration)*, 2020 FC 545 at para 3). While the language of the current UNHCR Handbook no longer cites “exceptional circumstances”, paragraphs 120-125 still provide guidance and language, including examples, that requires exceptional circumstances in order for a refugee to maintain their status despite obtaining a national passport:

120. If the refugee does not act voluntarily, he will not cease to be a refugee. If he is instructed by an authority, e.g. of his country of residence, to perform against his will an act that could be interpreted as a re-availment of the protection of the country of his nationality, such as applying to his Consulate for a national passport, he will not cease to be a refugee merely because he obeys

such an instruction. He may also be constrained, by circumstances beyond his control, to have recourse to a measure of protection from his country of nationality. He may, for instance, need to apply for a divorce in his home country because no other divorce may have the necessary international recognition. Such an act cannot be considered to be a “voluntary re-availment of protection” and will not deprive a person of refugee status.

[...]

124. Obtaining a national passport or an extension of its validity may, under certain exceptional conditions, not involve termination of refugee status (see paragraph 120 above). This could for example be the case where the holder of a national passport is not permitted to return to the country of his nationality without specific permission.

125. Where a refugee visits his former home country not with a national passport but, for example, with a travel document issued by his country of residence, he has been considered by certain States to have re-availed himself of the protection of his former home country and to have lost his refugee status under the present cessation clause. Cases of this kind should, however, be judged on their individual merits. Visiting an old or sick parent will have a different bearing on the refugee’s relation to his former home country than regular visits to that country spent on holidays or for the purpose of establishing business relations. (UNHCR Handbook at para 120-125)

[31] The RPD reasonably found that the Applicant’s last 9 trips back to Turkey were voluntary since the Applicant did not establish that there were immediate health concerns relating to his parents or that they were in urgent need of full-time care, as was the case with the Applicant’s first three trips.

B. *The Applicant exhibited an intention to re-avail himself of the protection of Turkey*

[32] As noted by the FCA in *Camayo* (paras 63 and 65), there is a presumption that refugees who acquire passports issued by their country of nationality and travel to that country or to a

third country have intended to avail themselves of the protection of their country of nationality. This is because passports entitle the holder to travel under the protection of the issuing country. This presumption is even stronger when refugees return to their country of nationality, as they are not only placing themselves under diplomatic protection while travelling, they are also entrusting their safety to governmental authorities upon their arrival. The presumption is a rebuttable one. The onus is on the refugee to adduce sufficient evidence to rebut the presumption of re-availment.

[33] With those legal principles in mind, I do not agree with the Applicant that the RPD was unreasonable in their conclusion that the Applicant intended to re-avail himself of the protection of Turkey.

[34] First, the Applicant submits the RPD erred in its analysis of the Applicant's knowledge that returning to Turkey may have put his refugee status in jeopardy. The Applicant cites one of the *Camayo* factors in support of his argument, which states "Evidence that a person has returned to her country of origin in the full knowledge that it may put her refugee status in jeopardy may potentially have different significance than evidence that a person is unaware of the potential consequences of her actions" (*Camayo*, at para 84). The RPD reasonably found, based on the evidence, that the Applicant "knew that his trips back to Turkey could have consequences on his refugee status." During his RPD hearing, the Applicant admitted to at least "partially" knowing his trips back to Turkey were "putting his refugee status at risk":

MEMBER: Okay. What did you know could be at risk, or how did you know?

PRINCIPAL CLAIMANT: I did not know about details much, I wasn't aware of the details much, but I had to go, there was no

other option. It was always in my mind that if I am ever asked about my visits to Turkey I can always explain the reason.

MEMBER: Okay. I asked you if you knew that it would put your protection at risk if you returned home, you said yes, you had an idea about it partially, that what I want you to explain.

PRINCIPAL CLAIMANT: I knew about it that if I ever go to Turkey that would jeopardize my application here. I was aware of it. I did not make research about it because I had to go due to reasons that I explained. But I knew partially about the risk.

MEMBER: Okay. In 2018 when you got the notice that the Minister was making an application to cease your refugee protection did you realize at that time that your refugee protection was at risk?

PRINCIPAL CLAIMANT: Yes, actually when I received that notice regarding my situation in 2018, I was scared at the time and I actually visited with a friend of mine, a lawyer who had knowledge about such situations and he told me that if I am given a court date by the government authorities I am always able to return back to Canada. This is what I learned from him when I visited him.

[35] During the hearing, the Respondent argued that the fact that the Applicant had sought and obtained legal advice from his friend did not detract from the reasonableness of the RPD's Decision because the Applicant was never advised that refugee status would be maintained, only that if he was given a court date, he could travel back to Canada. The RPD acknowledged this advice in its Decision, and reasonably concluded that the Applicant knew the potential consequences of his travels back to Turkey. The RPD reasonably assessed all of the evidence and took into consideration the Applicant's education, advice from legal counsel, and the fact that the Applicant had decided to travel to Turkey even after receiving notice of the Minister's pending application to cease his refugee protection.

[36] Second, the Applicant submits the RPD erred in its conclusion that the Applicant intended to avail himself of the protection of Turkey when he applied for his Turkish passports and one time travel document, “regardless of his motive to visit his ill and aged parents” (Decision at para 41) even though he had no other way to travel to Turkey. The Applicant argues this conclusion was especially unreasonable given the Applicant did not use his Turkish passport to go to any other country or on any other trips apart from visiting his parents in Turkey.

[37] I agree with the Applicant that the RPD’s conclusion that “regardless of his motive to visit his ill and aged parents, [the Applicant’s] intention was to avail himself of the diplomatic protection of his country, since that was the only means he could travel” (Decision at para 41) is ill-founded given the ability for “exceptional circumstances” to rebut the presumption of reavailment. However, I note that ultimately the RPD’s reasons demonstrate that the RPD took all circumstances into consideration to conclude, in light of all the evidence, that the Applicant failed to rebut the presumption of his intention to reavail himself of the protection of Turkey during the last nine trips.

[38] Third, the Applicant submits that the RPD should have considered that the Applicant took steps to ensure there was nothing in the Turkish authority’s system about the Applicant when he applied for his Turkish passport and therefore he did not need to reavail himself of Turkish protection for anything. The Applicant cites portions of the hearing transcript in support of this claim. I am not persuaded by the Applicant’s argument that the RPD ignored the preventative steps the Applicant and his police officer uncle took. The RPD considered the fact that the Applicant’s uncle informed him that he was no longer under any reporting obligations to the

courts (Decision, at para 51) under the Applicant's submission that his application might be decided under section 108(1)(e) of the *IRPA*. The RPD was reasonable in not considering this evidence in its assessment of the Applicant's intention to reavail because the steps taken by the Applicant and his police officer uncle are irrelevant to the Applicant's intention to reavail himself of Turkey's protection. The steps taken by the uncle merely verified if the Applicant's name still appeared on wanted lists or mandatory signing lists and would not have prevented the Applicant's information from appearing in Turkey's "systems".

C. *The Applicant actually obtained such protection*

[39] It was reasonable for the RPD to conclude that the Applicant had actually obtained the protection of Turkey. It is presumed that a refugee has obtained the actual protection of his country of nationality when the Minister establishes that the refugee has used that passport to travel (*Seid* at para 14; *Mayell v Canada (Citizenship and Immigration)*, 2018 FC 139 at para 12). The Applicant failed to rebut the presumption that he obtained the diplomatic protection of Turkey.

[40] The Applicant argues that the RPD failed to explain why his precautionary measures "to get safely to Turkey and stay safely in Turkey" was not sufficient to rebut the presumption that he obtained the diplomatic protection of Turkey. The Applicant submits the RPD unreasonably provided a "baseless conclusion" that the Applicant's actions in Turkey outweigh the precautionary measures he took.

[41] I disagree. I find the RPD's reasoning reproduced below from paragraph 48 of the Decision provides an explanation that is based on an internally coherent and rational chain of analysis (*Vavilov* at para 85):

Taking note of the instructions in *Camayo*, I have considered that evidence that a person who claims to fear the government of his country of nationality nevertheless discloses his whereabouts to that same government by applying for a passport or entering the country may be interpreted differently than evidence with respect to individuals seeking passports who fear non-state actors. Even though the Respondent claimed to have feared the state when he made his claim for refugee protection in Canada, he nevertheless provided the state with his personal information by applying for a passport on two different occasions since receiving protected status in this country. He travelled through airports, governed ports of entry. He was married in a civil ceremony. He stayed in the same home where his father had previously been targeted by state authorities. It is more likely than not, the parents' home would be one of the first places authorities would have looked for the Respondent if they were inclined to do so. Even though the Respondent may have been circumspect in his activities, or in his discreet travels in his uncle's car, this is outweighed by the more obvious factors of applying for and receiving two passports, his civil marriage, and that he travelled on his Turkish passport on approximately 11 occasions (and once with a single use travel permit). Thus, I find that the Respondent received diplomatic protection. (Decision, at para 48)

[42] Also, I find that the RPD reasonably concluded that the Applicant's behaviour demonstrated that he was neither in hiding nor concerned with his safety while in Turkey. Approximately 100 guests attended the Applicant's wedding in Turkey, the couple honeymooned in the city of Istanbul, and the Applicant "was married by a municipal office and obtained not one but two passports clearly recording vital personal information with the state on multiple occasions and evincing an intention to be treated as a Turkish citizen by Turkish officials". The RPD reasonably found that this is not behaviour indicative of a person either in hiding or concerned with his safety generally.

D. *Severity of the Consequences*

[43] Finally, the Applicant submits the RPD erred in its analysis about the severity of consequences to the Applicant. Citing *Camayo*, the Applicant sets out what the RPD should have considered to determine whether the Applicant's actions rebutted the presumption of reavailment, notably: "the severity of the consequences that a decision to cease refugee protection will have for the affected individual" (*Camayo* at para 84).

[44] Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes (*Vavilov* at para 133). Here, the seriousness of the impact of the RPD's Decision on the Applicant increased the duty on the RPD to explain its decision. As pointed out by the Respondent, the RPD acknowledged that a decision in this matter should not be taken lightly, but ultimately provided sufficient explanation for its decision and found, based on the evidence, that the Applicant was aware of the potential consequences of a ceased refugee status and travelled nevertheless.

VII. Conclusion

[45] For the foregoing reasons, the application for judicial review is dismissed. The outcome of this case is a function of its particular facts, and accordingly no question is certified for appeal.

JUDGMENT in IMM-7301-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Ekaterina Tsimberis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7301-22

STYLE OF CAUSE: TEKIN BIYIKLI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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