

Federal Court



Cour fédérale

Date: 20231120

Docket: IMM-3044-22

Citation: 2023 FC 1536

Ottawa, Ontario, November 20, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

ANSAR AHMED CHOUDHRY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, the Minister of Citizenship and Immigration (“the Minister”) is challenging a decision of the Refugee Protection Division (“RPD”) to dismiss the Minister’s application to find Ansaar Ahmed Choudhry’s refugee status had ceased. The Minister brought an application under paragraph 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], arguing that the Applicant’s trips back to Pakistan, his country of citizenship,

meant that his refugee protection should now be deemed dismissed because he had voluntarily reavailed himself of the protection of Pakistan. The RPD rejected the Minister's argument, finding that the Applicant's actions did not amount to reavilment.

[2] On judicial review, the Minister does not challenge the RPD's reavilment finding. The Minister challenges the intelligibility of the decision solely on the basis of the RPD's failure to make a final determination relating to the effect of the RPD's finding that paragraph 108(1)(e) of *IRPA*—the change of circumstances ground of cessation—applies.

[3] I agree with the Minister that the RPD's reasons on paragraph 108(1)(e) of *IRPA* are unclear and require redetermination. Based on the reasons below, the application for judicial review is allowed in part in order for the RPD to redetermine the finding on paragraph 108(1)(e) of *IRPA*.

II. Issue and Standard of Review

[4] The only issue on judicial review is the RPD's determination on paragraph 108(1)(e) of *IRPA*. The parties submit and I agree that I should review the RPD's decision on a reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] described a reasonable decision as “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). Administrative decision makers must ensure that their exercise of public power is “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

III. Analysis

[5] This Court has found that once the Minister initiates an application for cessation, the RPD is not limited to only considering cessation on the grounds brought forward by the Minister and can consider any of the grounds of cessation listed in subsection 108(1) of *IRPA* (*Tung v Canada (Citizenship and Immigration)*, 2018 FC 1224 at paras 28-29; *Canada (Citizenship and Immigration) v Al-Obeidi*, 2015 FC 1041 at paras 21-22). Before the RPD, the Minister argued that the change of circumstances ground of cessation (paragraph 108(1)(e) of *IRPA*) did not apply to Mr. Choudhry's case and the RPD should find that Mr. Choudhry's refugee status had ceased due to reavailment. Mr. Choudhry argued the opposite—that the appropriate ground to find his status had ceased was under paragraph 108(1)(e) of *IRPA* because of the change of circumstances in Pakistan. He argued that his travels back to Pakistan happened after there had been a change of circumstances in the country; namely, after the demise of the military government.

[6] At the conclusion of its analysis rejecting that the Applicant had reavailed himself of the protection of Pakistan, the RPD stated:

Most significantly, the Respondent did not travel to Pakistan until there was a significant change of circumstances in Pakistan with the demise of the military government and return to democracy. ... The panel finds that section 108(1)(e) "the reasons for which the person sought refugee protection have ceased to exist" also applies to the case.

[7] In the next paragraph, the RPD dismissed the Minister's application to cease refugee protection. There is no further mention of the other ground of cessation that the RPD found

applied, section 108(1)(e) of *IRPA*. It is on this basis that the Minister argues the decision is unreasonable. Mr. Choudhry argues that the RPD was not required to make a determination on a ground of cessation not raised by the Minister, and the decision is clear that a finding was not made on paragraph 108(1)(e) of *IRPA*.

[8] I agree with the Minister that the RPD's reasoning on paragraph 108(1)(e) is confusing. I am left not understanding whether it was an oversight, after having found section 108(1)(e) applies, for the RPD to not have also found Mr. Choudhry's refugee protection claim was deemed dismissed under section 108(3) of *IRPA* or whether the RPD intended to not make a final conclusion on section 108(1)(e) of *IRPA*. In this respect, I find the decision to be unreasonable because the reasons "fail to provide a transparent and intelligible justification" for the ultimate result (*Vavilov* at para 136; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 60).

[9] Mr. Choudhry argues that even if I find that the decision is unintelligible on this point, it is irrelevant because unlike a finding under paragraph 108(1)(a) of *IRPA*—the reavailment cessation ground—a finding under 108(1)(e) does not result in a loss of permanent residence status (paragraph 46(1)(c.1) of *IRPA*). Essentially, Mr. Choudhry argues that sending the matter back on the 108(1)(e) ground is a waste of time because this sort of finding would not change anything for Mr. Choudhry.

[10] While I agree that the consequence for Mr. Choudhry of a finding under paragraph 108(1)(e) of *IRPA* is certainly much less severe than a finding that any of the other grounds of

cessation apply, I cannot agree that it is an irrelevant consequence, making redetermination on paragraph 108(1)(e) unnecessary.

[11] A finding made under paragraph 108(1)(e) results in the loss of protected person status. Subsection 108(3) explains that the effect of a cessation decision on any ground listed in 108(1) is for “the claim of the person is deemed to be rejected”. It is not correct to say that this determination carries with it no consequences. The principle of *non-refoulement* applies to protected persons and generally “prohibits the direct or indirect removal of refugees to a territory where they run a risk of being subjected to human rights violations” (*Németh v Canada (Justice)*, 2010 SCC 56 at paras 18-19; cited in *Mason* at para 108). For example, in the event that a person lost their permanent residence status, those who have protected person status are afforded a further process before they can be removed from Canada (section 115 of *IRPA*).

[12] After carefully considering the matter, it is my view that the appropriate solution is to send the matter back for the RPD to consider cessation only on the grounds of change of circumstances (paragraph 108(1)(e) of *IRPA*). Given that the Minister has not sought to challenge the reavilment finding on judicial review, there is no basis to send the matter back to be redetermined on that issue. (See *Abbas v. Canada (Citizenship and Immigration)*, 2023 FC 871 (CanLII) at para 53). The application will be allowed only in respect of the RPD’s analysis regarding the application of paragraph 108(1)(e) of *IRPA*. A re-hearing may not be necessary as the parties may be able to address the limited issue on redetermination in writing.

[13] The Respondent requested that costs be awarded because of their efforts to settle this matter prior to judicial review. Given my determination to allow the application in part, I do not find that there are “special reasons” to award costs (Rule 22 of *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22).

[14] Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-3044-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed in part;
2. The matter is sent back to be redetermined solely on the issue of section 108(1)(e) of *IRPA*;
3. No serious question of general importance is certified; and
4. No costs are awarded.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3044-22

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v ANSAR AHMED CHOUDHRY

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 18, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: NOVEMBER 20, 2023

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