Federal Court  Cour fédérale

Date: 20240102

Docket: IMM-8289-22

Citation: 2024 FC 4

Ottawa, Ontario, January 2, 2024

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

MUHAMMAD FARHAN ASLAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Muhammad Farhan Aslam, seeks judicial review of a decision of a member of the Refugee Protection Division [RPD], dated July 22, 2022 [Decision]. In the Decision, the RPD allowed the Respondent's application to cease the Applicant's refugee protection, pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant claimed refugee protection in 2015 because he feared persecution in Pakistan as a gay man. In his Basis of Claim form, his agents of persecution were his family, religious extremists, and the state. His claim was accepted on August 24, 2015. The Applicant became a permanent resident in November 2018, and soon thereafter, in January 2019, he travelled to Pakistan for two weeks. He travelled using his Pakistani passport. He stated in an affidavit before the RPD that the purpose of his trip was to visit his ex-boyfriend, deal with a property issue with his family, see his younger brother, and see an herbalist in Lahore who was reputed for curing kidney stones. During his time in Pakistan, he also visited with his mother, at a restaurant and at the market. Upon returning to Canada, a Canada Border Services Agency [CBSA] Officer informed him that he was not supposed to return to Pakistan.

[3] The Applicant renewed his Pakistani passport in April 2019 and returned to Pakistan using this passport in February 2020 for two and a half weeks. He did so to sign documents and powers of attorney, spend time with his family at their home, and see his ex-boyfriend.

[4] The Applicant travelled to Pakistan using his Pakistani passport a third time in 2021. This time he stayed in Pakistan for a month, during which time he stayed in his family home and married a woman he had met while they were both in Canada. The Applicant and his wife returned to Canada on June 27, 2021.

[5] The Respondent applied to the RPD for cessation of the Applicant's refugee status on the basis that he voluntarily reavailed himself of the protection of Pakistan on three occasions, used

and renewed a Pakistani passport for his travels, and no exceptional circumstances existed to justify his visits.

[6] The RPD considered the cumulative three-part analytical framework for cessation, namely (i) whether the refugee acted voluntarily, (ii) whether the refugee intended by their action to reavail themselves of the protection of their country of nationality; and (iii) whether the refugee actually obtained such protection. The RPD further considered the factors set out by the Federal Court of Appeal in *Canada* (*Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 84 [*Camayo*]. In the resulting analysis, the RPD concluded that the Applicant had voluntarily reavailed himself of the protection of Pakistan, had travelled to Pakistan, and had exposed himself to his agents of persecution. The RPD therefore allowed the Respondent's application.

[7] The Applicant submits that the Decision is unreasonable on a number of grounds, namely that the RPD (i) failed to issue reasons that reflect the stakes of the present case; (ii) unreasonably rejected and/or failed to mention evidence of the Applicant's subjective fear and his lack of intention to reavail himself; (iii) failed to consider the issue of actual protection; (iv) failed to reasonably apply the *Camayo* factors; (v) failed to account for the Applicant's actual intentions; (vi) failed to account for the Applicant's actual knowledge of the immigration consequences of returning to Pakistan on his national passport; (vii) ignored evidence that the Applicant sought advice from his friends and father-in-law on returning to Pakistan; (viii) failed to appropriately consider the psychologist's report in relation to both the issues of voluntariness and intention; (ix) unreasonably conflated voluntariness with intention; (x) failed to consider the

country condition evidence; (xi) did not make any adverse credibility findings and yet failed to accept his evidence as to his actual knowledge and intent; (xii) made errors of fact; (xiii) made a veiled credibility finding; (xiv) ignored evidence as to the Applicant keeping a low profile in Pakistan; and (xv) failed to consider the Applicant's reasons for travel from his own perspective.

[8] The Respondent submits that the Applicant returned home to Pakistan three times, on his Pakistani passport, for non-compelling reasons, including to marry a woman he met in Canada, obtain herbal remedies for kidney stones, and review legal documents, all of which could have been done in Canada. Being homesick is simply insufficient, in the Respondent's view, to justify returning. The Respondent pleads that simply because an applicant now states that they did not intend to reavail themselves, does not mean that this dictates the outcome of their case. The Respondent submits that viewed cumulatively, the Applicant fits into the cessation test and his behaviour in this case, including being in contact with his agents of persecution (his family), does not evidence subjective fear. It was therefore reasonable of the RPD to conclude that the Applicant had reavailed himself of the protection of Pakistan.

[9] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to persuade me that the RPD's decision is unreasonable. For the reasons that follow, this applicable for judicial review is dismissed.

II. Issue and Standard of Review

[10] The issue in the present case is whether the Decision is reasonable.

[11] The parties agree that the applicable standard of review is that of reasonableness as set out in *Canada* (*Minister of Citizenship and Immigration*) *v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85).

[12] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

[13] As stated recently by the Federal Court of Appeal in *Camayo*:

> [48] *Vavilov* teaches that reasons "must not be assessed against a standard of perfection" and that administrative decision makers should not be held to the "standards of academic logicians": *Vavilov* SCC, above at paras. 91, 104. Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis*": Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador* (*Treasury Board*), 2011 SCC 62 at para. 25 (*Newfoundland Nurses*); *Vavilov* SCC, above at para. 128. Nor are they required to "make an explicit finding on each constituent element, however subordinate, leading to [their] final conclusion": *Newfoundland Nurses*, above at para. 16.
>
> [49] That said, reasons "are the primary mechanism by which administrative decision makers show that their decisions are reasonable": *Vavilov* SCC, above at para. 81. The principles of justification and transparency thus require that administrative decision makers' reasons "meaningfully account for the central issues and concerns raised by the parties": *Vavilov* SCC, above at para. 127. The failure of a decision maker to "meaningfully grapple with key issues or central arguments raised by the parties

> may call into question whether the decision maker was actually alert and sensitive to the matter before it": *Vavilov* SCC, above at para. 128. As a result, "where reasons are provided but they fail to provide a transparent and intelligible justification ... the decision will be unreasonable": *Vavilov* SCC, above at para. 136.

[14] During the hearing, the Applicant emphasized that 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; See also *Camayo* at para 50).

III. Analysis

[15] An application by the Minister to cease refugee protection turns on, among other things, whether the individual has reavailed themselves of the protection of their country of nationality (section 108(1)(a) of the IRPA). As noted above, the RPD considered the cumulative three-part analytical framework for cessation, namely (i) whether the refugee acted voluntarily, (ii) whether the refugee intended by their action to reavail themselves of the protection of their country of nationality; and (iii) whether the refugee actually obtained such protection (*Camayo* at paras 18, 20 and 79; *Saha v Canada* (*Citizenship and Immigration*), 2023 FC 1553 at para 8 [*Saha*]).

[16] Where a refugee acquires and travels using the passport of their country of nationality, they are presumed to have intended to reavail themselves of the protection of that country (*Camayo* at para 63). This presumption is even stronger when a refugee returns to their country of nationality – as they are not only placing themselves under diplomatic protection while travelling, they are entrusting their safety to the governmental authorities upon their arrival (ibid). Reavailment typically suggests an absence of risk or lack of subjective fear as, absent

compelling reasons, people do not abandon safe havens to return to places where they are at risk (*Camayo* at para 64).

[17] The presumption, however, is a rebuttable one (*Camayo* at para 65). The onus is on the refugee to adduce sufficient evidence to rebut the presumption of reavailment (ibid).

[18] In addition to the three-part analytical framework, the Federal Court of Appeal in *Camayo* identified a number of factors which the RPD should take into account when considering whether a refugee has rebutted the presumption of reavailment (at para 84). In the case at bar, the RPD referenced *Camayo* and then considered the factors that applied to the Applicant's situation.

[19] I have considered the arguments raised by the Applicant, however, I have not been persuaded that the Decision is unreasonable. Taking into account the record before the RPD, the reasons provided by the RPD in the Decision, and the factors outlined in *Camayo*, the Decision meets the standard of reasonableness set out in *Vavilov*. In other words, the Applicant has failed to satisfy me that there are sufficiently serious shortcomings in the Decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100).

[20] The Applicant submits that the RPD failed to consider a number of factors, including his subjective intention, his lack of knowledge, and his reasons for travel from his perspective. The

Applicant further submits that the RPD erred in its treatment of the Applicant's psychological assessment report and the evidence of his subjective fear.

[21] Contrary to the Applicant's submissions, I find the RPD did engage with the issues raised by the Applicant. While the Applicant may not agree with the RPD's analysis, it is not the function of this Court, absent exceptional circumstances, to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125). By way of example, the Applicant alleges that the RPD unduly dismissed the psychological assessment report and ought to have considered this evidence when assessing his actual intention. The psychological assessment report stated, based on information provided by the Applicant, that the Applicant focused on the risk in Pakistan and did not question the risk of losing his status in Canada.

[22] The RPD considered the contents of the psychological assessment report in detail and addressed it both when assessing whether the Applicant acted voluntarily and when considering the Applicant's intention. The passages quoted by the Applicant in the present proceedings, were in fact considered and discussed by the RPD in the Decision. Ultimately, the RPD concluded that while the Applicant made poor decisions, focused on the wrong risk, is vulnerable and not assertive, the psychological assessment report does not demonstrate that he is incapable of making informed decisions or understanding their consequences. I agree with the Respondent that it was open to the RPD, based on the record, to conclude that the psychological assessment report did not rebut the presumption that the Applicant intended to reavail himself of the protection of Pakistan.

[23] I also find a number of the Applicant's arguments to fall into the category of a "line-by-line treasure hunt for error" (*Vavilov* at para 102). The Applicant submits that the RPD erred in concluding that he chose to make no inquiries or seek legal advice. He alleges that his former father-in-law was an immigration consultant who told him he could travel to Pakistan to marry. In support of this allegation, the Applicant references his prior submissions contained in the Application Record along with screen shots of the website for Eclat Immigration services. The marriage certificate identifies the Applicant's father-in-law as Muhammad Ayub. The father-in-law is later referred to as Yaqood Khan in the Applicant's disclosure. Neither name appear on the website screen shot. The Applicant's affidavits do not address his alleged conversations with his former father-in-law.

[24] When read in context, the RPD noted that the Applicant chose not to make any inquiries about the warning the CBSA Officer gave to him. The RPD equally noted that the Applicant had not sought legal advice about the immigration consequences of returning after he was warned by the CBSA Officer. There is no evidence in the record that the Applicant raised the CBSA Officer's warning with anyone, including his father-in-law, nor that he instructed a lawyer to provide him with legal advice. Given the record before the RPD, I am not persuaded the RPD erred in finding that the Applicant made no inquires about the CBSA Officer's warning and did not seek legal advice about it. I therefore disagree with the Applicant's submission that the RDP erred on this point.

[25] The Applicant submits that the RPD neglected to consider the objective country condition documents before it, which strongly corroborate his subjective fears. The Applicant states that

the evidence establishes that LGBTQ+ persons face serious persecution, violence, and harm in Pakistan from state and non-state actors. In his written pleadings, he simply cites the National Documentation Package [NDP] for Pakistan without pinpointing the reference or a specific document in support of this statement. During the hearing, counsel for the Applicant was asked whether there was a specific country condition document that the RPD ought to have taken into account, and counsel was unable to refer to one.

[26] I note the country condition documentation, in particular the United Kingdom Home Office "Country Policy Information Note – Pakistan: Sexual orientation and gender identity and expression"(April 2022) [Home Office Report], states "[i]n general, a person living openly as LGBTI is not at real risk of persecution or serious harm by the state" but notes each case must be considered on its facts. The RPD noted that in his refugee claim, the Applicant identified his agents of persecution as his family, religious leaders, society in general and that he was afraid to approach the state. Before the RPD, the Applicant pled that his agents of persecution were his family and non-state agents.

[27] In his submissions to the RPD, the Applicant referenced the entire NDP for Pakistan in a footnote when stating "[i]t is also clear, from the objective evidence, that as a gay man, Farhan faces a serious risk of persecution, as well as a risk of torture, to his life, and of cruel and unusual treatment or punishment in Pakistan." The Applicant made this statement in the context of a lengthy argument on future risk. The RPD's reasons addressed the Applicant's submissions in detail and reasonably concluded that it was not bound to conduct a forward-looking risk analysis in the context of a cessation decision (*Jing v Canada* (*Citizenship and Immigration*), 2019 FC

104 [*Jing*] at para 34; *Ahmed v Canada* (*Citizenship and Immigration*), 2022 FC 884 [*Ahmed*] at para 59).

[28] The Applicant did not refer to any specific country condition evidence in the context of his submissions to the RPD on subjective fear or even in his submissions generally. He only referred to the NDP for Pakistan twice – in two footnotes – both times accompanying a general statement and referring to the NDP as a whole. The resulting Decision by the RPD was reflective of the submissions before it, and I see no reason to intervene.

[29] The Applicant also submits that the RPD erred by failing to address the issue of " actual protection" and pleads that as a gay man he fears for his freedom and safety in Pakistan and has reason to believe he cannot receive actual protection from the state. The Applicant highlights that detailed post-hearing submission on this point were provided to the RPD.

[30] The Respondent submits that the RPD reasonably determined that the Applicant's circumstances showed that he obtained protection, and took into account precautionary measures.

[31] The Applicant's submissions to the RPD on this point are comprised of legal, theoretical, and policy arguments, without reference to the facts or the evidence of the case, save for two general statements that (a) the Applicant fears for his safety in Pakistan and has good reason to believe he cannot obtain any form of "actual protection" from the state, diplomatic or otherwise, and (b) a state like Pakistan which criminalizes same-sex acts and denies protection to those

persecuted for their sexual orientation cannot be expected to afford the Applicant with protection. Neither of these statements are accompanied by citations to evidence. I note that the Home Office Report states that the Pakistan Penal Code [PPC] does not explicitly refer to same-sex activity but does highlight that the more general provisions of the PPC have sometimes been used by the police to extract bribes or sexual favours.

[32] Given the submissions and the record before the RPD, I do not agree that it failed to address the third prong of the test as alleged by the Applicant. The RPD asked "whether he actually obtained the protection of Pakistan", considered the issue, and noted that many of the factors to be considered had been addressed earlier in the Decision. The RPD highlighted that the Applicant renewed and travelled on his Pakistani passport to Pakistan for non-compelling reasons and presented himself to Pakistani government officials on multiple occasions. The RPD noted that precautionary measures are a factor, and considered where the Applicant stayed during each trip, with whom he met and his activities. The RPD considered that the Applicant did not investigate whether the property documents could be signed remotely or whether his treatment for kidney stones was available in Canada, and noted that he travelled to marry a woman who was actually in Canada prior to the wedding.

[33] Following the hearing, the Applicant filed further submissions citing additional jurisprudence on the issue of intention. The Applicant pleads, based primarily on *Saha*, that the RPD erred in rendering a conclusion on what he should have known rather than what he actually knew (at para 31).

[34] The Respondent's position is that the RPD did not fail to consider the Applicant's intention, but rather found that while he may not have known the specific consequences of his actions, this was but one factor to be weighed and it was not determinative. The Respondent relies on *Dari v Canada* (*Citizenship and Immigration*), 2023 FC 887 [*Dari*].

[35] The jurisprudence is clear that a refugee's lack of actual knowledge of the immigration consequences of their actions is a key factor, but it is not determinative of the question of the intent to reavail (*Camayo* at para 70; *Dari* at para 18; *Saha* at para 30). Justice Southcott in *Saha* states that it was not an error to fail to treat an applicant's professed lack of subjective knowledge as determinative (at para 31). Where the RPD weighs a lack of actual knowledge along with other *Camayo* factors, thereby conducting the multi-factor analysis required by *Camayo*, the resulting decision may be reasonable (*Saha* at para 30; *Dari* at paras 18, 24, and 25).

[36] The RPD in the present case did not, in my view, fail to consider the Applicant's actual knowledge. The RPD considered his testimony that he was not aware of the immigration consequences of returning, his knowledge of the warning from the CBSA Officer, his choices once he received the warning, and his testimony concerning his safety in Pakistan. The RPD also considered and balanced other relevant *Camayo* factors, including the severity of the consequences for the Applicant; the arguments raised by both parties; the applicable jurisprudence; the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and the concepts of voluntariness, intention and reavailment; the identity of the Applicant's agents of persecution; whether he obtained his Pakistani passport voluntarily; the

purpose for which he travelled; the Applicant's level of sophistication; what the Applicant did while he was in Pakistan; the precautionary measures the Applicant took while in Pakistan; and whether the Applicant's actions demonstrated that he no longer has a fear of persecution in Pakistan.

[37] While I have sympathy for the Applicant and the challenges he has faced in his life, he has not met his burden of persuading me that the RPD's Decision is unreasonable in light of the record before it. On the contrary, the Decision is transparent, intelligible, and justified.

IV. Proposed Questions for Certification

[38] The Applicant has proposed two questions for certification:

1. In a cessation application, where there is country condition evidence corroborating a refugee's risk, their subjective fear, and their intention with respect to reavailment, is it reasonable for the RPD not to consider that evidence?
2. In a cessation application, where the evidence supports that state protection, as understood and applied under sections 96 and 97 of the IRPA, is not available from the refugee's country of nationality, is it reasonable for the RPD to rely on his travel to that country as evidence of his intent to reavail himself of the diplomatic protection of that country, and of his actually obtaining such protection, for the purposes of s. 108(1)(a) of the IRPA?

[39] As stated by the Federal Court of Appeal, to be properly certified, a question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises

an issue of broad significance or general importance (*Canada* (*Immigration and Citizenship*) *v Laing*, 2021 FCA 194 at para 11). Moreover, a question that is in the nature of a reference, or whose answer depends on the facts of the case cannot raise a properly certified question (*Lunyamila v Canada* (*Public Safety and Emergency Preparedness*), 2018 FCA 22 at paras 46-47; *Lewis v Canada* (*Public Safety and Emergency Preparedness*), 2017 FCA 130 at para 36).

[40] I agree with the Respondent, that the first question is highly fact specific and pertains to the Applicant's allegation that the RPD ignored country condition evidence (addressed above). Moreover, it speaks to forward-looking risk, which has been found to not be a relevant consideration in a cessation hearing (*Jing* at para 34; Ahmed at para 59). In addition, the question of what is to be considered has been answered by the Federal Court of Appeal in *Camayo*, namely the factors listed therein bearing in mind that "[t]he focus throughout the analysis should be on whether the refugee's conduct—and the inferences that can be drawn from it—can reliably indicate that the refugee intended to waive the protection of the country of asylum" (at paras 83 and 84).

[41] I have similar concerns with the second question. As in *Ahmed*, the Applicant conflates state protection at the refugee stage with the protection at issue in the context of reavailment, an approach which has consistently been rejected by this Court (*Ahmed* at para 59; *Chokheli v Canada* (*Citizenship and Immigration*), 2020 FC 800). This then draws in whether an applicant would be at risk of persecution in their country of nationality, which is not relevant in a cessation hearing (*Jing* at para 34; Ahmed at para 59; *Chokheli* at para 65-66). The second question, like

the first, has already been answered by the existing jurisprudence, including *Camayo*. It does not raise an issue of broad significance or general importance.

[42] I therefore find that neither question meets the criteria set out by the Federal Court of Appeal.

V. Conclusion

[43] For the foregoing reasons, I conclude that the Decision meets the standard of reasonableness set out in *Vavilov*. This application for judicial review is therefore dismissed. No question for certification shall be certified.

JUDGMENT in IMM-8289-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question for certification is certified.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8289-22
STYLE OF CAUSE:	MUHAMMAD FARHAN ASLAM v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 15, 2023
JUDGMENT AND REASONS:	ROCHESTER J.
DATED:	JANUARY 2, 2024

APPEARANCES:

Celeste Shankland	FOR THE APPLICANT
James Todd	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Landed Law Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT