

Federal Court



Cour fédérale

**Date: 20240424**

**Docket: IMM-6504-23**

**Citation: 2024 FC 621**

**Ottawa, Ontario, April 24, 2024**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**VISNAROOBAN CELVANAYAHAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Visnaroooban Celvanayaham, seeks judicial review of a decision of the Refugee Protection Division (“RPD”) dated May 4, 2023, finding that the Applicant’s refugee status is ceased pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicant submits that the RPD's decision is unreasonable, as the RPD erred in finding that he had the subjective intent to reavail himself of Sri Lanka's protection.

[3] For the following reasons, I find that the RPD's decision is reasonable. This application for judicial review is dismissed.

## II. Analysis

### A. *Background*

[4] In a decision dated May 24, 2017, the RPD granted the Applicant refugee status on the basis of perceived political opinion. On June 28, 2019, the Applicant became a permanent resident of Canada.

[5] The Applicant stated that in 2020, he obtained a Sri Lankan passport at the Consulate General of Sri Lanka in Toronto. In October 2021, the Applicant travelled to Sri Lanka, stating that he went to perform ritual rites for his deceased mother. The Applicant also testified that upon having COVID-19 twice, he became, in the RPD's words, "depressed and worried that he could die alone without seeing his child, who lived in Sri Lanka with his wife."

[6] On December 7, 2021, the Applicant returned from Sri Lanka. He confirmed to a Canada Border Services Agency agent that he did not have problems entering or exiting Sri Lanka and did not answer whether there was any reason to fear returning to Sri Lanka. However, the

Applicant also testified that he had to bribe a border agent in Sri Lanka in order to not be reported to the authorities.

[7] On March 4, 2022, the Minister applied to cease the Applicant's status pursuant to subsection 108 of the *IRPA*. In a decision dated May 4, 2023, the RPD allowed the Minister's application.

[8] Section 108 of *IRPA* sets out the grounds upon which an application for cessation of refugee protection can be granted. In the Applicant's case, the RPD considered that a claim for refugee protection shall be rejected if "[t]he person has voluntarily re-availed themselves of the protection of their country of nationality" as per subsection 108(1)(a) of the *IRPA*.

[9] In considering voluntarily reavilment under subsection 108(1)(a), the RPD considered paragraphs 118 to 125 of the United Nations High Commission on Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, paragraph 119 stating that cessation of refugee protection implies three requirements: 1) the refugee must act voluntarily; 2) the refugee must intend to reavail himself of the protection of the country of his nationality; and 3) the refugee must actually obtain such protection. This test was recently affirmed and applied by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at paragraph 18 ("*Camayo*").

[10] The consequences of cessation are severe. They involve the inability to appeal the cessation finding to the Immigration Appeal Division or the Refugee Appeal Division, the

inability to seek a Pre-Removal Risk Assessment or an application for permanent residence on humanitarian and compassionate grounds for at least one year, and inadmissibility to Canada for an indeterminate period, with removal enforced “as soon as possible” under subsection 48(2) of *IRPA* (*Li v Canada (Citizenship and Immigration)*, 2023 FC 792 at para 16). Following changes to the *IRPA* brought about by *Protecting Canada’s Immigration System Act*, SC 2012, c 17, a successful cessation application also generally results in the loss of an individual’s permanent residence status.

[11] On the first prong of the test for cessation, the RPD found that the Applicant’s travel was voluntary, concluding that there were not “compelling or exceptional reasons” for his trip to Sri Lanka.

[12] On the second prong, the RPD found that the evidence demonstrated that the Applicant had a subjective intention to reavail himself of Sri Lanka’s protection. The RPD acknowledged the Applicant’s testimony regarding his education, fear of return to Sri Lanka, and his explanation that he was suffering from COVID-19 and depression when he returned. The RPD also acknowledged testimony stating that the Applicant believed he could return to Canada based on his permanent resident card, that he did not travel outside of his family home in Sri Lanka (albeit due to a COVID-19 lockdown), and was transported from the airport by a relative. The RPD further acknowledged that the Applicant paid a bribe to airport staff in Sri Lanka, who threatened to contact the authorities if the Applicant did not pay. The RPD noted the Applicant’s testimony stating that his stay was extended because his wife contracted COVID-19 and the Applicant could not travel.

[13] The RPD also acknowledged the Applicant's travel history, including two travels to Malaysia on his Refugee Travel Document, as well as testimony stating he could not use this document to travel to Sri Lanka. The RPD noted the Applicant's testimony stating that he obtained a Sri Lankan passport to travel to Sri Lanka (and noted the fact that he travelled to Cuba on this passport), and acknowledged that the Applicant did not obtain legal advice before travelling to Sri Lanka because he was "depressed and did not know what to do." The RPD also acknowledged that the Applicant provided that he was depressed because of his five-year long attempt to sponsor his wife and child to come to Canada. The RPD found, however, that he did not provide medical documentation regarding this depression.

[14] The RPD found the Applicant's failure to contact counsel before travelling to Sri Lanka demonstrated intention to return to Sri Lanka, knowing that there were possible risks in so doing. The RPD found that it would not have been unreasonable for the Applicant to contact counsel before travelling to Sri Lanka, given his competent counsel in his refugee claim.

[15] The RPD further found that the Applicant's intention to avail himself of Sri Lanka's protection was demonstrated by obtaining his Sri Lankan passport and entering and exiting the country, given his agent of persecution was the Sri Lankan state. The RPD noted that the Applicant travelling to Cuba on his Sri Lankan passport, rather than his Refugee Travel Document and Canadian Permanent Resident card, further demonstrated his intention. The RPD found that the Applicant "was made aware of the possible immigration consequences by traveling on his Sri Lankan passport to Sri Lanka at various instances throughout his travels and he was aware of traveling to third countries by relying on his Refugee Travel Document."

[16] Moreover, the RPD found that while the Applicant testified that he feared state authorities in Sri Lanka and remained in his family home while there as a precaution, there were lockdowns at the time and the Applicant engaged with state authorities “by simply entering and exiting the country and by obtaining his passport.” The RPD concluded that by obtaining a Sri Lankan passport and returning there for 61 days, the Applicant intended to reavail himself of Sri Lanka’s diplomatic protection.

[17] On the final prong of the test for cessation, the RPD found that the Applicant actually reavailed himself of the Sri Lankan government’s protection to enter and exit Sri Lanka, as well as Cuba. The RPD acknowledged that the Applicant obtained his passport from Sri Lankan authorities after becoming a refugee and travelled to two different countries on this passport, including Sri Lanka. The RPD further noted the Applicant’s acknowledgment that he used the Sri Lankan passport and faced no obstacles when entering or exiting Sri Lanka.

[18] For these reasons, the RPD found that all requirements of an application for cessation of refugee status were made out and deemed the Applicant’s refugee claim to be rejected.

B. *Issue and Standard of Review*

[19] This application raises the sole issue of whether the RPD’s decision is reasonable.

[20] The standard of review is not in dispute. The parties agree the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 23-25) (“*Vavilov*”). I agree.

[21] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[22] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

C. *The decision is reasonable*

[23] The Applicant submits that the RPD erred in determining that the Applicant intended to reavail himself of Sri Lanka’s protection. The Applicant first states that his credibility was never in question, his evidence thus being taken as true regarding the factors used to rebut the presumption of reavailment. The Applicant further maintains that the RPD confused Sri Lanka with Pakistan in the analysis, failed to consider evidence that the Applicant was unaware of the immigration consequences of returning to Sri Lanka, and erred by finding it was reasonable for

the Applicant to seek legal advice before returning to Sri Lanka given he had previously had competent counsel. The Applicant further maintains that the issue of cessation has nothing to do with whether the Canadian government could protect the Applicant and that the RPD erred in finding that evidence of the Applicant's travel to Cuba supported that he did not fear returning to Sri Lanka. Additionally, the Applicant submits that the RPD erred in the analysis of the Applicant's awareness of the travel consequences of using his Sri Lankan passport, especially in considering the Applicant's "engagement" with the Sri Lankan state by having to pay a bribe to a border official.

[24] The Respondent submits that the decision is reasonable, the Applicant raising various trivial errors in the RPD's decision and mischaracterizing aspects of the RPD's decision. The Respondent maintains that the RPD reasonably assessed the Applicant's subjective intention to reavail himself of Sri Lanka, having considered the *Camayo* factors, and especially given his testimony that he was aware he could not use his Refugee Travel Document to travel to Sri Lanka, his interaction with a border official in Sri Lanka, and the diplomatic protection he received when travelling to Sri Lanka and Cuba. The Respondent further submits that the Applicant's circumstances in returning to Sri Lanka may have been "unfortunate," but were not involuntary, and the RPD nonetheless reasonably found that the Applicant did not furnish corroborating evidence regarding his mental health issues.

[25] I agree with the Respondent. I first note that counsel for the Applicant at the hearing conceded that the RPD's findings on voluntariness and actual reavailment were not at issue. The



sole issue is with the RPD's decision regarding the Applicant's intention to reavail himself of Sri Lanka's protection.

[26] The Applicant raises the issue of the RPD's analysis regarding the Applicant's "engagement" with the Sri Lankan state via a border official. The RPD acknowledged the Applicant's testimony that he feared the Sri Lankan state. The RPD also acknowledged that the Applicant had to pay a bribe upon entering Sri Lanka. On its own, the RPD's conclusion that the Applicant had "engaged with the Sri Lankan state by simply entering and exiting the country and by obtaining his passport" would appear to lack transparency and justification by failing to account for the fact that it was a bribe the Applicant had to pay at the border.

[27] However, the RPD further acknowledged the fact that the Applicant had himself "testified that he did not have any issues in entering or leaving the country." I cannot fault the RPD for accepting this evidence from the Applicant to find that he did not have issues when engaging with the Sri Lankan state, despite the Applicant's testimony before the RPD that he had to bribe an official when arriving in Sri Lanka. Finding otherwise would require the Court to reweigh and reassess this evidence. That is not this Court's role on reasonableness review (*Vavilov* at para 125).

[28] Furthermore, I cannot agree with the Applicant that the RPD failed in the analysis of the Applicant's awareness of the travel consequences of using his Sri Lankan passport.

[29] There is a strong presumption of an intention to reavail when refugees return to their country of nationality on passports issued by their country of nationality (*Camayo* at para 63). The presumption of an intention to reavail can also be triggered when a refugee uses a passport issued by their country of nationality to travel to a third country (*Camayo* at para 63). An individual's actual knowledge of the immigration consequences of their actions is a "key factual consideration" when considering intention to reavail (*Camayo* at para 70).

[30] The Applicant returned to Sri Lanka on his Sri Lankan passport. The RPD acknowledged evidence of the Applicant using his Sri Lankan passport to travel to a third country, namely, Cuba. Additionally, the RPD acknowledged the Applicant's testimony stating that he could not use his Refugee Travel Document to travel to Sri Lanka, and as a result had to obtain a Sri Lankan passport to travel to Sri Lanka. I am further mindful of testimony from the Applicant at the cessation hearing confirming that he understood he had received the cessation application because he had "travelled illegally." The RPD is presumed to have considered this evidence (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1554 at para 35, citing *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36 and *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1).

[31] In my view, when considering *Camayo*, there is no reviewable error with the RPD's conclusion that the Applicant had failed to adduce evidence to rebut the presumption that he intended to reavail himself of Sri Lanka's protection when he obtained and used a Sri Lankan passport to travel to both Sri Lanka itself and to a third country, and by testifying that he could not use his Refugee Travel Document to go to Sri Lanka.

[32] Furthermore, I do not agree with the submission that the RPD apparently placed “little to no weight” on the evidence that the Applicant did not know he could forfeit his immigration status in Canada upon returning to Sri Lanka. The RPD explicitly acknowledged that the Applicant “stated that he was confident he would be able to live and return to Canada since he had a Permanent Resident Card;” but as noted above, the RPD also acknowledged testimony where the Applicant stated he could not use his Refugee Travel Document to travel to Sri Lanka, and as a result had to obtain a Sri Lankan passport to travel to Sri Lanka. I cannot reweigh the evidence, and do not find that the RPD “fundamentally misapprehended” it such that the Court can interfere (*Vavilov* at paras 125-126).

[33] I do not agree with the remainder of the Applicant’s submissions. The Applicant’s argument regarding the RPD conflating “Pakistan” and “Sri Lanka” at certain points in the decision is peripheral (*Vavilov* at para 100). The RPD did not have any credibility concerns, and there is nothing in the decision to suggest the RPD did not consider the evidence tendered to rebut the presumption of reavailment. The RPD specifically acknowledged his depression, experiencing COVID-19, reasons to return to Sri Lanka, attempt to sponsor his wife and child, testimony about the immigration consequences of his travel, and having a Canadian Permanent Resident card. These submissions amount to a further request for the Court to reweigh the evidence (*Vavilov* at para 125). Additionally, there is no issue with respect to the argument regarding the Applicant having availed himself of Canada’s protection, the RPD’s statement regarding the Canadian government’s protection being a statement of counsel for the Minister’s submissions.

[34] Furthermore, I do not find that the RPD's reference to the Applicant failing to speak with counsel before travelling to Sri Lanka to be unreasonable. This reference was made with the qualification that it would have not been unreasonable to seek legal advice, "particularly because [the Applicant] was aware he could not travel there given the statement on his Refugee Travel Document." As provided above, the Applicant testified that he could not travel to Sri Lanka on this document and the RPD did not err by relying upon that piece of evidence. Again, I cannot reweigh the evidence before the RPD (*Vavilov* at para 125).

### III. **Conclusion**

[35] This application for judicial review is dismissed. The RPD's decision is reasonable, the Court being prohibited from reweighing evidence and deciding the issues itself (*Vavilov* at paras 83, 125). No questions for certification arose, and I agree that none arise.

**JUDGMENT in IMM-6504-23**

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

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”  
\_\_\_\_\_  
Judge

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

**DOCKET:** IMM-6504-23

**STYLE OF CAUSE:** VISNAROOBAN CELVANAYAHAM v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 6, 2024

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** APRIL 24, 2024

**APPEARANCES:**

Robert Israel Blanshay FOR THE APPLICANT

Kevin Spykerman FOR THE RESPONDENT  
Jake Boughs

**SOLICITORS OF RECORD:**

Blanshay Law FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario