Federal Court  Cour fédérale

Date: 20250116

Docket: IMM-6987-23

Citation: 2025 FC 88

Toronto, Ontario, January 16, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

TIINDE BUJBACZI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Ms. Tiinde Bujbaczi (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the "RPD"), allowing the application of the Minister of Citizenship and Immigration (the "Respondent") for cessation of her refugee Convention status. The cessation application was made pursuant to paragraph 108(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2021, c. 27 (the "Act"). The RPD made its decision on May 4, 2023.

[2] The Applicant is a Hungarian national of Roma ethnicity. She sought refugee protection in Canada together with her former husband, an Algerian citizen, and their son.

[3] The Applicant submitted a claim for refugee protection in Canada, pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"), on December 3, 1996. The claim included her ex-husband and her son, and was made by reference to Algeria and Hungary.

[4] In September 1998, the Applicant was granted refugee protection by the original RPD panel.

[5] On March 11, 2004, the Applicant became a permanent resident of Canada. On November 3, 2008, she received a new Hungarian National Identity Card. On July 2, 2014, she received a new Hungarian passport.

[6] According to a Residency Questionnaire completed by the Applicant, she travelled to Hungary for one month in June 2004. She returned to Hungary in June 2006 for six weeks. In November 2006, the Applicant left Canada and was in Hungary.

[7] The RPD found that the Applicant made ten (10) trips to Hungary between June 2004 and October 2015. It found that her trip in June 2004, to bring her son to see his grandmother, was not due to exceptional circumstances and was voluntary.

[8] The RPD found that two trips to Hungary from Switzerland between November 2006 and December 2012 were voluntary.

[9] The RPD found that the Applicant's trip to Hungary from Algeria in August 2013 was voluntary.

[10] Finally, the RPD found that the Applicant's trip to Hungary in October 2015, to meet her godmother, was voluntary.

[11] The Applicant also used her Hungarian passport to travel to Switzerland and Algeria. The RPD found that these travels showed both an intent to reavail and actual reavailment, of the protection of her country of nationality by the Applicant.

[12] The Applicant argues that the RPD breached her right to procedural fairness by conducting a cessation hearing twenty-five (25) years after she obtained refugee protection and with no documents to support her claim for refugee protection.

[13] The Applicant acknowledges that the RPD questioned her about her application for refugee protection. However, she argues that she was disadvantaged at the cessation hearing because materials in support of her refugee claim were not available.

[14] The Applicant also argues that the RPD erred in its analysis of the elements of voluntariness and intent to reavail. She emphasizes her ignorance of the consequences of her

travel upon her immigration status, relying on the decision of the Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50 at paragraph 84.

[15] Finally, the Applicant contends that the RPD did not adequately explain why it did not accept her evidence as rebutting the presumption that she had reavailed of the protection of Hungary, her country of nationality. She submits that the RPD provided no analysis as to why her evidence was insufficient in this regard.

[16] The Respondent first raised an objection that the application for leave and judicial review was filed late. This argument was not addressed by the Applicant and was not pursued at the hearing.

[17] On the merits, the Respondent takes the position that there was no breach of procedural fairness arising from the fact that cessation proceedings were not commenced until 2016. The duration of the cessation proceedings over a number of years was due to requests from the Applicant for accommodation for health reasons.

[18] The Respondent also submits that the facts concerning the cessation application are more important than the grounds for the Applicant’s claim for refugee protection.

[19] Finally, the Respondent notes that the Applicant was represented by counsel at the hearing before the RPD and no objection was raised about the absence of the original refugee application materials.

[20] Two issues arise from this application for judicial review: was there a breach of procedural fairness, and was the decision unreasonable?

[21] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration v. Khosa*, [2009] 1 S.C.R. 339.

[22] The merits of the decision are reviewable on the standard of reasonableness, following the decision in *Canada (Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[23] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov*, *supra*, at paragraph 99.

[24] I agree with the submissions of the Respondent on the issue of an alleged breach of procedural fairness. In my opinion, there was no breach of procedural fairness.

[25] In my opinion, the Applicant's file materials submitted in support of her claim for refugee status are not relevant to the disposition of the cessation application brought by the Respondent. Since the Applicant was recognized as a Convention refugee, the "missing" materials were relevant only to her request for protection.

[26] The cessation application arose solely due to the Applicant's status as a Convention refugee when her actions relative to Hungary, her country of nationality against which she sought protection, raised the question of reavailment. Paragraph 108(1)(a) of the Act is engaged and provides as follows:

108. A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	**108.** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
(a) the person has voluntarily reavailed themself of the protection of their country of nationality;	(a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;

[27] Insofar as the Applicant complains about a breach of procedural fairness arising from the timeliness of the Respondent's cessation application, which began in 2016, some eighteen (18) years after she was recognized as a Convention refugee in Canada, I see no merit in this argument and I see no resulting breach of procedural fairness.

[28] The Applicant does not control the administration of the Act. She did not "perfect" her status in Canada by applying for citizenship, pursuant to the *Citizenship Act*, R.S.C. 1985, c. C-29. The hearing of the cessation application began in February 2020. That is not an unduly long time after it started. As well, the RPD noted that delays in the hearing were due to the accommodation of the Applicant on health grounds.

[29] The facts about the Applicant's travels, subsequent to recognition as a Convention refugee, are relevant and important for the cessation application.

[30] The evidence before the RPD showed a number of trips undertaken by the Applicant to two countries of relevance to her refugee claim.

[31] The RPD considered the relevant passages of the United Nations' High Commission Handbook on Procedures and Criteria for Determining Refugee Status. At paragraph 13 of its decision, the RPD referred to the test for reavailment as follows:

> The panel has considered paragraphs 118 to 125 of the United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook). Paragraph 118 introduces the concepts of voluntariness, intention and re-availment within the context of cessation of Convention refugee protection, specifically:
>
> A refugee who has voluntarily re-availed himself of national protection is no longer in need of international protection. He has demonstrated that he is no longer "unable or unwilling to avail himself of the protection of the country of his nationality."
>
> 119. This cessation clause implies three requirements:
>
> a) voluntariness: the refugee must act voluntarily;
>
> b) intention: the refugee must intend by his action to reavail himself of the protection of the country of his nationality;
>
> c) re-availment: the refugee must actually obtain such protection.

[32] In paragraph 38 of its decision, the RPD acknowledged that the use of a passport, issued by the country against whom refugee status was granted, gives rise to a rebuttable presumption that the user of such passport had voluntarily reavailed of the protection of that country. It found that the Applicant had failed to rebut the presumption.

[33] In the present case, the Applicant challenges the manner in which the RPD dealt with the elements of voluntariness and intention.

[34] I agree with the manner in which the RPD treated these elements. It examined the circumstances of the Applicant's travel and in my view, reasonably found that five (5) of the trips were voluntary, within the meaning of the test for cessation of refugee protection.

[35] In my opinion, the RPD reasonably determined that travel to get divorce documents was voluntary in the sense that other means were available to get those documents.

[36] I agree with the submissions of the Respondent that the Applicant carried the burden of persuading the RPD that her travels, on her Hungarian passport after recognition as a Convention refugee, were due to exceptional circumstances. The RPD found that such circumstances were not established.

[37] I am satisfied that the RPD's reasons meet the test of "reasonableness" as set out in *Vavilov, supra* - they are "justified, transparent and intelligible".

[38] The RPD referred to the decision in *Kovacs v. Canada (Citizenship and Immigration)*, 2022 FC 1532 where the Court said the following at paragraph 33:

> It is true that Ms. Kovacs did not acquire her Hungarian passport to travel to that country, and that this is what normally triggers the presumption of re-availment. However, I am of the view that the presumption must also apply when a person decides to apply and obtain a passport from their country of nationality while being in that country. This certainly strongly suggests that the person intended to avail themself of the protection of their country of nationality (*Camayo FCA* at para 63).

[39] This reference applies to the present case. The RPD reasonably considered relevant jurisprudence in assessing the Applicant's use of her Hungarian passport to travel to both Hungary and other countries.

[40] The RPD considered the Applicant's arguments as to her ignorance of the consequences upon her refugee status in Canada, resulting from her use of her Hungarian passport. It referred to the decision of the Federal Court of Appeal in *Camayo, supra* at paragraph 70, and observed that ignorance of consequences is not a dispositive issue upon a cessation application.

[41] The RPD also addressed the severity of the consequences of a cessation application upon the Applicant in paragraph 49 of its decision. Again it referred to the decision in *Camayo, supra* and noted that this factor is not dispositive of an cessation application.

[42] The RPD referred to the decision in *Camayo*, *supra* where at paragraph 52, the Federal Court of Appeal said that the intention to reavail is stronger when refugees “return” to their country of nationality.

[43] That is what happened here.

[44] At paragraph 57 of its decision, the RPD clearly set out its conclusion that the Applicant “intended” to reavail herself of the diplomatic protection of Hungary and that she “received such protection”.

[45] Upon the basis of the evidence submitted in this application and considering the submissions, both written and oral, I am not satisfied that the Applicant has shown any reviewable error on the part of the RPD.

[46] There was no breach of procedural fairness and the decision meets the applicable legal test. There is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

[47] The Applicant may pursue other options for remaining in Canada, including that provided by subsection 25(1) of the Act.

JUDGMENT IN IMM-6987-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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