

Federal Court



Cour fédérale

Date: 20220325

Docket: IMM-2802-21

Citation: 2022 FC 387

Ottawa, Ontario, March 25, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

NASIRA IQBAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] On March 26, 2021, the Refugee Protection Division [RPD] allowed the application the Minister of Public Safety and Emergency Preparedness [the Minister] presented pursuant to subsections 108(2) and (3) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Minister had alleged that Ms. Iqbal had voluntarily reavailed herself of the protection of her country of nationality, Pakistan, by applying for and obtaining a Pakistani passport, then

having used this document to travel to Pakistan in 2016 and again in 2018, per paragraph 108(1)(a) of the Act.

[2] The RPD ceased Ms. Iqbal's status as a Convention refugee and deemed rejected her claim [the Decision]. Ms. Iqbal asks the Court to set aside the Decision.

[3] For the reasons outlined below, I will dismiss Ms. Iqbal's application for judicial review.

II. Factual background

[4] Ms. Nasira Iqbal is a citizen of Pakistan. In January 2013, she and Mr. Farooq Ahmad, both of Ahmadi faith, married in Pakistan. In June 2013, Ms. Iqbal applied for a Canadian Visitor's Visa and in September 2013, the visa issued. On November 5, 2013, Ms. Iqbal arrived in Canada alone, and on November 26, 2013, she claimed refugee protection based on her fear of persecution in Pakistan on the basis of her Ahmadi faith.

[5] On March 12, 2014, the RPD accepted Ms. Iqbal's claim and found her to be a Convention refugee. On March 31, 2014, Ms. Iqbal applied for permanent resident status and included her husband as her dependant. On May 4, 2015, she was granted permanent resident status, but no progress had been made on her husband's application.

[6] Ms. Iqbal applied for a new Pakistani passport, and on September 15, 2015, she obtained it from the Pakistan consulate in Toronto, valid for 10 years and indicating her faith as Ahmadi.

Ms. Iqbal also obtained a new Pakistani National ID card issued September 5, 2015 and valid for 10 years, which indicated her permanent address as one in Pakistan.

[7] From February 10, 2016 to October 4, 2016, Ms. Iqbal sojourned in Pakistan.

[8] On October 18, 2016, an immigration officer at the Canadian High Commission in Islamabad interviewed Mr. Ahmad as part of his permanent residence application as Ms. Iqbal's dependant husband. Mr. Ahmad then indicated to the immigration officer, *inter alia*, that Ms. Iqbal had visited Pakistan for family reasons, that she knew of her husband's interview in regards to his permanent residence application, and that she had left Pakistan to return to Canada early October, 2016, hence before said interview, in order to attend a religious event.

[9] On November 3, 2016, Mr. Ahmad's permanent residence application as Ms. Iqbal's dependant was denied. The immigration officer found that Mr. Ahmad did not meet the requirements of the Act, concluding that the marriage was entered into primarily for the purpose of acquiring any status or privilege under the Act or is not genuine. This decision was challenged before the Court, but leave for judicial review was denied.

[10] On May 30, 2018, Ms. Iqbal applied for Canadian citizenship. In the application forms she completed in support of her citizenship application, she confirmed that she had returned to Pakistan from February 10, 2016 to October 4, 2016, hence for 237 days. She indicated that the purpose of her visit was essentially to visit her husband.

[11] From September 8, 2018, to February 15, 2019, Ms. Iqbal sojourned again in Pakistan.

[12] In December 2019, Ms. Iqbal and Mr. Ahmad initiated the procedure for spousal sponsorship and Family Class permanent resident application for Mr. Ahmad.

[13] On June 27, 2019, an officer of Immigration, Refugees and Citizenship Canada interviewed Ms. Iqbal as part of her citizenship application. During this interview, Ms. Iqbal confirmed that she had returned to Pakistan to visit her husband and family. The citizenship officer noted that Ms. Iqbal refused to answer when asked if she still had a fear of the country.

[14] On August 20, 2019, the Minister presented two applications to the RPD. One for cessation of Ms. Iqbal's refugee protection as per subsection 108(2) of the Act, and the other for the vacation of her refugee protection as per section 109 of the Act.

[15] In response to the Minister's applications, Ms. Iqbal submitted that (1) at the citizenship interview, she could not express the full detailed account of why she had to travel to Pakistan in English and thus remained silent as English is not her first language; (2) she returned to Pakistan in order to fulfill a two-year cohabitation with her husband requirement; (3) she obtained her passport to visit her husband in order show she and her husband were in a genuine conjugal relationship; (4) in Pakistan, she remained in hiding and never met anyone outside family circle; (5) she was obliged by Canada and Pakistan to apply for a Pakistani passport as she did not yet have Canadian citizenship; (6) she had to prove her conjugal relationship and between 2014 and

2015, cessation of refugee status did not affect permanent resident status; (7) she received poor legal advice; and (8) she did not obtain protection in Pakistan.

[16] In her submissions to the RPD, Ms. Iqbal stated that the Minister correctly mentioned that paragraph 108(1)(a) of the Act does not require an assessment of forward-looking risk.

[17] On January 22, 2021, the Minister replied, on January 29, 2021, the RPD heard the case and both parties subsequently filed closing submissions. In her closing submissions, Ms. Iqbal again confirmed that “[...] at the cessation hearing, the tribunal is not supposed to access the forward-looking risk assessment [...]”.

[18] On March 26, 2021, the Minister’s application to cease Ms. Iqbal’s refugee protection under section 108 of the Act was allowed. This is the decision challenged by Ms. Iqbal in these proceedings.

III. The law

[19] Section 108 of the Act provides as follows:

Rejection

108(1) 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:

(a) the person has voluntarily reavailed themselves of the protection of their country of nationality;

Rejet

108(1) 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) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;

(b) the person has voluntarily reacquired their nationality;

b) il recouvre volontairement sa nationalité;

(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;

c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;

(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or

d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;

(e) the reasons for which the person sought refugee protection have ceased to exist.

e) les raisons qui lui ont fait demander l'asile n'existent plus.

Cessation of refugee protection

Perte de l'asile

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1)

(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

Effect of decision

Effet de la décision

(3) If the application is allowed, the claim of the person is deemed to be rejected.

(3) Le constat est assimilé au rejet de la demande d'asile.

Exception

Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

[20] Subsection 108(1) of the Act relates to situations “[...] in which a person has voluntarily reavailed themselves of the protection of their country of nationality, including by travelling to that country or by travelling elsewhere using that country’s passport” (*Canada (Citizenship and Immigration) v Bermudez*, 2016 FCA 131 at para 23 [*Bermudez*]).

[21] Broadly, as stated by the Federal Court of Appeal, cessation of refugee protection “[...] is based on the premise that refugee protection is a temporary remedy against persecution” and “[...] is no longer available when the circumstances enumerated in subsection 108(1) of the [Act] arise” (*Bermudez* at para 22). The Federal Court of Appeal stated that the wording of section 108 of the Act is “clear and unambiguous” as “[t]he scope of section 108 is clearly defined and leaves very little room for discretion in terms of the circumstances that trigger its application” (*Bermudez* at para 39). The Federal Court of Appeal added that the role of the officer “[...] is to determine whether a prima facie case for a cessation application exists under the grounds listed at subsection 108(1) of the [Act]” (*Bermudez* at para 39).

[22] In its decision *Bermudez*, the Federal Court of Appeal had to determine whether a Canada Border Services Agency [CBSA] hearing officer had the discretion to consider circumstances or factors that are not explicitly listed in section 108 of the Act, more precisely H&C factors and the best interests of the child, when assessing whether an application for cessation of refugee protection should be submitted to the RPD for a determination that refugee protection has ceased for any of the reasons described in subsection 108(1) of the Act, particularly in instances involving a refugee who acquired permanent resident status in Canada (*Bermudez* at para 1). The Federal Court of Appeal found that “H&C factors have simply not

been deemed by Parliament to be of relevance within that context. Had Parliament intended that H&C considerations be taken into account in the cessation process, it would have used language to that effect. It has not done so” (*Bermudez* at para 40).

[23] The Federal Court has also already determined that “[...] whether an applicant would be at risk of persecution if returned to their country of nationality is not relevant in a cessation hearing” (*Chokheli v Canada (Citizenship and Immigration)*, 2020 FC 800 at para 66). The Court reiterated that “[...] this Court has held in a number of recent decisions that the RPD does not have to undertake a forward-looking risk analysis in a cessation decision (*Abadi*, at para 20; *Balouch v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 765 at para 19 [*Balouch*]; *Norouzi*, above)” (*Jing v Canada (Citizenship and Immigration)*, 2019 FC 104 at para 34 [*Jing*]). The Court noted “[...] that this question of whether section 108 of the [Act] necessitates a forward-looking risk assessment was certified in both the *Balouch* and *Narouzi* decisions. Both appeals were ultimately abandoned” (*Jing* at para 34).

IV. The Impugned Decision

[24] The RPD noted the Minister’s evidence and allegations, more specifically the fact that the Minister submitted that Ms. Iqbal reavailed herself of the protection of her country of nationality, Pakistan, by applying and obtaining a Pakistani passport and having used this document to travel to Pakistan in 2016 and 2018.

[25] The RPD noted that in deciding whether the Applicant voluntarily reavailed herself of Pakistan’s protection, as set out in paragraph 108(1)(a) of the Act, is guided by the *United*

Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status [UNHCR Handbook]. The RPD stated that the analytical framework for reavilment is rooted in paragraph 119 of the UNHCR Handbook.

[26] The RPD identified considerations necessary for cessation of refugee protection: (1) voluntariness, the refugee must act voluntarily; (2) intention, the refugee must intend by her action to reavail herself of the protection of the country of nationality; and (3) reavilment, the refugee must actually obtain such protection.

[27] Under the first consideration, the RPD examined if Ms. Iqbal acted voluntarily when she (1) renewed her Pakistan passport; (2) returned to Pakistan in 2016; and (3) returned to Pakistan in 2018.

[28] On the renewal of the passport, the RPD noted that it has not been provided with any persuasive testimony or documentary evidence that demonstrates the Ms. Iqbal was either forced or compelled to obtain her Pakistani passport. The RPD found that Ms. Iqbal acted voluntarily when she acquired the passport.

[29] On her trip to Pakistan in 2016, the RPD noted that Ms. Iqbal testified that the purpose of the 10 month trip was to spend time with her husband as well as to assist him to acquire his status in Canada. The RPD noted that she added that it also to attend the weddings of her brother, sister and another relative. The RPD further noted that Ms. Iqbal stated that she took precautions

during the visit not to go into public, and confirmed that she presented her authentic passport upon entry and exit and did not experience any problems.

[30] The RPD noted that Ms. Iqbal failed to attend her husband's immigration interview in Islamabad, leaving the country just two week before the interview. It found her explanation neither credible nor trustworthy. The RPD opposed Ms. Iqbal's affirmation that she travelled involuntary to Pakistan in order to assist her husband, while leaving Pakistan when he needed her. The RPD found that this undermined her credibility. The RPD noted the Minister's documentary evidence suggesting that the processing of Mr. Ahmad's immigration application had not begun until March 2016 or a period of one-month after she arrived in Pakistan. The RPD did not accept as credible that Ms. Iqbal's presence in Pakistan was required in February 2016.

[31] On her trip to Pakistan in 2018, the RPD noted Ms. Iqbal's explanations, namely that her presence in Pakistan was required in order to help secure a permanent resident visa for her husband under the spousal sponsorship program, and that her physical presence was required. The RPD noted that the sponsorship application had actually been filed after Ms. Iqbal's stay in Pakistan.

[32] The RPD found Ms. Iqbal's testimony not credible, and that she had not rebutted the presumption that she acted voluntarily in returning to Pakistan in 2018.

[33] Under the second consideration, i.e., her intention, the RPD noted the UNHCR Handbook and the case of *Li v Canada (Citizenship and Immigration)*, 2015 FC 459 whereby a factual

presumption of reavailment exists when a claimant has obtained a passport of their country of origin. The RPD also noted that it must consider and weigh evidence as to whether Ms. Iqbal was aware of the consequences of her return to Pakistan.

[34] The RPD found that it was reasonable for Ms. Iqbal not to be aware that obtaining a Pakistani passport and using it to travel on two occasions to her country of nationality would possibly compromise her own immigration standing in Canada. The RPD found however that her act of obtaining a Pakistani passport is persuasive evidence that she voluntarily intended to avail herself of the protection of her country of nationality, and that she failed to discharge the presumption that she intended to reavail.

[35] On the efforts made Ms. Iqbal to hide from the agents of persecution during her period of actual reavailment, the RPD found that Ms. Iqbal did not remain in hiding during her entire time spent in Pakistan in 2016 and in 2018, but that, to some degree, she engaged in public life during her visits.

[36] Under the third consideration, the actual reavailment, the RPD considered the length of time that Ms. Iqbal spent in Pakistan, which is approximately 400 days within a three-year period of time. The RPD found that visiting and residing in her country of nationality for a period of this length is not consistent with the purpose of her visits, as alleged during her hearing. The RPD cited *Cerna v Canada (Citizenship and Immigration)*, 2015 FC 1074 [*Cerna*] to state that by acquiring the passport to return to Pakistan, Ms. Iqbal obtained actual protection from that state.

[37] The RPD concluded that Ms. Iqbal's actions in acquiring a Pakistani passport and using it to permanently return to her country of nationality on two occasions to demonstrate her voluntary reavailment of the protection of that country pursuant to section 108(1)(a) of the Act. The RPD added that the cessation of Ms. Iqbal's status as a Convention refugee is allowed pursuant to section 108(2) and (3) of the Act and the Applicant's refugee claim is rejected.

[38] The RPD concluded that as the RPD has allowed the Minister's application to cease the Applicant's status, it is unnecessary for the panel to also assess the Minister's application to vacate the Applicant's status under section 109 of the Act.

V. Issues before the Court

[39] Ms. Iqbal submits that the RPD erred (1) in its cessation via reavailment analysis; and (2) by failing to consider prospective risk of persecution.

[40] In regards to Ms. Iqbal's second argument, and as I noted earlier, in her submissions before the RPD, Ms. Iqbal recognized and agreed with the Minister that paragraph 108(1)(a) of the Act does not require an assessment of forward-looking risk. She repeated this acknowledgment in her closing submissions before the RPD.

[41] This issue was therefore clearly not disputed before the RPD and cannot be raised now before the Court. The RPD cannot be faulted for not addressing an issue that Ms. Iqbal herself agreed, twice, was not in dispute, and that was consequently not examined by the RPD. Justice

Gagné held in *Khalid v Canada (National Research Council)*, 2013 FC 438 at paragraph 49 the following:

If the applicant's claim for negligent misrepresentation was not argued before the decision-maker, it may well be that the issue was not viewed as contentious and it should therefore not be considered by this Court on judicial review. The jurisprudence is well-established that on judicial review, a decision cannot be impugned on the basis of an issue not raised before the administrative decision-maker, unless the new issue is a jurisdictional one, which is not the case here (see *Toussaint v Canada (Labour Relations Board)*, [1993] FCJ No 616 (FCA), at para 5; *Shubenacadie Indian Band v Canada (Canadian Human Rights Commission) (re Macnutt)*, [1997] FCJ No 1481 at paras 37-43; and *Nametco Holdings Ltd v Canada (Minister of National Revenue)*, 2002 FCA 149, at para 2). [Emphasis added.]

[42] As this Court also stated, “[a] court has discretion not to consider an issue raised for the first time on judicial review where doing so would be inappropriate: exercising that discretion in favour of an applicant is generally not warranted where the issue could have been, but was not, raised before the decision maker” (*Hughes v Canada (Attorney General)*, 2021 FC 147 at para 75 citing *Canada RNA Biochemical Inc v Canada (Health)*, 2020 FC 668 at para 92; see also *Alberta (Information and Privacy Commissioner v Alberta Teachers' Association)*, 2011 SCC 61 at paras 22-26).

[43] Before this Court, Ms. Iqbal argued that the RPD, under the correctness standard, erred in not examining this issue despite the parties' agreement that it did not apply because the parties' position was contrary to the settled law on the matter. As I outlined earlier in this decision, this is not the case and this argument cannot succeed.

[44] Also, as the Minister of Citizenship and Immigration [the Respondent] noted before the Court, Ms. Iqbal does not dispute that her repeated reavilment was fully voluntary, and that the first consideration of the test for cessation was reasonably decided by the RPD. Although there is a section on “voluntary action” in her further memorandum, I could not discern an argument on the matter.

[45] Therefore, before the Court in these proceedings, remains Ms. Iqbal’s arguments that the second and third components of the cessation test was unreasonably decided by the RPD.

VI. Standard of review

[46] I agree with the parties that the standard of review is reasonableness.

[47] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on “an internally consistent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). The reviewing court must consider “[...] the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). The reviewing court must therefore ask “[...] whether the decision 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” (*Vavilov* at para 99

citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74 and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

VII. Submissions and analysis

A. *Did the RPD err in its cessation via reavailment analysis?*

(1) Intention

(a) *Submissions by Applicant*

[48] Ms. Iqbal first states that the UNHCR Handbook sets out the tripartite conjunctive test for cessation on the grounds of reavailment, which is that the refugee must (1) act voluntarily; (2) intend by their action to reavail themselves of the protection of their country of nationality; and (3) actually obtain such protection, as adopted by the Court in *Yuan v Canada (Citizenship and Immigration)*, 2015 FC 923 at para 27 [*Yuan*].

[49] Ms. Iqbal accepts that obtaining a passport from one's country of nationality creates a presumption that the individual reavailed themselves of that country's protection. She stresses however that this presumption can be rebutted. She alleges that the RPD left no room for her to demonstrate that she did not intend to avail herself of Pakistan's protection.

[50] Ms. Iqbal submits that the RPD was required to consider whether her subjective understanding of the benefits of her permanent residence status in Canada rebutted the presumption that she intended to reavail. She adds that Immigration, Refugees and Citizenship

Canada [IRCC] and CBSA intentionally hid from her the jeopardy in which she was putting her and her husband's futures in Canada.

[51] Ms. Iqbal alleges that the RPD's finding that it is not credible that she was in Pakistan for an immigration purpose since her husband's application was not yet in process, is incorrect because the Applicant applied for her and her husband's permanent residence in March 2014.

[52] On the fact that she did not attend her husband's interview in Islamabad, Ms. Iqbal argues that the RPD misstates and misconstrues the evidence as she never say that she was required to attend the interview, and did not leave Pakistan prematurely. Her explanation for her absence, i.e., meeting the spiritual leader of the global Ahmadiyya community and the successor to the promised Messiah, was reasonable and should not have led to an adverse credibility finding.

[53] On the fact that the RPD found that there does not appear to be an immigration related reason for her to have returned to Pakistan in 2018, Ms. Iqbal submits that her husband's application had been rejected on the grounds that their marriage was found not to be genuine and that therefore she took a risk and returned to Pakistan to obtain more evidence before filing a sponsorship in 2019. Ms. Iqbal cites *Mohammadi v Canada (Citizenship and Immigration)*, 2003 FC 1028 at paragraph 15 to state that it is clear from her testimony that her intention was not to reavail herself of the protection of the Pakistani state.

[54] Ms. Iqbal also submits that the RPD's conclusion that she did not remain in hiding during her time in Pakistan cannot be standard as she was a non-visible refugee.

[55] Finally, Ms. Iqbal submits that the presumption was rebutted in *Yuan* and in *Din v Canada (Citizenship and Immigration)*, 2019 FC 425 [*Din*] and that she had no intention of availing herself.

(b) *Submissions by Respondent*

[56] The Respondent responds and agrees that an applicant who obtains a passport from their country of nationality raises a rebuttable presumption of reavilment.

[57] The Respondent adds that Ms. Iqbal makes an internally contradictory argument at paragraph 26 of her memorandum where she mentions the “objectively horrendous conditions endured by Ahmadi Muslims” in Pakistan. Given she returned voluntarily, the Respondent submits that it would be extremely surprising that she voluntarily returned twice in Pakistan if the conditions were so. The Respondent also questions how CBSA or IRCC could have warned her of the potential consequences of reavilment since she has already reavailed by the time they became aware of her return.

[58] The Respondent summarizes the RPD’s reasoning as follows: (1) where a claimant has applied for a passport, a “factual presumption” of the intent to re-avail arises; (2) accepting that Ms. Iqbal may not have been aware of cessation proceedings, the RPD considered her intent in obtaining and using a Pakistani passport; (3) in using her passport, Ms. Iqbal represented herself as an Ahmadi citizen of Pakistan, to Pakistani officials; and (4) Ms. Iqbal argued she was “in hiding” in Pakistan, but went to three large wedding celebrations during her lengthy visits, and was photographed.

(c) *Analysis*

[59] As agreed by the parties, “[t]here is a presumption that when a refugee applies for and obtains a passport from his country of nationality, it will be presumed that they intended to avail themselves of the protection of the country of nationality” (*Jing* at para 17 citing *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 16 [*Abadi*]).

[60] The Court stated that “[t]he presumption of re-availment is particularly strong where a refugee uses his national passport to travel to his country of nationality” (*Abadi* at para 16). The presumption clearly applies in the present case and is a strong one, since Ms. Iqbal used her Pakistani passport, identifying her clearly as Ahmadi, to travel to Pakistan on two occasions. In addition, “[i]t is only in ‘exceptional circumstances’ that a refugee’s travel to his country of nationality on a passport issued by that country will not result in the termination of refugee status” (*Abadi* at para 18; see also *Jing* at para 17). Ms. Iqbal has not convinced me there existed exceptional circumstances that the RPD ignored or wrongly assessed.

[61] I note particularly that (1) there is no indication that IRCC and CBSA had a duty to inform Ms. Iqbal of the jeopardy in which she was putting her and her husband’s futures in Canada; (2) the RPD’s finding in regards to the purpose of her trip is reasonable given the record; (3) it was reasonable for the RPD to consider Ms. Iqbal’s explanation for her absence at her husband’s interview as unreasonable and to draw an adverse credibility finding, since she had allegedly traveled to Pakistan precisely to obtain and create more evidence intended to secure her husband’s status; and (4) with regards to the aspect of Ms. Iqbal hiding while

returning in Pakistan, she cited no authority to state that “[a]s a non-visible refugee, the Applicant does not need to have been in hiding the entire time”. The RPD considered the *Yuan* decision and found, on balance of probabilities, that Ms. Iqbal did not remain in hiding, but engaged to some degree in public life during her visits in Pakistan. The RPD could reasonably weight the evidence and conclude as it did.

[62] Ms. Iqbal’s arguments essentially amount to a disagreement with the RPD’s conclusions. I find the RPD decision on Ms. Iqbal’s intention to be transparent, intelligible and justified given the record before it.

(2) Actual protection

(a) *Submissions of Applicant*

[63] Ms. Iqbal submits that as a devout Ahmadi Muslim, she fears the Pakistani state and cannot obtain any form of protection from it, diplomatic or otherwise. Ms. Iqbal alleges that the RPD conflated intention with actual protection. She takes issue with the RPD’s logic, i.e., simply applying for a passport, obtaining it, and using it to travel to the home country is both demonstrative of her intention and synonymous with obtaining actual protection, is tautological and cannot be sustained. She cites the UNHCR Guidelines and argues that they do not say that obtaining a passport and using it to travel is equivalent to diplomatic protection.

[64] Ms. Iqbal alleges that the RPD persisted in ignoring the country condition evidence. She describes the various conditions in Pakistan, for instance the Ahmadi faith, punishable by

imprisonment under Pakistan’s Criminal Code, the blasphemy law and the number of violent attacks against Ahmadis. The Applicant argues that the evidence is sufficient to rebut the presumption that Ms. Iqbal reavailed.

(b) *Submissions of Respondent*

[65] The Respondent responds that the RPD’s analysis of actual reavaiement was reasonable. He outlines that the RPD noted that (1) the presumption of actual reavailment applied; (2) Ms. Iqbal spent 400 days in Pakistan in the span of three years, far more than was necessary for the stated purpose of her visits; and (3) repeatedly travelling in and out of the country, on a passport which indicated her Ahmadi faith, Ms. Iqbal “placed herself within the diplomatic protection of the Government of Pakistan, and actually obtained diplomatic protection” (Decision at para 62).

[66] The Respondent responds that the *Din* decision is distinguishable from the present case, as the applicant in *Din* was not identified as an Ahmadi Muslim on his passport. In the present case, the Respondent submits that Ms. Iqbal passport clearly indicates her Ahmadi faith.

(c) *Analysis*

[67] With regards to the presumption of reavailment when the minister is able to demonstrate that the person has obtained or renewed a passport from the country, the Court noted that it is “[...] presumed that the refugee has obtained the actual protection of that country when the Respondent establishes that the refugee has used that passport to travel” [Emphasis added] (*Seid v Canada (Citizenship and Immigration)*, 2018 FC 1167 at para 14 [*Seid*]). In *Cerna*, at

paragraph 13, the Court held that “[i]f the refugee acquires the passport in order to return to his or her country of origin, [...] then the refugee has also obtained actual protection from that state. In these circumstances, unless the refugee has rebutted the presumption of intention, the only remaining question is whether he or she voluntarily acquired his or her passport” [Emphasis added]. The presumption of intention was not rebutted. The decision on that aspect is reasonable.

[68] I agree with the Respondent that the RPD reasonably noted that (1) the presumption of actual reavailment applied; (2) Ms. Iqbal spent 400 days in Pakistan in the span of three years, far more than was necessary even if one accepts the stated purpose of her visits; and (3) repeatedly travelling in and out of the country, on a passport which indicated her Ahmadi faith, Ms. Iqbal “placed herself within the diplomatic protection of the Government of Pakistan, and actually obtained diplomatic protection” (Decision at para 62).

[69] I appreciate that the RPD decision has a considerable impact on her life. However, Ms. Iqbal has not established the RPD decision is unreasonable given the record before it, the language of the provision and the Court’s case law.

VIII. Conclusion

[70] The application for judicial review will be dismissed.

JUDGMENT in IMM-2802-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.
3. No cost are awarded.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2802-21

STYLE OF CAUSE: NASIRA IQBAL v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 17, 2022

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: MARCH 25, 2022

APPEARANCES:

Me Celeste Shankland FOR THE APPLICANT

Me Christopher Ezrin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Landed Law FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario