Federal Court Cour fédérale

Date: 20220829

Docket: IMM-1150-20

Citation: 2022 FC 1239

Ottawa, Ontario, August 29, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

DANIEL URIBE ARANGO

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Respondent is a citizen of Colombia who became a permanent resident of Canada on September 29, 2005. His wife and daughters remain in Colombia.

[2] On October 28, 2005, the Respondent, who believed he was dying, used his Colombian passport to return to Colombia. His purpose for the trip was to spend time with his family, as he wanted to see them before he died.

[3] On August 12, 2015, the Minister applied to the Refugee Protection Division (RPD) to cease refugee protection for the Respondent and, if successful, to have his refugee claim deemed as rejected.

[4] This is an application to review the decision made by the RPD on January 28, 2020, rejecting the Minister's application to cease refugee protection for the Respondent (the Decision).

[5] For the reasons that follow, this application is dismissed.

II. **Background Facts**

[6] When the Respondent returned to Colombia, he resided on a remote farm owned by his father-in-law, away from his wife and children in the town of Altagracia. He remained in hiding for a period of 35 months.

[7] Because of the Respondent's efforts to keep a low profile, he was not working. His wife got a job so the family could afford to buy tickets to fly to Canada if visas were received.

[8] The Respondent returned to Canada alone on September 23, 2008. He renewed his Colombian passport on July 16, 2010 based on the advice of his social worker that it was necessary for his citizenship application.

III. **The Decision**

[9] In response to the Minister's application to cease the Respondent's refugee protection, the Respondent submitted extensive evidence.

[10] The evidence included medical records, diagnostic reports, flight tickets to and from Colombia, and letters of support from his wife, sister, brother, brother-in-law and doctor.

A. *Voluntariness and Intention to re-avail*

[11] The RPD noted that in considering whether the Respondent voluntarily re-availed to Colombia's protection paragraph 108(1)(a) of the *IRPA* and paragraphs 118 to 125 of the United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status* (UNHCR Handbook) would be considered.

[12] The RPD reviewed paragraph 120 of the UNHCR Handbook and determined that none of the examples applied. It found though that the Respondent had voluntarily re-availed himself by returning to Colombia.

[13] The RPD went on to consider the provisions in paragraph 124 of the UNHCR Handbook indicating that under certain exceptional conditions obtaining a national passport or an extension of its validity, may not involve termination of refugee status.

[14] The RPD noted though the state of the Respondent's mental health and the circumstances of his return in 2005 were relevant considerations to address.

[15] The Panel found the Respondent's evidence and testimony demonstrated his motivation "to die surrounded by his family, at a time of significant physical and mental stress". It determined that fact rebutted the presumption of an intent to re-avail himself of the protection of Colombia.

[16] There were no credibility issues at the hearing. The RPD found the Respondent's testimony was "unassailed", and when it was coupled with the circumstances of his decision to return there were exceptional circumstances and the application for cessation should not be granted.

IV. **Issue**

[17] The only issue is whether the Decision is reasonable.

V. **Standard of review**

[18] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[19] A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker. It does not attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem: *Vavilov* at para 83.

[20] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

[21] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion". To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a

decision maker's failure 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. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Vavilov* at para 128.

VI. **Analysis**

[22] The Minister submits the Decision is unreasonable because the RPD failed to mention paragraphs 123 and 125 of the UNHCR Handbook. Paragraph 125 sets out the presumption that flows from a person who visits their country of nationality using a passport issued by the country from which the person sought refuge. The presumption of re-availment is particularly strong when a Convention refugee/protected person uses his national passport to return to the country from which refuge had been taken.

[23] The Respondent agrees that the presumption exists but points out that it is rebuttable and the RPD found it had been rebutted.

[24] The Minister also submits that the RPD appears to have taken the position that because the Respondent was in hiding, he rebutted the presumption of intent. The Minister adds that this definition of intention, taken to its logical conclusion, would permit any refugee who identified a non-state agent of persecution to return to their country of nationality provided the refugee made an attempt to hide from their assailant(s).

[25] The Respondent counters that the Minister is raising a ‘slippery slope’ argument but the RPD actually found that the Respondent had adduced credible evidence to rebut the presumption.

[26] I agree with the Respondent’s submissions and find the Decision is reasonable.

[27] With respect to the Applicant’s substantive arguments on the reasonableness of the Decision, they can all be reduced to the undisputed fact that a Convention refugee’s travel on the passport of their nationality amounts to re-availment of diplomatic protection and the RPD disregards the presumption of intent with respect to that travel.

[28] I find nothing in the Decision to support such a conclusion. On the contrary, the RPD accepted the Respondent’s evidence and testimony to be credible, remarking that it was unassailed.

[29] While the Applicant explained at some length that the presumption was ignored, it clearly was not. The RPD acknowledges the presumption at paragraphs 15 and 25 of the Decision when it holds that the Respondent overturned it.

[30] In addition, the Respondent points out that the RPD’s consideration of his efforts to hide is consistent with the jurisprudence. In fact, the failure to examine those efforts would render the decision unreasonable as established in *Camayo v Canada (Minister of Citizenship and Immigration)*, 2020 FC 213 at para 53 [*Camayo*]; *Canada (Minister of Citizenship and*

Immigration) v Antoine, 2020 FC 370 at para 40 [*Antoine*]; and, *Peiqrishvili v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1205 at para 24 [*Peigrishvili*].

[31] It considered whether that was sufficient to rebut the presumption in line with the jurisprudence in *Antoine* at para 40; *Camayo* at para 53; *Peiqrishvili* at para 24.

[32] The Applicant's arguments amount to a reweighing of the evidence, which is not the proper role of this Court upon judicial review: *Vavilov* at para 125.

[33] Taking into account *Vavilov's* teaching that as a reviewing court I am not to interfere with the factual findings made by the RPD, I am satisfied on review that the Decision is reasonable.

[34] I am also satisfied the reasons meet the requirements set out in *Vavilov*. They are justified, transparent and intelligible. The RPD responded to the arguments it received and grappled with the evidence. I can discern no fatal flaw in the logic or reasoning.

VII. **Conclusion**

[35] This application is dismissed, for all the foregoing reasons.

[36] There is no serious question of general importance for certification.

JUDGMENT in IMM-1150-20

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no serious question of general importance for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1150-20
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v DANIEL URIBE ARANGO
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 22, 2021
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	AUGUST 29, 2022

APPEARANCES:

Michael Butterfield	FOR THE APPLICANT
Chantal Desloges	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE APPLICANT
Desloges Law Group Professional Corporation Barristers and Solicitors Toronto, Ontario	FOR THE RESPONDENT