

Federal Court



Cour fédérale

Date: 20230623

Docket: IMM-3503-22

Citation: 2023 FC 887

Ottawa, Ontario, June 23, 2023

PRESENT: Madam Justice Walker

BETWEEN:

DARI Fatih Mehmet

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Dari, is a citizen of Turkey who came to Canada in 2015 to escape persecution due to his Kurdish identity. The Applicant's claim for protection was granted on August 20, 2015 and he became a permanent resident on June 30, 2017.

[2] The Applicant obtained a Turkish passport on August 1, 2017 and travelled to Turkey twice using the passport: September 2, 2017 to October 10, 2017 and November 25, 2017 to December 10, 2017. The Applicant made both trips to see his aging mother who had undergone

two non life-threatening day surgeries. The first surgery occurred two weeks before the Applicant's September-October 2017 return trip and the second took place during his November-December 2017 trip.

[3] On February 23, 2018, the Minister applied to the Refugee Protection Division (RPD) to cease the Applicant's refugee protection pursuant to subsection 108(2) of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*.

[4] The RPD granted the Minister's application in a decision dated March 25, 2022. The panel determined that the Applicant had voluntarily and intentionally reavailed himself of the protection of his country of nationality within the meaning of paragraph 108(1)(a) of the *IRPA* by obtaining and using his Turkish passport to return to Turkey on two occasions.

[5] The Applicant now seeks the Court's review of the RPD's decision.

[6] For the reasons that follow, the application will be dismissed. I have considered the decision, the evidence before the RPD, and the applicable law and jurisprudence and conclude that the decision is reasonable. The evidence supports the RPD's conclusions regarding the Applicant's reavilment of the diplomatic protection of Turkey.

I. Decision under review

[7] The RPD found that the Minister had established the factual allegations set out in his application, namely that the Applicant obtained a Turkish passport after he received refugee

protection from Canada and returned to Turkey using the passport on two occasions. The panel summarized the Applicant's reasons for obtaining the passport as opposed to a Canadian Travel Document and the purpose of his return trips. In terms of the latter, the Applicant explained that his trips to Turkey were prompted by a desire to see his mother. While in Turkey, he remained with his mother at her home to care for her but did socialize on a limited basis and met with his future wife's parents as part of the courting process in Turkish culture. Otherwise, he did not make his presence in Turkey known, nor did he post on social media or attend social or cultural gatherings.

[8] The RPD's decision focusses on the question of whether the Applicant voluntarily reavailed himself of the protection of Turkey within the meaning of paragraph 108(1)(a). In concluding that the Applicant had done so, the panel was guided by the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* and the concepts of voluntariness, intention and reavailment:

Voluntariness - obtaining Turkish passport and return travel: The RPD reviewed the Applicant's explanation of his decision to obtain a Turkish passport and concluded that there was no evidence that he did not obtain the passport voluntarily. The Applicant then used the Turkish passport to return to Turkey to see his mother in light of her declining health and the two surgeries which, while not life threatening, were serious. Although the Applicant understandably wanted to be with his mother to provide support and care, he was not compelled to do so. The RPD concluded that the Applicant made a deliberate choice to return to Turkey voluntarily.

Intention: The RPD addressed the Applicant's submission that he did not know prior to December 2017 that, as a refugee, he was not supposed to have a Turkish passport or to return to Turkey. It was only upon his return from the second trip that he was informed of these concerns by a Canada Border Services Agency (CBSA) officer. The panel also considered the length of the two trips, the circumstances of the trips and the Applicant's conduct while in Turkey. The RPD concluded that the Applicant intended to reavail himself of the protection of his country of nationality as he had not provided sufficient reasons or evidence to refute the presumption of reavailment that arose when he obtained and used a Turkish passport to return to Turkey.

Actual Reavailment: The RPD considered the fact that the Applicant encountered no difficulties with the Turkish authorities when entering and leaving the country, kept a low profile in the country although not in hiding, and the duration of his trips. The panel concluded that the Applicant had actually reavailed himself of the protection of Turkey.

[9] The RPD concluded that the Applicant is a person described in paragraph 108(1)(a) of the IRPA and allowed the Minister's application.

II. Issue and Standard of Review

[10] The Applicant submits that the RPD erred in concluding that he had not rebutted the presumption of reavailment. In his view, he did not voluntarily and intentionally reavail himself of the protection of Turkey in returning to the country in 2017. The Applicant argues that the RPD did not reasonably apply the relevant factors identified by the Federal Court of Appeal (FCA) in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 (*Camayo FCA*). Although, the RPD's decision predates the March 29, 2022 *Camayo FCA* judgment, the parties addressed the impact of the decision in their memoranda of argument filed with the Court and in oral submissions.

[11] The RPD's cessation decision is subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Camayo v Canada (Citizenship and Immigration)*, 2020 FC 213 at paras 17-18; *aff'd Camayo FCA* at paras 39-43). To be reasonable, the RPD's decision must be based on "internally coherent reasoning" and "must be justified in relation to the constellation of law and facts that are relevant to the decision [citations omitted]" (*Vavilov* at para 105). Further, "the legal and factual contexts

of a decision operate as constraints on the decision maker in the exercise of its delegated powers” (*ibid*).

[12] Among the legal or factual considerations that may constrain an administrative decision maker in a particular case is the impact of the decision on an individual: “The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature’s intention” (*Vavilov* at para 133). The legislature’s intention and the legal consequences at stake for the individual are critical considerations in cessation applications where, not only may the individual lose refugee protection, they may also lose permanent resident status and become inadmissible to Canada (*Ravandi v Canada (Citizenship and Immigration)*, 2020 FC 761 at para 28).

III. Analysis

[13] Pursuant to Article 1C of the United Nations *Convention Relating to the Status of Refugees* (the Convention), a person may lose refugee protection where that person’s actions indicate they no longer have a well-founded fear of persecution in their country of nationality or that the surrogate protection of another country is no longer required. This principle is reflected in the grounds of cessation set out in section 108 of the *IRPA*. Paragraph 108(1)(a), one of the five section 108 grounds, provides that a claim for refugee protection will be rejected and a person will not be a Convention refugee if the person “has voluntarily reavailed themselves of the protection of their country of nationality”.

[14] It is well-established that three conditions must be met for a person to reavail themselves under paragraph 108(1)(a): (1) the person must act voluntarily; (2) the person must intend by their actions to reavail themselves of the protection of their country of nationality; and (3) the person must actually obtain such protection (actual reavilment) (*Nsende v Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 at para 13; see also *Camayo FCA* at para 18). It is also well-established that the Minister has the burden of proving reavilment on a balance of probabilities. However, where the Minister proves that a protected person has obtained or renewed a passport of their country of nationality, there is a presumption that the person intends to avail themselves of the protection of that country absent proof to the contrary. The presumption of reavilment is particularly strong where the person uses the passport to travel to their country of nationality (*Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 16; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1481 at para 26).

[15] In *Camayo FCA*, the FCA provided guidance to the RPD regarding its analysis of reavilment in future cessation cases but noted that the outcome in a particular case would largely be fact driven. The FCA emphasized that the RPD's analysis of cessation must not be mechanistic or rote and must focus 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" (*Camayo FCA* at para 83). The FCA then listed a comprehensive series of factors to assist the RPD in its assessment of whether a protected person has rebutted the presumption of reavilment (*Camayo FCA* at para 84):

- The provisions of subsection 108(1), which operate as a constraint on the RPD in arriving at a reasonable decision;

- The provisions of international conventions such as the Convention and guidelines such as the Refugee Handbook, as international law operates as an important constraint on the RPD;
- The severity of the consequences that a cessation decision will have for the affected individual;
- The submissions of the parties;
- The state of the individual's knowledge of the cessation provisions;
- The personal attributes of the individual such as age, education and level of sophistication;
- The identity of the agents of persecution and their relationship to the country's governmental authorities;
- Whether the obtaining of a passport from the country of nationality was voluntary;
- Whether the individual actually used the passport for travel purposes;
- The purpose of the travel;
- The frequency and duration of the travel;
- What the individual did while in the country of nationality;
- Whether the individual took precautionary measures while in the country of nationality;
- Whether the individual's actions demonstrate that they no longer have a subjective fear of persecution in their country of nationality such that surrogate protection may no longer be required; and
- Any other factors relevant to the question of whether the particular individual has rebutted the presumption of reavilment.

[16] The Applicant's principal argument in this application is that he did not know he would risk his refugee protection and permanent resident status by obtaining a Turkish passport and returning to Turkey using the passport. To him, as a layperson, a Turkish passport merely enabled him to travel. The Applicant emphasizes that he immediately stopped using the passport

after a CBSA officer informed him upon his return to Canada in December 2017 that he should not be using his Turkish passport to return to Turkey. The Applicant returned his Turkish passport and obtained a Canadian Travel Document. In addition, he and his then-fiancée changed their wedding plans and married in Ukraine instead of Turkey.

[17] The RPD found the Applicant to be credible and accepted his testimony. The panel stated that the question was not whether the Applicant was concerned about losing his status in Canada but whether his return trips to Turkey using a Turkish passport demonstrated that he no longer subjectively feared persecution in that country. The RPD's analysis was consistent with the FCA's reference in *Camayo FCA* (at para 84) to one of the factors relevant to reavailment: "[w]hether, the actions of the individual demonstrate that [they] no longer ha[ve] a subjective fear of persecution in the country of nationality such that surrogate protection may no longer be required". The RPD assessed the Applicant's decisions and actions and noted that he returned to the country twice using the Turkish passport and encountered no issues with Turkish authorities. His first trip of approximately five weeks was of a duration that the RPD found meaningful. The fact that the Applicant did not intend to stay permanently in Turkey and did not work, study or have other interactions with administrative authorities did not detract from his voluntary acquisition of Turkey's diplomatic protection.

[18] Although an individual's lack of knowledge of the immigration consequences of their actions is a key factor in assessing intention to reavail, it is not determinative (*Camayo FCA* at para 70). The RPD considered the Applicant's lack of knowledge of the consequences to him of travelling on a Turkish passport and weighed that knowledge against his actions and the duration

and purpose of his two trips to Turkey. The RPD's decision reflects the multi-factored analysis required of an RPD panel by the FCA.

[19] The Applicant obtained a Turkish passport and travelled to Turkey in very different circumstances from those before this Court and the FCA in *Camayo FCA*. Ms. Galindo Camayo was a minor when she arrived in Canada and initially used the Columbian passport obtained for her by her mother. She later obtained an adult Columbian passport when she was advised to do so by Columbian authorities during her second trip to Columbia. In contrast, the Applicant was an adult when he decided to apply for a Turkish passport and return to Turkey two years after he fled violence and discrimination due to his Kurdish identity. He was educated, having attended university, and was aware of available alternative travel documents.

[20] The Applicant submits that the RPD ignored the identity of his agents of persecution and downplayed the serious reason for his trips to Turkey. He argues that he was not wanted in Turkey and so had no reason to expect the authorities to identify him or to impede his entry or exit. The Applicant states that the harassment and discrimination he experienced while living in Turkey arose when he participated in Kurdish festivals or interacted with fanatical students. As he did not participate in any festivals or public activities or go to school or work, he was not at risk during his return trips and the reasons for his refugee claim remained.

[21] The Applicant's argument is not persuasive. I have read the RPD's refugee decision and agree with the Respondent that the Applicant's refugee claim was broader in scope. The Applicant claimed he feared state actors in Turkey, including the police. He had been accused of

being a Kurdish separatist and stated that “this knowledge with the authorities would pose further problems to [him] upon return to [his] country”. In its refugee decision, the RPD found that violence against Kurds in Turkey did not only result from particular events and that “[t]he sources point to Kurds facing a constant possibility of attack”. The RPD cessation panel was aware of the basis of the Applicant’s refugee claim and considered the Minister’s cessation application in light of the fears of persecution expressed by the Applicant in his refugee claim.

[22] The RPD considered the Applicant’s explanations of the reasons why he did not fear travelling on a Turkish passport and the restricted scope of his activities in Turkey:

[53] The Panel has considered that the [Applicant] only returned to Turkey on two occasions in 2017. However, as mentioned above, the Panel finds that the duration of the [Applicant’s] first trip to Turkey was not insignificant. The Panel has considered the [Applicant’s] explanations that he maintained a relatively low profile while in Turkey and did nothing which would attract attention to himself. That being said, considering his testimony and the facts on file, the Panel cannot conclude that he was in hiding. He did not take special or extraordinary measures to ensure his personal security during his stays.

[23] The RPD also acknowledged that the Applicant’s reason for returning to Turkey was a serious one. It was not frivolous but neither was it compelling. The Applicant’s submissions challenging both this finding and the RPD’s assessment of the duration of his trips and scope of his activities while in Turkey essentially reflect his disagreement with the RPD’s assessment of the evidence. The Court’s role is not to reassess the evidence unless the decision maker has ignored or misapprehended the material evidence before it (*Kovacs v Canada (Citizenship and Immigration)*, 2022 FC 1532 at para 31).

[24] In summary, I find that the RPD could reasonably conclude that the Applicant had not rebutted the presumption established by his obtaining a Turkish passport and his use of the passport to travel to Turkey. The RPD effectively considered and balanced the relevant factors summarized by the FCA in *Camayo FCA*, despite not having the benefit of that judgment at the time of its decision. The decision is not perfect and I acknowledge that there is some conflation of voluntariness and intention in the RPD's analysis. However, the RPD did not limit its assessment of the Applicant's intention to reavail to the voluntariness of his actions. The panel engaged with each of the Applicant's submissions and undertook a detailed assessment of his evidence. The Applicant essentially relies on the fact that he did not understand the specific consequences under Canadian law of his use of a Turkish passport to return to his country of nationality. The RPD accepted his lack of knowledge and assessed other relevant factors and evidence. The RPD's reasoning is consistent with the Applicant's evidence and the panel's explanation of its conclusions is transparent, intelligible and justified, and is internally coherent. I find that the Applicant has not established a serious or significant error that undermines the justification of the decision as a whole (*Vavilov* at para 122).

[25] Accordingly, the Applicant's application for judicial review is dismissed. The RPD properly applied the test for reavailment and reasonably found that the Applicant had failed to rebut the presumption that he intended to reavail himself of the protection of Turkey by virtue of his return trips to the country in 2017 in reliance on a Turkish passport.

[26] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-3503-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

M^e Styliani Markaki FOR THE APPLICANT

M^e Mario Blanchard FOR THE RESPONDENT

SOLICITORS OF RECORD:

M^e Styliani Markaki FOR THE APPLICANT
Barrister and Solicitor
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec