

Federal Court



Cour fédérale

Date: 20230925

Docket: IMM-9960-22

Citation: 2023 FC 1284

Ottawa, Ontario, September 25, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

CEREN CEKI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ceren Ceki, seeks judicial review of the decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada granting an application made by the Minister of Public Safety and Emergency Preparedness [Minister] for the cessation of the Applicant's status as a Convention refugee and rejection of her claim for refugee protection, pursuant to ss 108(2) and 108(3), respectively, of the *Immigration and*

Refugee Protection Act, SC 2001, c 27 [IRPA] and Rule 64 of the Refugee Protection Division Rules, SOR/2012-256.

Background

[2] The Applicant is a citizen of Turkey. She came to Canada in June 2017 on a Canadian student visa and made a claim for refugee protection on the basis that she feared persecution in Turkey, as she was a politically active Alevi Kurd, she had been arrested and beaten by the Turkish authorities on three occasions because of her activities, her home had been raided on one occasion and, after she left Turkey, the police had continued to make inquiries about her and warned that she would be detained if she were to return. The Applicant was granted refugee protection on February 27, 2018, and received permanent residence status on July 31, 2019.

[3] The Applicant was intercepted by the Canada Border Services Agency [CBSA] on August 27, 2020, at the Toronto-Pearson International Airport. When questioned about her travels, the Applicant said she had first gone to Ukraine for a few months to marry her husband, a Turkish national who has always lived in Turkey, after which she went to Turkey for two or three months. She stated that the purpose of her travel was to visit her ill father and that she did not have any adverse encounters with Turkish authorities because she entered on a Turkish identity card [ID] rather than a passport.

[4] The Minister brought a cessation application on May 28, 2021. The evidence submitted by the Minister included that the Applicant entered Canada on June 26, 2017 (her original entry), on August 27, 2020, and on January 10, 2021. On her second entry, she used a Turkish passport

issued on August 27, 2019, by the Turkish Consulate in Toronto, valid to January 30, 2021. She was also in possession of a Turkish national ID card expiring on May 8, 2028, and a marriage certificate stating that she was married on March 3, 2020, at the Turkish Embassy in Kiev, Ukraine. During a subsequent interception by the CBSA on January 10, 2021, when the Applicant was again returning from Turkey, it was revealed that she was then in possession of a new Turkish national ID card, expiring on October 3, 2030, and a Turkish driver's licence. On that trip she entered Turkey on September 17, 2020.

[5] The RPD granted the Minister's cessation application on September 27, 2022.

RPD Decision

[6] In rendering its decision, the RPD identified the three-part test for cessation applications brought under s 108(1)(a) of the *IRPA*:

- a. voluntariness: the refugee must act voluntarily;
- b. intention: the refugee must intend by their actions to re-avail themselves of the protection of their country of nationality;
- c. reavailment: the refugee must actually obtain such protection.

[7] In interpreting and applying this test, the RPD stated that it considered the *United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status* [*UNHCR Handbook*] and that it had regard to the Applicant's particular circumstances and the context within which the alleged reavailment occurred. It was also guided by the factors set out by the Federal Court of Appeal in *Canada (Minister of Citizenship and*

Immigration) v Galindo Camayo, 2022 FCA 50 [*Camayo*], which the RPD described as *obiter* but to which it nevertheless owed deference.

[8] The RPD found that the Applicant voluntarily travelled to Turkey using her Turkish passport and had failed to rebut the presumption of voluntary reavilment that arises when a person with protected status returns to their country of origin using their national passport. There was no evidence that she travelled to Turkey under duress, that she was instructed by any authority in Canada or Turkey to use her Turkish passport for travel, or that she was constrained by circumstances beyond her control. Further, the Applicant's testimony was that she applied for a new Turkish passport at the Turkish Consulate in Toronto at the instruction of her now husband, who indicated that it was necessary in order to get married in Ukraine, and that a close friend working in the consulate was able to facilitate the acquisition of the passport without alerting the Turkish authorities. The Applicant acknowledged that she provided a passport photo for this purpose but testified that she did not submit to being fingerprinted. The RPD noted that the objective country evidence in the National Documentation Package [NDP] indicated that a person must present themselves in person and provide fingerprints and a biometric photo as part of the passport application process. Given this, the RPD did not accept the Applicant's version of events as to the acquisition of her passport.

[9] The RPD also found the Applicant's travel was planned and unnecessary and that her actions indicated a lack of subjective fear in returning to Turkey. It noted that obtaining or renewing a passport from one's country of origin, as the Applicant did in the present case, creates a factual presumption of intent to reavail. Further, when a person has actually travelled

back to their country of nationality on a passport issued by that country, the presumption is particularly strong. It is only in exceptional circumstances that this will not result in the termination of refugee status. The RPD found the Applicant's circumstances, visiting her ill father, while sympathetic, were not exceptional. She had immediate family in Turkey who lived with her father, and her presence was not required for his ongoing care.

[10] The RPD further found that the Applicant was not credible with respect to how she secured her Turkish passport and ID card and that the stamps on her passport belied her statement to the CBSA that, on her first return, she had entered Turkey using her Turkish national ID card. The RPD also found her travel involved interactions with the Turkish authorities to enter and exit the country and other interactions when she obtained her Turkish national ID card and the documents relating to her marriage and its registration. She also held two wedding celebrations in two different cities, attended by 500 people. While the Applicant claimed that the celebrations occurred in areas that were not under police control and where there were no raids, and that it was only family in attendance, the RPD found that these large gatherings undermined the Applicant's alleged subjective fear of returning to Turkey.

[11] The RPD assessed the Applicant's testimony that her Turkish lawyer had assisted her in renewing her Turkish ID card and arranged with a police contact to facilitate the Applicant's entry into Turkey without notice by the Turkish officials. It also reviewed letters from the subject lawyer and from the Applicant's husband and sister. It noted that the letters were provided only after the RPD's concerns were raised during the first hearing date, and it therefore afforded them

little weight. It found that the Applicant was not a credible witness and that the preponderance of the evidence indicated that the Applicant did not have an ongoing fear of persecution in Turkey.

[12] Finally, the RPD found that the Applicant not only presumptively but actually reavailed herself of Turkey's diplomatic protection. She was not in hiding when she was in Turkey, and there was no evidence that she took any precautions with regard to her previously alleged fear of persecution. Rather, her actions there, including her direct interactions with the authorities to obtain her national ID card and her marriage documentation and registration, suggested that she was not concerned about her safety. Referencing Federal Court jurisprudence and the *UNHCR Guide*, the RPD concluded that the Applicant had actually reavailed herself of the protection of Turkey.

Issue and Standard of Review

[13] The sole issue in this matter is whether the RPD's decision was reasonable. The parties submit, and I agree, that the standard of review applicable to the merits of the RPD's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*]).

Analysis

[14] The Applicant submits that the RPD overlooked or ignored the thrust of the Federal Court of Appeal's decision in *Camayo* and failed to properly analyze her intention to reavail herself of the protection of Turkey. More specifically, the Applicant submits that the RPD was oblivious to

four of the five most relevant of the factors identified in *Camayo* that are to be taken into consideration by the RPD in determining whether an applicant has rebutted the presumption of reavailment, particularly subjective intent.

[15] As a starting point, I note that in her application for judicial review, the Applicant does not take issue with the test for reavailment as described by the RPD. That test has been recognized by this Court and remains intact under *Camayo*, in which the Federal Court of Appeal provided guidance on how the RPD may determine a cessation case under s 108 of the *IRPA* (*Chowdhury v Canada (Citizenship and Immigration)*, 2021 FC 312 at para 8; *Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 884). Nor does she take issue with its finding that her return to Turkey was voluntary. Rather, her focus is on the second aspect of the test, being whether she intended to reavail herself of the protection of her country of nationality.

[16] As the RPD stated in its reasons, the onus is on the Minister to show, on a balance of probabilities, that the person subject to the cessation application has voluntarily reavailed themselves of the protection of the country from which they fled to avoid persecution. However, if the Minister is able to demonstrate that the person has obtained or renewed a passport from that country, then the burden of proof is reversed. It is then presumed that the refugee intended to reavail themselves of the protection of the country in question, and the onus is on the refugee to adduce sufficient evidence to rebut the presumption. It is also presumed that the refugee has obtained the actual protection of that country when the Minister establishes that the refugee has used that passport to travel (*Canada (Citizenship and Immigration) v Safi*, 2022 FC 1125 at paras 33, 35, citing *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 17 [*Abadi*];

Canada (Citizenship and Immigration) v Nilam, 2015 FC 1154 at para 26; *Li v Canada (Citizenship and Immigration)*, 2015 FC 459 at para 42; *Camayo* at para 65). The presumption of reavilment is particularly strong when the refugee travels to the country of nationality using a passport issued by that country (*Abadi* at para 16; *Camayo* at para 63).

[17] The Applicant identifies five *Camayo* factors that she considers most relevant to her circumstances:

- the severity of the consequences for the affected individual;
- the state of the individual's knowledge with respect to the cessation provisions;
- the individual's use of the passport for travel purposes (e.g., travel to one's country of nationality may have a different impact on the analysis compared to travel to a third country);
- the purpose of the travel (e.g., travel to help an ill family member may have a different significance than a vacation); and
- the individual's activities in the country.

[18] In my view, the RPD was not necessarily required to explicitly set out and address each relevant *Camayo* factors. However, viewed in whole, its reasons must demonstrate that it understood the nature of the analysis it was required to conduct and that it conducted its analysis accordingly. I also note that while the Applicant asserts that the RPD appeared to be "oblivious of four out of five factors," in her written submissions she addresses the insufficiency of the

RPD's approach to only two of them – the severity of consequences and the individual's knowledge about the cessation provisions.

[19] As to the severity of the consequences for the affected individual, the totality of the Applicant's submission on this point is to quote paragraph 50 of *Camayo* and to state that the RPD "did not consider this important factor."

[20] As the Respondent points out, while her written submissions quote *Camayo* at length, the Applicant does not tie these quotes to the RPD's decision or explain how they establish that the decision is unreasonable. Here, the RPD did acknowledge the *Camayo* factor pertaining to the severity of the consequences for the Applicant, which implicitly speaks to the potential loss of permanent resident status. The Applicant does not explain what further was required or point to any submission or evidence that was overlooked in considering the factor. The RPD did not, as the Applicant submits, fail to consider this factor.

[21] As to the individual's use of the passport for travel purposes, there was no dispute that the Applicant had travelled to Turkey, her country of nationality. The RPD found her evidence that she was able to enter the country without difficulty because she used her ID card not to be credible. The objective documentary evidence, the stamps in her passport, established that she used her passport, acquired after she was granted refugee protection, to enter Turkey. The RPD clearly considered this factor, noting that such travel makes the presumption of reavilment particularly strong.

[22] The RPD also expressly considered the Applicant's stated purpose for returning to Turkey – to visit her ill father. While it sympathized with her, for the reasons it set out, it found this purpose did not overcome the exceptional circumstances threshold and was not sufficient to rebut the presumption of reavailment. In her application for judicial review, the Applicant has not challenged this finding as being unreasonable (see also *Wu v Canada (Citizenship and Immigration)*, 2023 FC 1071 at para 24).

[23] As to the factor concerning an individual's activities in the country, the RPD explicitly considered evidence of the Applicant's activities in Turkey, specifically with respect to her subjective fear. For example, it found the organizing and holding of two large wedding celebrations with over 500 guests in two cities undermined her subjective fear, as did her direct interaction with the Turkish authorities in that country in obtaining her marriage registration and other documents.

[24] This leaves only the question of whether the RPD erred by failing to address the second factor identified by the Applicant – the state of her knowledge with respect to the cessation provisions of the *IRPA*. As the Respondent points out, the Applicant does not refer to any evidence that was before the RPD that asserted and supported a lack of knowledge about the cessation provisions. Nor does the Applicant point to any testimony before the RPD that addressed this issue. The Applicant did not file an affidavit in support of her application for judicial review, which could have identified any such evidence. When asked by the Court if there was such evidence and, if so, where it could be found, current counsel for the Applicant advised that he had not obtained and reviewed the CTR.

[25] Had counsel reviewed the CTR, he would have known that, while it does not include a transcript, it does provide audio files of the hearing.

[26] It is not the role of this Court to spend many hours listening to such audio files in order to confirm whether there was testimony before the RPD by which the Applicant asserted a lack of knowledge about the cessation provisions. That is the role of counsel. However, the Court is permitted to look to the reasons and the record in assessing the reasonableness of a decision (*Vavilov* at paras 91-98, 305). In this case, the audio files do indicate that the Applicant gave evidence indicating that none of her lawyers or others advised her that she could lose her permanent residence status if she obtained her Turkish passport and national ID card and returned to Turkey, and her testimony was that she only learned of this risk in June 2021.

[27] The RPD was required to consider all available evidence on this factor but it appears that it failed to do so.

[28] I acknowledge that the RPD found that the Applicant was not credible and that her conduct demonstrated a lack of subjective fear, and I note that she makes no submissions challenging the credibility findings or explaining how the RPD erred in finding that she lacked subjective fear.

[29] Further, that in the context of the rebuttable presumption created when the Applicant renewed and travelled with her Turkish passport, the onus is on the Applicant to adduce relevant evidence to disprove the intent to reavail. The difficulty here is that the question of whether her

evidence as to her state of knowledge with respect to the cessation provisions was credible and/or sufficient to meet her onus was not assessed by the RPD. This factor was not weighed and balanced with the RPD's other *Camayo* factors, such as her lack of subjective fear.

[30] Although no one factor is necessarily dispositive, the RPD's failure to consider the Applicant's evidence on this factor renders its decision unreasonable.

[31] For the sake of completeness, I note before concluding that the Applicant also asserted that the RPD erred in stating that she returned to Turkey on two occasions, as she returned only once. The Applicant submitted that, while not determinative, this demonstrated that the RPD "took its eye off the ball" in analyzing the Applicant's intent to reavail. However, the Minister's submission to the RPD in the cessation application indicates that the Applicant was intercepted by the CBSA a second time at Pearson International Airport on January 10, 2021. The Minister provided the ICES Traveller History Report and the stamps in the Applicant's passport in support of this. I would also note that the letter from the Applicant's husband that the Applicant submitted in response to the cessation application confirms she made two trips to Turkey. Accordingly, there is no merit to the Applicant's submission on this point.

JUDGMENT IN IMM-9960-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The decision is set aside and the matter shall be remitted to a different RPD member for redetermination;
3. There shall be no order as to costs; and
4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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