Federal Court  Cour fédérale

Date: 20240327

Docket: IMM-10512-22

Citation: 2024 FC 486

Vancouver, British Columbia, March 27, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SEYED MOHAMMAD MOUSAVI DOGAHEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Seyed Mohammad Mousavi Dogahen (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the "RPD"), dated October 18, 2022. In that decision, the RPD determined that the Applicant was no longer a Convention refugee or a person in need of protection, pursuant to paragraph 108(1)(a) of the

Immigration and Refugee Protection Act, S.C. 2001, c. 27, because he had voluntarily reavailed himself of the protection of his country of nationality.

[2] The Applicant is a citizen of Iran. On February 27, 2014, he was granted refugee status on the basis of his fear of persecution in Iran as a gay man.

[3] The Applicant arrived in Canada as a permanent resident on July 16, 2014. On July 15, 2015, he travelled to Iran to attend his father's funeral. During his stay in Iran, he obtained a new Iranian passport and he married his wife.

[4] On January 12, 2016, the Applicant submitted a spousal sponsorship application for his wife; it was refused. On February 9, 2018, he submitted another spousal sponsorship application; this was accepted.

[5] The Applicant used his new Iranian passport in his spousal sponsorship application.

[6] Among others, the Applicant now presents the argument that the RPD improperly engaged in speculation in finding that he did not fear arrest in Iran, because he used his Iranian passport upon entering and leaving Iran.

[7] The Applicant also submits that the RPD erred by focusing on his interactions with the government of Iran, that is in obtaining a new passport, and not upon his subjective fear of persecution.

[8] Further, the Applicant argues that the RPD erred in finding that his return to Iran was "voluntary" when he had testified that he felt "compelled" to return to attend his father's funeral.

[9] The Minister of Citizenship and Immigration (the "Respondent") submits that the RPD considered the legal test for reavailment and reasonably considered the evidence in concluding that the Applicant had reavailed himself of the protection of Iran. He contends that there is no basis for judicial intervention.

[10] This decision is subject to review on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[11] 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.

[12] Three requirements must be shown in determining if refugee protection ceases to apply on the ground of reavailment: that the refugee has acted voluntarily; that the refugee has shown an intention to reavail; and, that the refugee has actually obtained the protection of his or her country of nationality; see *Balouch v. Canada (Public Safety and Emergency Preparedness)*, 2015 FC 765 at paragraph 7.

[13] In my opinion, the RPD reasonably engaged with the test for reavailment.

[14] The RPD considered the Applicant's stated reason for returning to Iran and determined that he acted voluntarily. This determination falls squarely within its mandate to weigh the evidence.

[15] I am not persuaded that the RPD unreasonably assessed his subjective intention. It appears that the RPD inferred the Applicant's intention to reavail from his actions, that is in travelling to Iran on the strength of his Iranian passport and presenting himself to Iranian authorities on multiple occasions.

[16] I refer to the recent decision of Justice Brown in *Ali v. Canada (Citizenship and Immigration)*, 2023 FC 383 at paragraphs 45 to 50, in dealing with the issue of "intention". I note in particular paragraph 47, which provides in part as follows:

> [47] … Intention is primarily a factual determination and lies within the purview of the trier of fact. The tried [*sic*] of fact in this case are the RPD and RAD and in criminal cases, for example it is the jury if there is one, or the trial judge if there is no jury. The rules of evidence in terms of determining intention are generally the same across all fields of law, absent legislative or judicial intervention. In this connection, it is well established that a party's intent may be determined based on the inference a trier of fact may draw from the evidence that people "intend the natural and probable consequences of their actions." This is a rule of evidence and a matter of common sense as stated by Cory J for the Supreme Court of Canada in *R v Seymour*, 1996 CanLII 201 (SCC), [1996] 2 SCR 252 at paragraph 19:
>
> > [19] When charging with respect to an offence which requires proof of a specific intent it will always be necessary to explain that, in determining the accused's state of mind at the time the offence

> was committed, jurors may draw the inference that sane and sober persons intend the natural and probable consequences of their actions. Common sense dictates that people are usually able to foresee the consequences of their actions. Therefore, if a person acts in a manner which is likely to produce a certain result it generally will be reasonable to infer that the person foresaw the probable consequences of the act. In other words, if a person acted so as to produce certain predictable consequences, it may be inferred that the person intended those consequences.
>
> [Emphasis added]

[17] By travelling on his Iranian passport, the Applicant obtained the benefit of diplomatic protection from his use of such passport.

[18] In the result, the Applicant has failed to show a reviewable error by the RPD. There is no basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-10512-22

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

DOCKET:	IMM-10512-22
STYLE OF CAUSE:	SEYED MOHAMMAD MOUSAVI DOGAHEN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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