

Federal Court



Cour fédérale

Date: 20240703

Docket: IMM-3318-23

Citation: 2024 FC 1040

Toronto, Ontario, July 3, 2027

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**SIDRA TUL MUNTAHA
ANAYA SEHAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sidra Tul Muntaha, and her daughter, Anaya, are citizens of Pakistan. They faced persecution in Pakistan as Ahmadi Muslims and were recognized as Convention refugees in August 2014. They became permanent residents of Canada in July 2017.

[2] In 2018, the Applicants renewed their Pakistani passports. They then used those passports to return to Pakistan to care for Sidra's grandmother, who was terminally ill, and to be with her when she passed away. The trip lasted 53 days.

[3] In August 2021, the Minister, relying on the Applicants' 2018 return to Pakistan, brought an application pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] to cease the Applicants' refugee protection. The Minister alleged the Applicants reavailed of the protection of Pakistan and no longer required protection in Canada.

[4] In a decision dated February 15, 2023, the Refugee Protection Division of the Immigration and Refugee Board [RPD], allowed the Minister's cessation application.

[5] The Applicants apply under subsection 72(1) of the IRPA for judicial review of RPD's decision.

[6] As is explained in detail below, the RPD failed to meaningfully grapple with the Applicants' evidence and submissions in addressing the issue of intent to reavail. This error renders the decision unreasonable. The Application is therefore granted.

II. Decision under review

[7] In concluding that the Applicants voluntarily reavailed themselves of the protection of Pakistan, the RPD considered the requirements of cessation as set out in the United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee*

Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UNHCR, 2019, UN Doc HCR/IP/4/ENG/REV (Geneva, 2019) [UNHCR Handbook] – voluntariness, intention, and reavailment.

[8] The RPD determined that the Applicants acted voluntarily when travelling to Pakistan. Relying on *Tung v Canada (Citizenship and Immigration)*, 2018 FC 1224, the RPD noted that “returning to one’s country of nationality to address the needs of relatives, such as caring for a sick parent, did not rebut the presumption of intention to reavail that arises when a claimant obtains a passport from their country of nationality.” Although the purpose of the trip was to visit Sidra’s ill grandmother, the RPD noted the Applicants’ presence was not strictly necessary – other relatives were caring for Sidra’s grandmother. The RPD relied on this factor coupled with the lengthy period that the Applicants remained in Pakistan to conclude the travel was voluntary.

[9] The RPD also concluded that the Applicants intended to reavail, satisfying the second requirement of cessation test. Once again, the RPD noted that “[w]here the Minister has proven that the protected person has obtained or renewed a passport from his country of origin, there is a presumption of reavailment.” The RPD found that the Applicants failed to rebut this presumption, noting that the “lengthy nature of the return visit, which required an introduction to border officials upon entry and departure, detracts significantly from the adult Respondent’s testimony that they lived a life of isolation while in Pakistan.” The RPD concluded that the use of Pakistani passports “to return to Pakistan for an extended period of time, provides convincing evidence of their intention to reavail themselves of Pakistan’s diplomatic protection.” The RPD

then concluded that, given Anaya's age, she was "unable to have an intention different from that of her mother."

[10] In considering the third requirement of cessation, actual reavilment, the RPD cited passages from the UNHCR Handbook stating that the conferring of a passport creates a presumption of reavilment. Furthermore, the RPD concluded that, as the Applicants had no issue entering or leaving Pakistan, they actually reavailed themselves of the protection of Pakistan.

III. Issues and standard of review

[11] The Application raises a single issue: is the RPD's decision reasonable? The Applicants do not take issue with the RPD's determination that their return to Pakistan was voluntary. However, they do argue that the RPD unreasonably found that, in voluntarily returning to Pakistan, they (1) had the intent to reavail, and (2) had actually reavailed themselves of the protection of Pakistan.

[12] The Parties agree that the presumptive standard of review of reasonableness applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [Vavilov]; *Camayo v Canada (Citizenship and Immigration)*, 2020 FC 213 at paras 17-18).

[13] When reviewing a decision on a standard of reasonableness, the Court must approach the decision with "respectful attention" and consider the decision "as a whole" (*Vavilov* at paras 84-85). The Court's overall focus will be upon whether the decision is appropriately justified,

transparent and intelligible. In other words, the Court will consider whether it is able to understand the basis upon which the decision was made and then to determine whether it “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law” (*Vavilov* at paras 86 and 97).

[14] A decision that is appropriately justified, transparent and intelligible is one that reflects “an internally coherent and rational chain of analysis” and “is justified in relation to the facts and the law that constrain the decision maker” (*Vavilov* at para 85). It should also reflect that the decision-maker “meaningfully grapple[d] with key issues or central arguments raised by the parties” (*Vavilov* at para 128).

[15] As set out below, I am of the opinion that the RPD failed to meaningfully grapple with key issues and central arguments in assessing the intent element of the cessation test. This alone renders the decision unreasonable and I have therefore not addressed all of the arguments raised by the Parties.

IV. Analysis

[16] The United Nations’ *Convention Relating to the Status of Refugees*, Can TS 1969 No 6 [Convention] addresses the cessation of refugee protection on the basis of voluntary reavilment of national protection at Article 1(C)(1). At paragraphs 118 to 125, the UNHCR Handbook provides guidance on the interpretation of Article 1(C)(1), stating that cessation of international protection requires the person to have acted voluntarily, to have intended by those actions to reavail themselves of the protection of the country of nationality and to have actually obtained

that protection. Paragraph 108(1)(a) of the IRPA is reflective of Article 1(C)(1) of the Convention. The conjunctive three-part test has been consistently adopted and applied by Canadian courts (*Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 20 [*Camayo FCA*]).

[17] In considering the test for cessation, the Federal Court of Appeal [FCA] affirmed that the three-part test is to be applied and that a person's conduct may give rise to a presumption that reavilment was intended. However, "each cessation proceeding will be largely fact-dependent...the test for cessation should not be applied in a mechanistic or rote manner. The focus throughout the analysis should be 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 Court then sets out a lengthy but non-exhaustive list of factors that "at a minimum" the RPD should have regard to and "which may assist in rebutting the presumption of reavilment" (*Camayo FCA* at para 84).

[18] The Respondent argues that the second part of the test for reavilment is primarily a factual determination. Relying on the particularly strong presumption of reavilment where an individual obtains a passport from their country of nationality and uses it to return to that country, the Respondent submits the RPD reasonably concluded that the Applicants did not rebut the presumption.

[19] The Respondent does not argue that the RPD acknowledged or cited *Camayo FCA* but does submit the FCA's guidance does not change the existing law, that the majority of factors

identified by the FCA were considered, and that the RPD can rely on the fact that it “considered all of the oral and documentary evidence, as well as post-hearing written submissions from Respondents and Minister’s counsel.” Together this demonstrates that the RPD considered the issue.

[20] I accept that *Camayo FCA* does not change the legal test to be considered in cases of cessation but it does significantly impact the nature of the analysis a decision maker is required to undertake. This is particularly so where, as here, the RPD relies on a presumption to establish an intent to reavail. In *Hamid v Canada (Citizenship and Immigration)*, 2022 FC 1541 [*Hamid*], Justice Avvy Go describes the impact of *Camayo FCA* in following terms:

[12] [...] The Respondent agrees that *Camayo* is the binding authority in cessation decisions. However, the Respondent submits that *Camayo* does not call for a wholesale reconsideration of cessation matters. Rather, the three-part cessation test – voluntariness, the intent to reavail, and actual reavailment of protection – remains intact. In this case, the Respondent submits that the RPD undertook the necessary analysis and reasonably assessed the evidence.

[13] While I agree with the Respondent that *Camayo* does not nullify the test that tribunals must follow in assessing cessation matters, I disagree that *Camayo* merely calls for a more “nuanced” approach to consider the evidence.

[14] In my view, *Camayo* represents a considerable development in the law of cessation by mapping out a clearly-articulated, *albeit* non-exhaustive, set of factors that decision-makers must assess to determine whether someone has reavailed themselves of the protection of their country of nationality, and whether that presumption can be rebutted.

[21] The RPD was not required to cite *Camayo FCA* and many of the factors identified in *Camayo FCA* were addressed by the RPD. However, other factors were not. For example, the

decision does not consider or address the severity of the consequences of a cessation decision.

This was found to be a reviewable error in *Hamid* (at para 38).

[22] In addition, where a decision has the potential to significantly impact the affected individual, a reviewing court should consider the adequacy of the justification provided from the perspective of that individual – the principle of responsive justification (*Vavilov* at para 133).

The principle is of application in the cessation context (*Camayo FCA* at para 50). The decision falls short in addressing certain key factors, a deficiency that is not remedied through the RPD's generalized statement that all evidence and submissions were considered.

[23] For example, the RPD acknowledged that the “lack of awareness of the consequences of one's actions is a relevant consideration when assessing intention, but is not necessarily determinative.” The Applicants' lack of awareness of the consequences of travel to Pakistan is of significant relevance to the Applicants' position that the presumption has been rebutted. Sidra had provided evidence on this very issue in testimony before the RPD, and evidence that a person is unaware of the potential consequences of her actions is identified in *Camayo FCA* as a factor to be considered. Despite this, the RPD's stated conclusion is unsupported by any analysis; it is not justified and therefore undermines the reasonableness of the decision.

[24] Similarly, the RPD failed to address evidence of the precautions the Applicants had taken in Pakistan. The Respondent argues it should be inferred that the RPD considered this factor but found it failed to overcome the presumption of an intent to reavail. This argument is not

persuasive in the face of *Camayo FCA*, the impact of a cessation decision on the Applicants, and in turn, the principle of responsive justification.

[25] It may well have been reasonable for the RPD to conclude that the presumption the Applicants intended to reavail had not been rebutted. However, the RPD's decision does not reflect the elements of transparency, intelligibility and justification necessary to demonstrate a reasonable consideration of this element of the conjunctive cessation test occurred.

V. Conclusion

[26] The RPD's decision is unreasonable and the Application for Judicial Review is granted.

[27] The Parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-3318-23

THIS COURT'S JUDGMENT is that:

1. The Application is granted.
2. The matter is returned for redetermination by a different decision maker.
3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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