

Federal Court



Cour fédérale

**Date: 20241022**

**Docket: IMM-5284-23**

**Citation: 2024 FC 1662**

**Ottawa, Ontario, October 22, 2024**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**BALJINDER SINGH**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant Baljinder Singh is a citizen of India who was granted refugee protection in Canada in 2009, fearing persecution from the Indian police who falsely accused him of assisting Sikh militants. He became a permanent resident in 2011.

[2] Between 2011 and 2018, Mr. Singh returned to India five times, on his Indian passport, for a total of 216 days. The Respondent Minister therefore sought to cease the refugee protection extended to the Applicant pursuant to subsection 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], on the basis of reavilment (i.e. specifically paragraph 108(1)(a) of the IRPA). See Annex “A” below for relevant legislative provisions.

[3] The Refugee Protection Division [RPD], finding the conjunctive elements of voluntariness, intention to reavail and actual reavilment of the applicable test were met, granted the Respondent’s application to cease Mr. Singh’s refugee protection [Decision]. Asserting unreasonableness and unfairness, Mr. Singh seeks to have the Decision set aside and the matter redetermined by a different decision-maker.

[4] The determinative issue on this judicial review is whether the Decision is reasonable, further to the presumptive standard of review. I am satisfied that Mr. Singh has met his burden of showing that the Decision is unreasonable because of unsupported speculation by the RPD in assessing Mr. Singh’s intention to reavail. For the more detailed reasons below, the Decision thus will be set aside, with the matter remitted to a different RPD panel for redetermination. In the circumstances, I find it unnecessary to address the RPD’s assessment of the other two elements of the reavilment test.

## II. Analysis

[5] As I explain, I find that the RPD engaged in speculation warranting the Court’s intervention in this matter.

[6] A decision may be unreasonable, that is, lacking justification, transparency and intelligibility in the context of the applicable factual and legal constraints, if the decision maker engaged in a flawed chain of analysis or misapprehended the evidence before it. The party challenging an administrative decision has the burden of showing that it is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25, 95-96, 99-100, 125-126.

[7] The test for reavilment comprises three cumulative and conjunctive elements – voluntariness, intention, and actual reavilment: *Canada (Public Safety and Emergency Preparedness) v Bashir*, 2015 FC 51 at para 72.

[8] The Federal Court of Appeal guides that “[t]he focus throughout the [reavilment] 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”: *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [Galindo Camayo] at para 83. Read holistically, the Decision does not demonstrate, in my view, that the RPD was guided by this overarching principle in connection with the panel’s reavilment analysis.

[9] The above quotation in *Galindo Camayo* reflects a submission made by the intervener, United Nations High Commissioner for Refugees [UNHCR], with which Justice Mactavish agreed. The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*

[Handbook] is often cited (at pages 118-125) regarding the definitions and requirements for voluntariness, intention and reavailment.

[10] In light of the Federal Court of Appeal's acceptance of the UNHCR's submission, I find the above principle must be considered as an overlay or clarification of the Handbook insofar as the intention element of the reavailment analysis is concerned. This means that, in examining the question of a refugee's intention, the RPD should consider and weigh factors such as the 15 non-exhaustive factors described in *Galindo Camayo* (above at para 84).

[11] I agree with Mr. Singh that, in the matter presently before the Court, the RPD failed to engage with his evidence of protective measures (i.e. one of the *Galindo Camayo* factors), including staying outside his home district, not telling anyone other than family of his return travels to India, remaining inside the home where he was staying, and attending a temple under cover of dark at 4:00 am.

[12] Instead, the RPD unreasonably focused on what he should have done, instead of what he did: *Levi v Canada (Citizenship and Immigration)*, 2024 FC 64 at paras 34-37. In doing so, the RPD engaged in unreasonable speculation in two significant respects. According to the RPD:

- A. Mr. Singh could have discussed options for obtaining a Canadian refugee travel document with the Sikh diaspora in Brampton. In my view, this unreasonably assumes, without evidence, that not only does the diaspora have the necessary expertise or knowledge to advise him, but also that he would be willing to consult them in the first place. The assumption is based on his past role as preacher that he no longer occupied; his evidence is that he became a truck driver after making his refugee claim.

B. Mr. Singh could have sought advice from the counsel that represented him in his refugee claim more than a decade earlier. In my view, this unreasonably assumes that such counsel was available for consultation and that Mr. Singh had the financial means to do so.

[13] Further, I agree with the Applicant that the RPD unreasonably conflates voluntariness with intention: *Abbas v Canada (Citizenship and Immigration)*, 2023 FC 871 at para 42.

[14] In the end, I determine that the RPD did not provide responsive reasons to Mr. Singh's key evidence and central arguments on the intention element of the reavailment test, thus warranting the Court's intervention: *Vavilov*, above at paras 127-128.

### III. Conclusion

[15] For the above reasons, the judicial review will be granted. The Decision will be set aside and the matter will be remitted to a different RPD panel for redetermination.

[16] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

**JUDGMENT in IMM-5284-23**

**THIS COURT'S JUDGMENT is that:**

1. The Applicant's judicial review application is granted.
2. The April 3, 2023 decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada is set aside, with the matter remitted to a different panel for redetermination.
3. There is no question for certification.

"Janet M. Fuhrer"

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Judge

**Annex “A”: Relevant Provisions**

*Immigration and Refugee Protection Act, SC 2001, c 27.*  
*Loi sur l’immigration et la protection des réfugiés, LC 2001, ch 27.*

<p><b>Rejection</b></p> <p><b>108 (1)</b> A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:</p> <p style="padding-left: 20px;">(a) the person has voluntarily reavailed themselves of the protection of their country of nationality;</p> <p><b>Cessation of refugee protection</b></p> <p><b>(2)</b> On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).</p>	<p><b>Rejet</b></p> <p><b>108 (1)</b> Est rejetée la demande d’asile et le demandeur n’a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :</p> <p style="padding-left: 20px;">a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;</p> <p><b>Perte de l’asile</b></p> <p><b>(2)</b> L’asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).</p>
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**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5284-23

**STYLE OF CAUSE:** BALJINDER SINGH v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 19, 2024

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** OCTOBER 22, 2024

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