Federal Court  Cour fédérale

Date: 20241022

Docket: IMM-6387-23

Citation: 2024 FC 1666

Toronto, Ontario, October 22, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

MUNIR AHMAD
ASIMA AHMAD
SOHAIB AHMAD
WAHAB AHMAD

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated April 27, 2023, of the Refugee Protection Division ("RPD") to vacate the Applicants' refugee protection status decision of October 5, 2004, pursuant to section 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], and the rejection of their claims based on evidence considered at the time of first determination, pursuant to subsection 109(2) of the *IRPA* ("Decision").

[2] The Applicants ask this Court to set the Decision aside and send the matter back for redetermination by a different panel.

[3] For the reasons that follow, this application is dismissed.

II. Background

[4] The Primary Applicants are Munir Ahmad (Munir) and Asima Ahmad (Asima). Sohaib Ahmad (Sohaib) and Wahab Ahmad (Wahab) (collectively the "Minor Applicants") are two of their three children.

[5] On July 30, 2002, the Applicants made their refugee protection claims at the Windsor, Ontario port of entry. They claimed they were citizens of Pakistan and resided there prior to leaving in June 2002 to come to Canada through the United Arab Emirates ("UAE"), the United Kingdom ("UK"), and the United States ("US"). They declared no alternate names or aliases. They claimed they had not visited any other countries outside Pakistan in the 10 years prior to coming to Canada.

[6] The Applicants were determined to be Convention refugees or persons in need of protection on October 5, 2004 ("Refugee Decision"). Both Sohaib and Wahab were minor children at the time of the Applicants' arrival in Canada and of the Refugee Decision. Asima signed the Personal Information Forms ("PIFs") on the Minor Applicants' behalf.

[7] On June 7, 2021, the Minister of Public Safety and Emergency Preparedness ("Minister") made an application to vacate the Refugee Decision ("Vacation Application"). The Minister alleged that the Applicants had obtained their refugee protection "as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter." The

Minister submitted that the Applicants misrepresented their identities, withheld the US citizenship of Wahab, omitted their residential history in the US, and likely misrepresented material facts relating to the alleged persecutory events in Pakistan that supported their refugee claim.

[8] Munir and Asima acknowledged that the Minister is correct with respect to the misrepresentation of their identity. Munir and Asima submitted that "they only began to use the AHMAD identities when they entered Canada as refugee claimants. However, they allege that all the other allegations of the refugee claims are true and correct, aside from their personal identities, up until April 1997."

[9] The RPD granted the Minister's application and found that the Applicants obtained refugee protection "as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter" pursuant to section 109 of the *IRPA*. The RPD then found that there was insufficient evidence at the time of the first determination to justify the Refugee Decision.

[10] The Applicants filed their application for leave and judicial review of the Decision on May 18, 2023. This Court granted leave on June 19, 2024.

III. Issues and Standard of Review

[11] This Court has developed two distinct lines of reasoning as to what standard applies to questions of an abuse of process as a result of delay in the execution of an administrative decision (*Ganeswaran v Canada (Citizenship and Immigration)*, 2022 FC 1797 [*Ganeswaran*] at para 23). In *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 [*Abrametz*], the Supreme

Court of Canada ("SCC") recognized that an abuse of process due to administrative delay is a question of procedural fairness and that "decision makers have, as a corollary to their duty to act fairly, the power to assess allegedly abusive delay" (*Abrametz* at para 38, citing *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras 105–107, 121; Guy Régimbald, *Canadian Administrative Law*, 3rd ed (Ottawa, ON: LexisNexis Canada, 2021) at 344–350).

[12] In *Ganeswaran*, Madam Justice Lobat Sadrehashemi found that a question relating to an RPD proceeding with a vacation application where there had been a long delay, is a procedural question and is subject to a correctness standard (*Ganeswaran* at para 25). A question concerning whether the Minister met the standard required pursuant to section 109 of the *IRPA* to vacate applicants' Convention refugee status goes to the merits and is subject to a reasonableness standard (*Ganeswaran* at para 25). However, she noted that a reasonableness review on the merits does not prevent the Court from considering if an aspect of the decision was unfair:

> As noted by Justice Rennie in *Canadian Pacific*, the Supreme Court of Canada in *Khela* noted that:
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> > the ability to challenge a decision on the basis that it is unreasonable does not necessarily change the standard of review that applies to other flaws in the decision or in the decision-making process. For instance, the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be "correctness."
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> [*Ganeswaran* at para 25, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79.]

[13] Generally, when reviewing allegations of breach of procedural fairness, a reviewing court is concerned with the fairness of the process, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). In my

opinion, the applicable standard of review for allegations of breach of procedural fairness is correctness.

IV. Analysis

[14] Section 109 of the *IRPA* is applicable to this matter:

Vacation of refugee protection	**Demande d'annulation**
109 (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.	**109 (1)** La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.
Rejection of application	**Rejet de la demande**
(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.	**(2)** Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.
Allowance of application	**Effet de la décision**
(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.	**(3)** La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

A. *Was it an abuse of process for the RPD to proceed with the Minister's Vacation Application given the Minister's delay?*

[15] Section 109 gives the Minister authority to vacate a decision to allow a claim for refugee protection where the decision was obtained as a result of direct or indirect misrepresentation or the withholding of material evidence. This section of the *IRPA* is designed to discourage fraudulent claims.

[16] The SCC set out the test to determine if a delay amounts to an abuse of process in *Abrametz*:

> The test for whether delay amounts to an abuse of process has three steps. First, the delay must be inordinate. This is determined on an assessment of the context overall. Second, the delay must have caused significant prejudice. When those two requirements are met, the court or tribunal is to conduct a final assessment as to whether abuse of process is established. This will be so when the delay is manifestly unfair to the party to the proceedings or in some other way brings the administration of justice intro disrepute: *Behn* at paras. 40-41.
>
> [*Abrametz* at para 72.]

[17] The fact that an administrative process took considerable time does not in and of itself amount to an inordinate delay (*Abrametz* at para 50). Rather, this Court "should consider the following contextual factors: (a) the nature and purpose of the proceedings, (b) the length and causes of delay, and (c) the complexity of the facts and issues in the case" (*Abrametz* at para 51). These factors are not exhaustive, and additional contextual factors may be considered, including if the applicant contributed to or waived delay (*Abrametz* at para 61).

[18] The Applicants were found to be Convention refugees on October 5, 2004. The Minister obtained the evidence to support the application to vacate the Applicants' status in July 2015;

however, the Minister only filed the application to vacate the Applicants' status on June 7, 2021—a delay of almost six years.

[19] In its Decision considering the delay in this matter, the RPD found as follows:

> [84] By comparison [to *Ganeswaran*], in the present case the minor respondents were already 17 ½ and 15 ½ by the time the Minister discovered the concerns which led to the vacation application. Thus the six year delay between July 2015 when this information came to the Minister's attention and the filing of the vacation application before the RPD on June 7, 2021 occurred largely outside the "formative years" which may reasonably be construed as ending at eighteen. Furthermore, the panels finds that the six year delay cannot be considered as being egregious as the ten year delay in *Ganeswaran*.
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> [85] In *Starovic v MCI* (Minister of Citizenship and Immigration) 2012 FC 827, there was a 5 ½ year delay in bringing a cessation application. No abuse of process was found to have existed due to the delay.
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> [86] In the instant case the Minister's Application dated June 7, 2021 has been heard within two years; there has been no further consequential delay caused by the Minister. In fact, the initial hearing scheduled on November 2, 2022 had to be postponed because of late respondents' disclosure sent to the RPD and to the Minister's Counsel after midday for the afternoon hearing. A second hearing scheduled on January 27, 2023 was adjourned in order to give the parties time to review and consider the Federal Court decision in *Ganeswaran*.
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> [87] In the panel's view, the largest part any delay or uncertainty for the respondents has been of their own making. They arrived in Canada in June 2002 yet the Canadian immigration authorities only discovered the respondents' misrepresentations in July 2015.
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> [88] Unlike the situation of the ten-year delay in *Mella* the years of inaction by the Minister after learning of the misrepresentations were not egregious, in the panel's view. That said, the panel agrees with the respondents that the Ministers' delay falls short of the expected standards given the importance of vacation applications for respondents. However, the panel does not find the six year delay to be an abuse of process, in all the circumstances.

> [89] Any consequent hardship for the respondents were they to return to Pakistan, or in the case of Wahab to the USA, is a matter for humanitarian and compassionate review, but does not fall within the panels' jurisdiction.

[20] The Applicants submitted that there is significant prejudice to them because this will break up their family; Wahab was born in the US, they have a Canadian daughter/sister, Fatima, born in 2003, and they are integrated and established in Canada.

[21] The Respondent submitted that the *Abrametz* test must be satisfied and, in order to constitute an abuse of process, the Applicants must demonstrate that the delay "is manifestly unfair to a party or in some other way brings the administration of justice into disrepute" (*Abrametz* at para 43). The Respondent argued that a stay of proceedings may only be granted in the clearest of cases, where the abuse falls at the high end of the spectrum of seriousness (*Abrametz* at paras 85–86; *Klos v Canada (Attorney General)*, 2023 FCA 205 at para 8).

(1) Was the delay inordinate?

[22] The first branch of the test, whether the delay was inordinate, has been meet in this application.

[23] The Minister delayed in moving forward with the Vacation Application by a period of almost six years. No explanation or justification for the delay has been provided.

[24] The Respondent argued that the Minister should not carry the expenditure and burden of the investigation of fraudulent claims within a certain time, and that the Court should not impose a limitation period upon the Minister.

[25] With respect, in finding that the delay in this case is inordinate, I am not imposing a limitation period upon the Minister, nor am I dismissing the importance of investigating fraud to preserve confidence in the Canadian immigration system.

[26] The reasons for the Respondent's delay in this case are unknown. The delay here was not a result of investigation, as the Respondent had the necessary information to commence vacation proceedings in July 2015. I agree with the RPD that the delay in this case "falls short of the expected standards given the importance of vacation applications." In my view, this is an inordinate delay.

(2) Is there significant prejudice to the Applicants?

[27] In *Abrametz*, the SCC considered the purpose of disciplinary bodies and their role in protecting the public and maintaining public confidence in the profession. The Court held that inordinate delay may be harmful to members of professional bodies, as such delay may overshadow their professional reputation, career, and personal life (*Abrametz* at para 55).

[28] In the present application, there is no evidence that the Applicants were aware the Minister had evidence in 2015 that could have been acted upon to initiate proceedings to vacate their refugee status. Rather, the record for this proceeding is clear—the Applicants were not aware of any of this until the Minister made its Vacation Application on June 7, 2021. In other words, there is no evidence that the Applicants' suffered harm as a result of the delay between the date that the Minister could have made the Vacation Application and when the Vacation Application was made.

[29] As noted by this Court in *Li v Canada (Citizenship and Immigration)*, 2015 FC 459 [*Li*]:

> Courts can stop proceedings that have become unfair or oppressive, including where delay has caused significant prejudice (*Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 at paras 101-102). In addition, they can provide a remedy where the person affected carried on with his or her life reasonably believing that no further action would be taken (*Ratzlaff v British Columbia (Medical Services Commission*) (1996), 17 BCLR (3d) 336 (BC 2015 FC 459 (CanLII) (BCCA) at para 23; *Fabbiano v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 1219 at para 8-10).
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> [*Li* at para 27.]

[30] That said, "[t]he test is whether the delay caused 'actual prejudice of such a magnitude that the public's sense of decency and fairness is affected'" (*Li* at para 28).

[31] It is unclear how the Applicants have been prejudiced by the administrative delay in this case. It appears that they simply went on living their lives during this period.

[32] I appreciate that Fatima, the Canadian daughter of Munir and Asima, may be impacted by this Decision. With respect, she is an adult and can chose to stay in Canada, as is her right, or take steps to move with her family. The Applicants did not provide evidence to support the assertion that she is unable to remain in Canada on her own or that she suffers from chronic medical conditions that require the support of family.

[33] The Applicants also asserted that they had significantly integrated into Canadian life. With respect, I cannot accept this as to do so would permit them to benefit from their misrepresentations. The reality is that the Applicants have been in Canada for over 20 years. Munir and Asima's children benefited from a Canadian upbringing and education. While the process to vacate their Convention refugee status has no doubt been stressful, this stress was

caused by their actions. Their status in Canada was acquired through misrepresentations. This is admitted by Munir in a letter dated November 1, 2022:

> Sometime in 1999. We decided to visit the U.S. We had Visitor Visas. We put in an application from UAE and were accepted. At the time we were also looking to get into Canada. We made a genuine true application to Canada and applied for Permanent Residency as well…
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> …
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> In late 2000, our application for Canadian Permanent Residency was refused and that is when things changed. Our plans were all thrown off… We had to find another way to get to Canada… So I since then have always intended on moving to Canada. Those were my real intentions. To make my life and family safe. I had two young kids, and we had no other way but to come to Canada as refugees. I then found an agent in the U.S. who helps us to come to Canada. The agent advised us strongly to not mention our original names because Canada (PR application) refused us…
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> Our original intents were to move to Canada. But when we were refused; we were devastated… we could not go back to UAE. There was not even a 1% chance that they would accept us as refugees. The U.S. was out of options also. We did not know the strong laws of Canada at the time. Our friends at the mosque and a US lawyer advised us to use different names. Out of desperation, we took their advice… We had to delete any reference to our first PR application to Canada because we were worried sick that they would not have accepted our claim after a refusal. We wanted an opportunity to start fresh so we could be heard without any bias about previous applications. So we foolishly decided not to reveal the fact that we had a son born in the US, visitor visa in the US, residence history in UAE and a son born in UAE. We were told that if we did, it would reveal our previous original PR applications that got refused and our current application would be tainted as well and likely refused. Although we take full responsibility for our actions, it was ultimately because of ill advice from our friends and that US lawyer that led to us providing false names. We were desperate and needed to get out of the US as fast as possible… It was then that we travelled to Canada in July 2002 and then we told everything that had happened. We wanted refugee protection.
>
> …

> All three of my children are now adults. We kept them hidden from all the hardships we faced in Pakistan. They have all completed their education and have good jobs with established careers. We all pay our taxes. We are loyal Canadian Citizens. We feel safe and protected here.

[34] Asima made similar confessions in her letter dated November 1, 2022:

> In May 1997, I joined Munir in UAE and that was only the beginning of our moving… [Munir] applied for U.S. visitor visa as well as Canadian Permanent Visa… Munir and I made the difficult decision and that was to leave UAE and his job to come to Canada. Canada was our only option.
>
> But when we applied to Canada properly by providing our true documents, we got refused. We had no problems getting U.S. visitor visas… Everyone at the time was confused and we had only one option is to just go to Canada and try our luck there. But the problem was that we were denied applicants when we applied for permanent residency in Canada. We needed to find another way to be heard and get help. We could not apply with the same names and say we were now refugees. My husband then found an agent who arranged for us to come to Canada. As soon as we entered Canada, we told them everything and that is when we were allowed to come in as refugees… We did not mention anything about our previous applications because we feared for our safety, and we did not want to ever hear the name Pakistan again…

[35] Respectfully, their integration into Canada was built off a foundation of fraud. It would be "perverse that the [Applicants] be permitted to continue to enjoy that which [they] fraudulently obtained" (*Canada (Citizenship and Immigration) v Campbell*, 2014 FC 40 at para 20; see also *Canada (Minister of Citizenship and Immigration) v Copeland (TD)*, 1997 CanLII 6392 (FC), [1998] 2 FC 493; *Canada (Minister of Citizenship and Immigration) v Kawash*, 2003 FC 709; and *Canada (Citizenship and Immigration) v Omelebele*, 2015 FC 305).

[36] Finally, I will note that the RPD found that the facts in this application are distinguishable from *Ganeswaran*, and I agree. As noted by the RPD, "in the present case, the minor respondents

were already 17 ½ and 15 ½ by the time the Minister discovered the concerns which led to the vacation application. Thus the six year delay between July 2015 when this information came to the Minister's attention and the filing of the vacation application before the RPD on June 7, 2021, occurred largely outside the 'formative years' which may reasonably be construed as ending at eighteen." The Applicants provided no evidence to support how the Minor Applicants had been prejudiced. On the contrary, the record for this application indicates that both Minor Applicants benefited from a Canadian education.

[37] The RPD did not find prejudice and noted that "the largest part any [*sic*] delay or uncertainty for the respondents has been of their own making." I agree.

[38] The RPD correctly found that the Applicants did not satisfy the high threshold for significant prejudice. In other words, they did not establish all of the elements of the *Abrametz* test.

[39] I agree with the Respondent that the Applicants' issue appears to be about the impact of the vacation proceedings. The Applicants have failed to demonstrate how the delay in this matter resulted in significant prejudice to them.

V. Conclusion

[40] The Applicants have failed to demonstrate that there has been an abuse of process in this matter warranting a stay of proceedings.

[41] This application is dismissed.

JUDGMENT in IMM-6387-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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