

Federal Court



Cour fédérale

**Date: 20230809**

**Docket: IMM-9820-22**

**Citation: 2023 FC 1087**

**Ottawa, Ontario, August 9, 2023**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**MUBASHAR AHMAD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision of a member of the Refugee Protection Division [RPD], dated September 16, 2022 [the Decision]. In the Decision, the Member allowed the application of the Minister of Citizenship and Immigration [Minister] to cease the Applicant's refugee protection, pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in greater detail below, this application is allowed, because the RPD failed to consider evidence relevant to the Applicant's actual knowledge of the consequences of travelling on a Pakistani passport, in assessing his intention to re-avail himself of the protection of Pakistan.

## II. Background

[3] The Applicant is a Pakistani citizen. His claim for refugee protection, based on religious persecution due to his Ahmadi faith, was accepted on December 21, 2010, and on September 21, 2011, he obtained permanent resident status in Canada.

[4] Since 2011, the Applicant has been issued two Pakistani passports, the second of which was valid until July 19, 2021. Both passports bore the Applicant's name, date of birth, and his religious affiliation as being Ahmadi.

[5] Between 2013 and 2021, the Applicant travelled to Pakistan annually (nine occasions in total) with his Pakistani passports. The Applicant testified that he travelled to Pakistan in January 2013 to visit his wife, who was seriously ill and ultimately passed away in April of that year. His subsequent trips were to sell his cattle, property, farm equipment, and land in Pakistan after his wife's passing.

[6] Based on the Applicant's travel history back to Pakistan, the Minister applied to the RPD pursuant to section 108 of the IPRA for the cessation of the Applicant's refugee protection.

## III. Decision under Review

[7] Before the RPD, the Minister argued that the Applicant voluntarily re-availed himself of the protection of his country of nationality within the meaning of subsection 108(1)(a) of the

IRPA. That provision mandates that a claim for refugee protection be rejected, and prescribes that a person is not a Convention refugee or a person in need of protection, if a person has voluntarily re-availed themselves of the protection of their country of nationality.

[8] In considering whether the Applicant had voluntarily re-availed himself of Pakistan's protection, the RPD was guided by the United Nations High Commission on Refugees Handbook on Procedures and Criteria for Determining Refugee Status [Handbook]. Paragraph 119 of the Handbook outlines the following cumulative three-part analytical framework for cessation:

- A. Voluntariness: the refugee must act voluntarily;
- B. Intention: the refugee must intend by their action to re-avail themselves of the protection of the country of their nationality; and
- C. Re-availment: the refugee must actually obtain such protection.

[9] In the resulting analysis, the RPD found that the Minister had met the onus for allowing the cessation application and therefore allowed the Minister's application.

[10] In analysing voluntariness, the RPD noted that the Applicant had traveled to Pakistan annually after his wife's death to slowly dispose of the cattle on his land, his farm equipment, his household goods, and to sell his son's land. The Applicant had testified that his son, who lives in Canada, was busy with his trucking business and therefore asked the Applicant to attend to the sale of the land and authorized him to carry out the transaction. The Applicant testified that he was not working and willingly consented to carry out the sale. The RPD found that the Applicant's own actions indicated voluntariness.

[11] With respect to intention to re-avail, the RPD concluded that the Applicant's use of two different Pakistani passports, which bore his biographical and religious information,

demonstrated his intention to re-avail himself of Pakistan's protection. In reaching this conclusion, the RPD considered the Applicant's actions and precautions in Pakistan and his travel history.

[12] Concerning the Applicant's actions and precautions, while the RAD found that the Applicant exercised a degree of caution when he attended prayers at his mosque, it also found that he failed to take precautionary measures during his ongoing business activities, which included interactions with various buyers and attending government offices. It also noted that the Applicant had remained at his family home in Pakistan and that he is known in his hometown and community as an Ahmadi Muslim. With respect to his travel history, the RPD again drew on the fact that the Applicant had used his Pakistani passport to travel to and from Pakistan.

[13] The RPD also found that the Applicant had actually re-availed himself of Pakistan's protection. In reaching this conclusion, the RPD noted that the burden is on the individual to show that they did not actually seek re-availment of the protection of the country from which they had sought refuge.

[14] The RPD found that the Applicant had failed to rebut the presumption that he intended to re-avail himself of the protection of Pakistan. The RPD noted that there had been no incidents involving the Applicant during his travels and stays in Pakistan and that he had been receiving ongoing pension payments from the Government of Pakistan irrespective of his religious faith. The RPD concluded that the evidence showed a lack of interest on the Government of Pakistan's part towards the Applicant. The RPD also found that the Applicant had re-availed himself of Pakistan's protection and terminated his refugee status in Canada because he applied for on his own initiative, and was granted, two Pakistani passports.

[15] The RPD noted that, to rebut the presumption of actual re-availment, the Applicant was required to show that he was obliged to travel due to exceptional circumstances. In concluding that the Applicant had failed to do so, the RPD noted that jurisprudence from this Court has held that returning to one's country of nationality to address the needs of a relative does not constitute exceptional circumstances if the individual's presence is not absolutely necessary. The RPD did not find the Applicant's ongoing and repeated presence in Pakistan to be necessary. While the Applicant testified that his siblings were unable to deal with the sale of his property in Pakistan, the RPD also noted that the Applicant testified that he travelled to Pakistan so that he could negotiate a better price for his property than he would have been able to attain if he sold the goods by telephone.

[16] The RPD also referenced the Applicant's explanation that he believed that being a permanent resident of Canada provided protection while travelling to Pakistan. However, the RPD found that the Applicant's status in Canada was insufficient to rebut the presumption that he intended to re-avail himself of Pakistan's protection.

[17] In light of the foregoing, the RPD concluded, on a balance of probabilities, that the Applicant had voluntarily re-availed himself of Pakistan's protection, and it allowed the Minister's application.

#### IV. Issues and Standard of Review

[18] In challenging the Decision, the Applicant articulates the following issues for the Court's consideration:

- A. Did the RPD commit reviewable errors in misapplying the test by conflating the three requirements of the test and thus failing to provide a proper analysis of the Applicant's subjective intent to re-avail?
- B. Did the RPD commit reviewable errors in concluding that the Applicant's travels to Pakistan were voluntary by finding:
  - i. the Applicant re-availed himself of the diplomatic protection of Pakistan by obtaining and renewing his passport; and
  - ii. that the purposes of the Applicant's travels to Pakistan were not constrained by exceptional circumstances.

[19] The standard of review applicable to these issues is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

## V. Analysis

[20] The determinative argument in this application is the Applicant's submission that, in assessing whether he intended to re-avail himself of Pakistan's protection, the RPD failed to consider the Applicant's actual knowledge of the consequences of travelling on his Pakistani passport.

[21] The Applicant relies on *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*], in which the Federal Court of Appeal explained that the RPD was required to assess the individual's subjective intention and therefore the individual's actual knowledge of the consequences of travelling on a passport issued by the country of persecution, rather than what the individual should have known about those consequences. While an individual's lack of

knowledge of the immigration consequences of their actions may not be determinative of the question of intent, it is a key factual consideration. The RPD must either weigh that fact in the mix with all the other evidence or properly explain why its consideration is excluded (at paras 66-71).

[22] In response to this argument, the Respondent submits that the RPD properly engaged with this aspect of the evidence regarding subjective intent, by concluding that the Applicant's permanent resident status in Canada was insufficient to rebut the presumption that he intended to re-avail himself of Pakistan's protection. As the Respondent notes, the RPD relied on *Al-Habib v Canada (Citizenship and Immigration)*, 2020 FC 545 [*Al-Habib*], as upholding a similar finding. The Respondent emphasizes the conclusion in *Camayo* (at para 70) that an individual's actual knowledge of the immigration consequences of their actions is not determinative, such that the RPD was free to weigh the remaining factors.

[23] The difficulty with the Respondent's argument is that the referenced portion of the RPD's analysis neither captures accurately the Applicant's evidence nor considers that evidence from the perspective required by *Camayo*.

[24] The Applicant relies on his testimony before the RPD that he did not know that travelling on a Pakistani passport meant that he was relying on the government of Pakistan for protection. Rather, he thought it was just a travel document. This testimony is distinct from that in *Al-Habib*, where the applicant alleged that he believed that his permanent resident status in Canada would have protected him in Chad (see para 19). In the case at hand, the testimony upon which the

Applicant relies focuses upon the significance of travelling on a passport issued by the country of persecution. That significance, *i.e.*, that such travel means relying on that country's protection, gives rise to potential immigration consequences and therefore must be considered in assessing intention to re-avail.

[25] However, the Decision does not disclose consideration of that testimony. Moreover, the RPD's finding, that the Applicant's status in Canada was insufficient to rebut the presumption that he intended to re-avail, fails to properly engage with the Applicant's evidence, because it does not demonstrate consideration of the Applicant's subjective intention as required by *Camayo*.

[26] On these bases, I find that the Decision is unreasonable, and this application for judicial review must be allowed. It is therefore unnecessary for the Court to consider the Applicant's other arguments.

[27] Neither party proposed any question for certification for appeal, and none is stated.



**JUDGMENT IN IMM-9820-22**

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

1. This application for judicial review is allowed, the Decision is set aside, and this matter is returned to another member of the Refugee Protection Division for re-determination.
2. No question is certified for appeal.

"Richard F. Southcott"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-9820-22  
**STYLE OF CAUSE:** MUBASHAR AHMAD v. MCI  
**PLACE OF HEARING:** TORONTO, ON  
**DATE OF HEARING:** JULY 20, 2023  
**JUDGMENT AND REASONS:** SOUTHCOTT J.  
**DATED:** AUGUST 9, 2023

**APPEARANCES:**

Ji Won Chun

FOR THE APPLICANT

Nick Continelli

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Rosenblatt Immigration Law  
Toronto, ON  
Attorney General of Canada  
Toronto, ON

FOR THE APPLICANT

FOR THE RESPONDENT