Federal Court  Cour fédérale

Date: 20231128

Docket: IMM-10945-22

Citation: 2023 FC 1587

Ottawa, Ontario, November 28, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

MOHAMMAD REZA TAJI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a 55-year-old citizen of Iran. In January 2011, the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada found him to be a Convention refugee on the basis of his well-founded fear of persecution due to his opposition to the government of Iran. The applicant became a permanent resident of Canada in April 2012.

[2] After becoming a permanent resident, the applicant returned to Iran eight times between 2012 and 2017, usually staying for several months at a time. On one of these trips (in 2013), he renewed his Iranian passport. He used this passport to travel to Turkey, Thailand, and the United States as well as to return to Iran on subsequent trips.

[3] In August 2020, the Minister of Public Safety and Emergency Preparedness applied to the RPD under subsection 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) for a determination that the applicant's refugee protection has ceased because he had voluntarily re-availed himself of the protection of his country of nationality.

[4] The applicant did not dispute that he had returned to Iran or that he had renewed his Iranian passport. He submitted, however, that he never intended to waive the protection granted to him by Canada and, in any event, the circumstances that had given rise to his need for refugee protection had ceased to exist. According to the applicant, that circumstances had changed in this way became clear to him during his first trip back to Iran in 2012. His subsequent trips confirmed his belief that he was no longer at risk in Iran.

[5] In a decision dated October 7, 2022, the RPD allowed the Minister's application, finding that the refugee protection conferred on the applicant has ceased because the applicant had re-availed himself of the protection of Iran. As a result, pursuant to subsection 108(3) of the *IRPA*, the applicant's claim for refugee protection was deemed to be rejected. As well, because the RPD found that the applicant's refugee protection has ceased due to re-availment, by the

operation of law, the applicant lost his permanent resident status in Canada and he became inadmissible: see *IRPA*, subsection 40.1(2) and paragraph 46(1)(c.1).

[6] The applicant now applies for judicial review of the RPD's decision under subsection 72(1) of the *IRPA*.

II. STANDARD OF REVIEW

[7] The parties agree, as do I, that the RPD's decision should be reviewed on a reasonableness standard. A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

III. ANALYSIS

[8] In this application for judicial review, the applicant does not challenge directly the reasonableness of the RPD's determination that his refugee protection has ceased due to re-availment, considered in isolation. Rather, he submits that it was unreasonable for the RPD to find that his refugee protection has ceased due to re-availment (*IRPA*, paragraph 108(1)(a)) without also considering whether it has ceased because the reasons for which he sought refugee

protection had ceased to exist (*IRPA*, paragraph 108(1)(e)) and, if this were the case, explaining why his refugee protection should nevertheless be found to have ceased due to re-availment. The difference between these two outcomes is significant: if the RPD had determined that the applicant's refugee protection has ceased under paragraph 108(1)(e) rather than paragraph 108(1)(a), the applicant would have retained his permanent resident status and he would not be inadmissible.

[9] For the reasons that follow, I agree with the applicant that the RPD's decision is unreasonable.

[10] The Supreme Court of Canada held in *Vavilov* that when determining whether a decision is reasonable, "the reviewing court asks whether the decision 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" (*Vavilov,* at para 99). As the Court also emphasized, "it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" (at para 86, emphasis in original). Furthermore, where "the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (*Vavilov*, at para 133). As the Court explained: "The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention" (*ibid.*). The need to conduct

reasonableness review mindful of the impact of the decision on the affected individual was reiterated recently in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 81.

[11] As I discussed in *Ravandi v Canada (Citizenship and Immigration)*, 2020 FC 761, [2021] 3 FC 177, having been given the jurisdiction to determine applications to cease refugee protection, the RPD has been entrusted with an "extraordinary degree of power" over the lives of the subjects of those applications (cf. *Vavilov*, at para 135). A corollary to this power is a "heightened responsibility" on the part of the RPD to ensure that its reasons demonstrate that it has considered the consequences of a decision and that those consequences are justified in light of the facts and law (*ibid.*). See *Ravandi*, at para 28.

[12] As set out above, the consequences of concluding that refugee protection has ceased include not only the loss of refugee protection – a serious matter in and of itself – but also, if it is found to have ceased under any of the circumstances described in paragraphs 108(1)(a) to (d) of the *IRPA*, the collateral legal consequences of the loss of permanent resident status and inadmissibility to Canada. Accordingly, I held in *Ravandi* that, where the RPD has a real choice to make between different grounds on which to find that refugee protection has ceased and it opts for a ground that entails more deleterious collateral consequences for the individual instead of another ground that does not entail such consequences, it is required to explain its choice with reasons that demonstrate that it has considered the consequences of the choice and that those consequences are justified in light of the facts and law. The reasons would have to explain why that decision best reflects the legislature's intention given the significantly different impacts of

the respective determinations, as defined by Parliament. See *Ravandi*, at paras 30-33; see also *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 84.

[13] In the decision at issue in *Ravandi*, the RPD had found that the applicant's refugee protection has ceased under paragraph 108(1)(a) of the *IRPA* due to re-availment. In doing so, it said very little about paragraph 108(1)(e) apart from noting at the outset of its decision that this provision was potentially engaged along with paragraph 108(1)(a). I concluded that the RPD's failure to examine the possibility of cessation under paragraph 108(1)(e) of the *IRPA* (i.e. the reasons for which the person sought refugee protection have ceased to exist) did not call the reasonableness of the decision into question because I was not persuaded that cessation on that basis was ever a reasonable possibility in the circumstances of that case.

[14] In contrast, in the present case, the issue of whether to find that the applicant's refugee protection has ceased due to re-availment, due to changed circumstances, or both, was squarely before the RPD. The Minister's application was originally framed solely in terms of paragraph 108(1)(a) (re-availment). In post-hearing written submissions, counsel for the applicant contended that the test for re-availment was not met but, in any event, cessation should be found only in relation to paragraph 108(1)(e) (changed circumstances) given the applicant's testimony that he no longer feared persecution in Iran as a result of changes in the conditions there. In responding submissions, counsel for the Minister contended that the application should be determined under both paragraph 108(1)(a) and paragraph 108(1)(e) or, in the alternative, only under paragraph 108(1)(a). In reply submissions, counsel for the applicant reiterated that the RPD should choose to find that refugee protection has ceased only under

paragraph 108(1)(e), even if a finding under paragraph 108(1)(a) could also be made (which was not conceded).

[15] Despite this, the RPD does not address paragraph 108(1)(e) of the *IRPA* anywhere in its decision. The decision only explains why the RPD concluded that the test for re-availment had been met. The RPD does not explain in any way why the Minister's application was being allowed on this ground alone, notwithstanding the applicant's detailed submissions urging it to find that cessation was established only under paragraph 108(1)(e), if at all. Given the serious consequences of the RPD's decision, its complete silence in this regard means that the decision does not meet the requirements of responsive justification set out in *Vavilov* and *Mason*.

[16] In addition, as *Vavilov* also holds, "The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties" (at para 127). The question of whether the applicant's refugee protection should be found to have ceased only under paragraph 108(1)(e) even if it could also be found to have ceased under paragraph 108(1)(a) was *the* central issue and concern raised by the applicant. It was developed in detail in written submissions from both parties. The RPD's failure to grapple with this issue meaningfully – or even at all – calls into question whether it was actually alert and sensitive to the matter before it (*c.f. Vavilov*, at para 128).

[17] The respondent submits that, even if the RPD's decision is unreasonable in these respects (which is not conceded), no useful purpose would be served by remitting the matter for reconsideration because it is inevitable that the RPD would conclude again that the refugee

protection conferred on the applicant has ceased under paragraph 108(1)(a) of the *IRPA*: see *Vavilov*, at para 142. Even if the RPD were to also conclude that refugee protection has ceased under paragraph 108(1)(e) as well, this would make no practical difference because the applicant would still face the deleterious consequences he seeks to avoid – namely, loss of permanent resident status and inadmissibility.

[18] I do not agree.

[19] I begin by noting that I agree with the applicant that, by using the term "may", subsection 108(2) of the *IRPA* confers a discretionary power on the RPD to find that refugee protection that was previously conferred under subsection 95(1) of the *IRPA* has ceased. This is in contrast to subsection 108(1) itself, which compels the RPD to reject a claim for refugee protection that has not yet been determined if one of the enumerated grounds for cessation is established: see *Canada (Public Safety and Emergency Preparedness) v Zaric*, 2015 FC 837, [2016] 1 FC 407, at para 22. As well, the statutory grounds on which refugee protection may be found to have ceased are also within the discretion of the RPD: see *Canada (Citizenship and Immigration) v Al-Obeidi*, 2015 FC 1041 at paras 7 and 22; *Tung v Canada (Citizenship and Immigration)*, 2018 FC 1224 at paras 28-29. Furthermore, as the Federal Court of Appeal held in *Galindo Camayo*, the test for cessation "should not be applied in a mechanistic or rote manner" (at para 83).

[20] In view of all this, I am unable to conclude that it is inevitable that, on redetermination, the RPD would not find that the applicant's refugee protection has ceased only under

paragraph 108(1)(e) of the *IRPA*, if at all. To make such a determination would trench impermissibly on the RPD's responsibility to decide such matters.

IV. CONCLUSION

[21] For these reasons, this application will be allowed and the matter will be remitted for redetermination by a different decision maker.

[22] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. Counsel for the applicant did express a tentative interest in proposing a question depending on how I resolved some of the legal questions before me. In my view, and in light of the parties' respective positions, the way I have decided this application does not raise any serious questions of general importance.

JUDGMENT IN IMM-10945-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division dated October 7, 2022, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10945-22
STYLE OF CAUSE:	MOHAMMAD REZA TAJI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JUNE 19, 2023
JUDGMENT AND REASONS:	NORRIS J.
DATED:	NOVEMBER 28, 2023

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