Federal Court  Cour fédérale

Date: 20240119

Docket: IMM-6137-22

Citation: 2024 FC 90

Ottawa, Ontario, January 19, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

THIYOPLUS STRACK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Thiyoplus Strack, was granted refugee protection in Canada approximately eleven years ago because of his fear of persecution in Sri Lanka. In 2020, the Minister of Public Safety and Emergency Preparedness [the Minister] applied under subsection 108(2)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for a determination that his refugee protection had ceased because he had voluntarily re-availed himself of the protection of Sri Lanka. The Minister's application was based on Mr. Strack's

travel to Sri Lanka on a Sri Lankan passport in 2016 and 2019 after he obtained permanent residence in Canada.

[2] In June 2022, the Refugee Protection Division [RPD] granted the Minister's cessation application. This decision had severe consequences for Mr. Strack; as a result, he lost both his refugee status and his permanent resident status.

[3] Mr. Strack challenges the RPD's cessation decision on this judicial review. His arguments all relate to the merits of the decision and therefore the parties agree, as do I, that I should review the RPD's decision on the reasonableness standard.

[4] Mr. Strack principally argues that the RPD's reasoning runs contrary to the Federal Court of Appeal's recent guidance in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*]. I agree. As I explain below, I find that the RPD failed to consider Mr. Strack's knowledge of the immigration consequences of his actions in obtaining and relying on a Sri Lankan passport to return to Sri Lanka. Further, contrary to the guidance in *Camayo*, the RPD conflated two distinct inquiries, relying on its finding that Mr. Strack voluntarily obtained and travelled on a Sri Lankan passport to find that he therefore intended to re-avail himself of Sri Lanka's protection. I also find, as was also argued by Mr. Strack, that the RPD unreasonably dismissed the precautionary measures he took as implausible.

[5] Like *Camayo*, this case involves a protected person who obtained and relied on a passport from their country of nationality to travel to that country. Where an application to cease a

protected person's status under paragraph 108(1)(a) of *IRPA* is based on these circumstances, there is a presumption that the protected person intended to avail themselves of their country of nationality's protection (*Camayo* at para 63).

[6] The onus is on the protected person to rebut the presumption (*Camayo* at paras 65–66). The RPD must conduct an individualized assessment of the evidence, including "any evidence relating to the protected person's subjective intent in obtaining, relying on a passport and/or travelling to their country of nationality" (*Singh v Canada (Citizenship and Immigration)*, 2022 FC 1481 at para 27, citing *Camayo* at paras 65–66).

[7] The Federal Court of Appeal in *Camayo* noted at para 70 that "an individual's lack of actual knowledge of the immigration consequences" is a "key factual consideration that the RPD must either weigh in the mix with all of the other evidence, or properly explain why the statute excludes its consideration." The RPD's analysis of Mr. Strack's actual knowledge of the immigration consequences is limited to only noting that it is a relevant consideration but not necessarily determinative: "it may be argued that… [Mr. Strack] lacked intention to re-avail, by reference to the *Camayo* decision. Alleged lack of awareness of the consequences of his actions is a relevant consideration when assessing intention, but is not necessarily determinative."

[8] There is no consideration of Mr. Strack's particular evidence about his knowledge of the immigration consequences of his actions. The Respondent argues that the RPD's consideration of the issue is sufficient because the issue is not determinative. While it is true that the Federal Court of Appeal noted that a lack of knowledge of the immigration consequences may not

necessarily be determinative, it is clear that the RPD is required to consider and explain the weight or lack of weight it is applying to this issue. Having not mentioned the specifics of Mr. Strack's knowledge at all, the reasoning on this issue certainly falls short.

[9] The Respondent also argues that while the RPD's reasons could have done a better job of maintaining the distinction between its analysis on voluntariness and intention, that this is not a serious shortcoming when considering the reasoning as a whole. I cannot agree. The RPD's analysis under the intention section of the decision is focused on its determinations that Mr. Strack voluntarily returned to Sri Lanka and voluntarily obtained and renewed his Sri Lankan passport, having considered his motivation to return was to visit his sick mother. The RPD noted that Mr. Strack was "not *per se* forced by an external source to return to the country of persecution" and that he "renewed his passport voluntarily." Based on this, the RPD concluded that "by virtue of travelling repeatedly on his Sri Lankan passports, the Respondent intended to reavail himself of the diplomatic protection of Sri Lanka."

[10] This is similar to the conflation problem identified in paragraph 72 of *Camayo*, where the Federal Court of Appeal noted "much of RPD's analysis of the intention issue is taken up with an examination of the reasons" for returning to the country of nationality. As explained by Justice Mactavish, "the question of whether one intended to reavail oneself of the protection of one's country of origin has nothing to do with whether the motive for the travel was necessary or justified"(*Camayo* at para 72; see also *Abbas v Canada (Citizenship and Immigration)*, 2023 FC 871 at paras 42–44; *Yao v Canada (Citizenship and Immigration)*, 2023 FC 920 at paras 26–27).

[11] Lastly, the RPD's treatment of the evidence of the precautions taken by Mr. Strack when travelling back to Sri Lanka is perfunctory. The RPD finds it implausible that the priest escorted him on all his outings. In making this finding, the RPD does not explain whether it believed that the priest escorted him on some of his outings, how many times Mr. Strack left his accommodation during his stay, or why this could not have occurred in reference to any evidence in the record, including the priest's letter. Particularly given what was at stake for Mr. Strack, the RPD's cursory dismissal of his evidence as implausible and therefore irrelevant to its analysis, which did not provide sufficient justification on a core issue (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 133; *Camayo* at paras 49–51).

[12] Based on the above reasons, the application for judicial review is allowed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-6137-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;

2. The RPD decision dated June 11, 2022 is set aside and sent back to a different member for redetermination; and

3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6137-22
STYLE OF CAUSE:	THIYOPLUS STRACK v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 8, 2024
JUDGMENT AND REASONS:	SADREHASHEMI J.
DATED:	JANUARY 19, 2024

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