

Federal Court



Cour fédérale

Date: 20240305

Docket: IMM-13591-22

Citation: 2024 FC 365

Ottawa, Ontario, March 5, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

SYED ASAD HUSSAIN NAQVI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Protection Division (the “RPD”). The Decision found that the Applicant had voluntarily reavailed himself of the protection of his country of nationality, within the meaning of section 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”). The Decision also granted

the Respondent's application for cessation of the Applicant's refugee protection pursuant to section 108(2) of the Act.

II. Preliminary Matter

[2] As noted by both parties, the Respondent should be the Minister of Citizenship and Immigration. The style of cause is amended accordingly.

III. Background

[3] Mr. Syed Asad Hussain Naqvi (the "Applicant") is a 45-year-old citizen of Pakistan.

[4] The Applicant practices Shia Islam. In December 2017, he was granted refugee protection in Canada due to threats from militant groups attacking him for his faith, and because his country of nationality was not providing him with protection. In September 2019, the Applicant became a permanent resident.

[5] Three weeks after acquiring permanent residency, the Applicant presented himself as a citizen of Pakistan to the Consulate General of Pakistan in Vaughan, Ontario, where he applied for a Pakistani passport. He was issued the passport in December 2019.

[6] The Applicant traveled to Pakistan only once to visit his mother, who was ill, in November 2020. His visit lasted for 29 days. The Applicant alleges that, for the duration of his visit, he was fearful and remained in hiding in private homes or the hospital where his mother was staying.

[7] The Respondent applied to the RPD for cessation of refugee protection in November 2021, arguing that the Applicant had reavailed himself of the protection of Pakistan.

IV. The Decision

[8] The RPD granted the Respondent's application. Citing *Nsende v Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 [*Nsende*] at paragraphs 12-14, it observed that it must be satisfied that (1) the Applicant's conduct was voluntary, (2) the Applicant intended to reavail himself of the protection of Pakistan, and (3) the conduct actually resulted in reavilment. The RPD held that the Applicant met all three elements.

[9] On the question of voluntariness, the RPD found that there is no evidence on the record before it to suggest that the Applicant was forced or pressured to apply for a Pakistani passport or to return to Pakistan. It acknowledged that the Applicant felt compelled to return to Pakistan to see his ailing mother, but it found that, ultimately, the Applicant was not forced to reavail himself of Pakistan's protection. Accordingly, the Applicant acted voluntarily.

[10] Regarding the Applicant's intention, the RPD cited *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*] at paragraph 63, and noted that the Applicant's act of applying for a passport from Pakistan and his subsequent return to that country gave rise to a strong presumption that the Applicant intended to reavail himself of its protection. The RPD further noted that the onus is on the Applicant to rebut that presumption, and that he can only do so by showing that exceptional circumstances existed at the time.

[11] The RPD held that the Applicant did not provide any evidence to overcome the presumption that he intended to reavail himself of the protection of Pakistan.

[12] As part of its examination of intention, the RPD considered the Applicant's submission that the purpose of his return to Pakistan was to visit his ill mother. It found that the visit was not necessary, as the Applicant's mother was attended to by his siblings.

[13] The RPD also considered the Applicant's submission that he was not aware that his return to Pakistan would lead to cessation of protection, that he is still at risk in Pakistan, and that he took security precautions while in Pakistan. The RPD also considered the Applicant's claim that he acquired the passport to travel more generally, not necessarily to return to Pakistan, and that the impetus for his return was partly the COVID-19 pandemic, which the Applicant feared will endanger his life or his mother's life. The Applicant's implicit position here is that these are not the indicia of a person who intended to reavail himself of Pakistan's protection.

[14] The RPD was not persuaded by the Applicant's submissions. It noted his level of education and that he could have acquired information regarding how applying for a passport or returning to Pakistan may lead to a cessation of his refugee protection. It also concluded from this that the Applicant visited Pakistan without concern of the alleged risks, demonstrating that he felt secure entering that country. The RPD also stated that the Applicant's use of his passport to travel to other countries only strengthened the view that he intended to reavail himself of Pakistan's protection. The RPD concluded that the Applicant did not rebut the strong presumption of intention to reavail.

[15] Finally, regarding actual reavailment, the RPD examined the case law and found that it is not necessary to show that Pakistan is actually providing the Applicant with *state* protection. Instead, actual reavailment is met if the Applicant secures *diplomatic* protection, which includes the provision of consular assistance and services from the Applicant's country of nationality while abroad.

[16] The RPD found that, when the Applicant decided to travel using a Pakistani passport, he placed himself under the diplomatic protection of that country. The RPD specifically noted that the Applicant's passport contains a message from the government of Pakistan requesting that authorities "allow the bearer [of the passport] to pass freely without let or hindrance".

[17] The RPD was satisfied that the Applicant reavailed himself voluntarily, intentionally, and actually. It granted the Respondent's application for cessation of refugee protection.

[18] The Applicant argues that the RPD erred by failing to address the forward-facing risk that cessation of his refugee status imposes on him and by failing to consider evidence regarding that risk. He further argues that the RPD's finding that he reavailed himself to Pakistan's protection is unreasonable because the RPD (1) failed to consider the exceptional circumstances posed by the COVID-19 pandemic and the emotional pressures it imposed on the Applicant over his life and his mother's life, (2) was wrong to conclude that the Applicant acted voluntarily, (3) unreasonably assessed actual reavailment by reference to diplomatic protection rather than state protection, and (4) did not provide any reasons with respect to its negative credibility findings.

V. Issues

[19] Did the RPD err by failing to address the forward-facing risk that cessation would impose on the Applicant?

[20] Was the RPD's conclusion that the Applicant reavailed himself of Pakistan's protection voluntarily, intentionally, or actually unreasonable?

VI. Analysis

[21] The standard of review with respect to the RPD's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25).

A. *Forward-facing risk*

[22] The Applicant states that the RPD erred by failing to address the forward-facing risk that cessation would impose on him. He submits that he continues to practice Shia Islam and is a member of a prominent Shia family. He states that members of his faith continue to face persecution in Pakistan.

[23] The RPD did not err in not considering the forward-facing risk that cessation would impose on the Applicant or the evidence related thereto. Section 108(2) of the Act is clear in that the RPD may grant an application for cessation if the Applicant reavailed himself to the protection of his country of nationality. The RPD correctly identified the test for reavailment as articulated in *Nsende* at paragraphs 12-14, namely that (1) the Applicant's conduct was voluntary, (2) the

Applicant intended to reavail himself of the protection of Pakistan, and (3) the conduct actually resulted in reavilment.

[24] Nowhere in this analysis is the RPD required to assess forward-facing risk. As the Respondent correctly states, the case law is consistent in rejecting such a claim (*Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 [*Abadi*] at para 20; *Iqbal v Canada (Citizenship and Immigration)*, 2022 FC 387 at para 23).

B. *COVID-19 and emotional pressures*

[25] The Applicant states that the RPD failed to take into account that, when the Applicant returned to Pakistan in November 2020, the world was amidst a global pandemic. He claims that the pandemic left the Applicant fearing that he may never see his mother again, because either of them may die due to COVID-19. According to the Applicant, the RPD did not consider this reality and whether it imposes exceptional circumstances for the purposes of intention.

[26] Contrary to the Applicant's position, the RPD did consider his submission that "it was an emergency situation to meet his mom" and that "with the pandemic, he had been ill himself and was not sure if he was going to survive". The RPD was not persuaded that such circumstances were so exceptional as to rebut the presumption of intention, and emphasized other factors such as the Applicant's omission to inquire about the risks of returning. The RPD's analysis in that respect was reasonable.

C. *Voluntariness*

[27] In a related argument, the Applicant claims that “for reasons presented in this memorandum of arguments, the [A]pplicant at no point in time acted ‘voluntarily’”. In essence, the Applicant claims that it was unreasonable for the RPD to find that his mother’s illness was not sufficient to show that he was compelled in his conduct.

[28] The RPD acknowledged the emotional pressures felt by the Applicant as a result of his mother’s illness. It held that that the Applicant’s justification for his return to Pakistan does not alter the voluntariness of the act. The RPD’s determination is consistent with the case law. In *Abadi*, at paragraph 18, this Court held that the applicant’s decision to travel to his country of nationality on a passport issued by that country constituted reavilment, even though the applicant was visiting his ill father. Similarly, in *Canada (Citizenship and Immigration) v Nilam*, 2015 FC 1154 [*Nilam*] at paragraph 28, the Court concluded that visiting a sick relative is not an exceptional circumstance if the visit involves returning to one’s country of nationality using a passport issued by that country.

[29] In both *Abadi* and *Nilam*, the Court acknowledged that the existing commentary by the United Nations High Commissioner for Refugees recognizes that visiting a sick relative amounts to an exceptional circumstance. However, it also observed that the commentary’s example was in relation to a refugee who visits his country of nationality using a travel document issued by the country of *refuge*, not one issued by the country of *nationality*.

[30] The RPD concluded in this case that that the Applicant’s decision to visit his sick mother was voluntary, regardless of how necessary the visit may have felt to him on a subjective level,

because the Applicant chose to do so using a passport issued by his country of nationality. This Court has consistently held such a finding to be reasonable.

[31] The RPD's assessment of voluntariness was reasonable.

D. *Diplomatic and state protection*

[32] The Applicant submits that the RPD did not assess whether he actually reavailed himself by securing *state* protection. He argues that the RPD's reliance on *diplomatic* protection alone to show actual reavilment was unreasonable.

[33] The Applicant's position is contrary to the authorities. The case law suggests that it is not necessary to demonstrate state protection in order to establish actual reavilment and that diplomatic protection would suffice (*Camayo* at para 63; *Du v Canada (Citizenship and Immigration)*, 2022 FC 1145 at para 30; *Lu v Canada (Citizenship and Immigration)*, 2019 FC 1060 at para 60). Acquiring a passport from one's country therefore supports a *prima facie* finding of reavilment.

[34] The RPD did not err in concluding that the Applicant actually reavailed himself by placing himself under Pakistan's diplomatic, rather than state, protection.

E. *Negative credibility finding*

[35] The Applicant further states that the RPD did not provide reasons with respect to its negative credibility findings. His submissions appear to focus on the RPD's finding that the Applicant did not fear for his life, contrary to his claims.

[36] The premise of the Applicant's challenge is incorrect. The RPD did examine the Applicant's claim that he continues to fear for his life. It stated that the Applicant's submissions in that regard were contradictory, and that his behaviour suggested otherwise. Accordingly, it held that the Applicant demonstrated a lack of subjective fear.

[37] The RPD addressed the Applicant's allegation. It did so reasonably and with sufficient explanation.

VII. Conclusion

[38] The application is dismissed.

JUDGMENT in IMM-13591-22

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended and the Minister of Citizenship and Immigration is named as the sole Respondent.
2. The application is dismissed.
3. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: SYED ASAD HUSSAIN NAQVI v THE MINISTER OF
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PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 20, 2024

JUDGMENT AND REASONS: MANSON J.

DATED: MARCH 5, 2024

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