

Federal Court



Cour fédérale

Date: 20240605

Docket: IMM-3069-23

Citation: 2024 FC 850

Toronto, Ontario, June 5, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

SAIDALI GAZIEV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario, on June 5, 2024)

[1] This is an application for judicial review of a Refugee Protection Division (“RPD”) decision to cease the Applicant’s refugee protection pursuant to section 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The primary issue is whether the RPD reasonably concluded that the Applicant re-availed himself of the protection of his country of persecution, Uzbekistan, by returning on multiple occasions for substantial periods over a

number of years, and by renewing his passport twice. For the reasons that follow, I find the decision of the RPD to be reasonable and I therefore dismiss the application.

[2] An issue raised by the Applicant in written argument but not advanced in oral argument is whether the RPD erred by “overly” relying upon the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (“UN Handbook”). There is no merit to this argument. The RPD clearly acknowledged that the UN Handbook was not binding and appropriately relied on Federal Court and Federal Court of Appeal jurisprudence to support its decision.

[3] The Applicant’s main focus is that the RPD’s re-availment analysis is unreasonable. I do not agree. The RPD considered all three legal requirements for re-availment – voluntariness, intention, and actual re-availment – and reasonably found that the Applicant re-availed himself by renewing his passport twice and returning to Uzbekistan on five occasions for substantial periods. The Applicant disputes the weight given to the evidence by the RPD but this does not tip the decision into unreasonableness.

[4] The RPD did not misinterpret jurisprudence; this Court has affirmed, in decisions subsequent to *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50, that the use of the wording “exceptional circumstances” in a panel’s analysis is not unreasonable: *Biyikli v Canada (Citizenship and Immigration)*, 2023 FC 1658 at para 30; *Canada (Citizenship and Immigration) v Safi*, 2022 FC 1125 at paras 49-50.

[5] In the end, the RPD provided adequate justification for its decision.

JUDGMENT in IMM-3069-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

“Michael Battista”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3069-23

STYLE OF CAUSE: SAIDALI GAZIEV v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 5, 2024

JUDGMENT AND REASONS: BATTISTA J.

DATED: JUNE 5, 2024

APPEARANCES:

Ariel Hollander FOR THE APPLICANT

Kevin Doyle FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario