Federal Court  Cour fédérale

Date: 20241211

Docket: IMM-8577-23

Citation: 2024 FC 2005

Calgary, Alberta, December 11, 2024

PRESENT: Justice Andrew D. Little

BETWEEN:

PASTOR SEGUNDO MACHADO MENA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant filed this application for judicial review to request that the Court set aside a decision of the Refugee Protection Division (the "RPD") dated May 16, 2023. The RPD granted an application by the Minister of Public Safety and Emergency Preparedness to cease the applicant's refugee status on the basis of voluntary reavailment and voluntary re-establishment under paragraphs 108(1)(*a*) and (*d*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[2] The applicant contends that the RPD's decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65, [2019] 4 SCR 563.

[3] For the reasons that follow, I conclude that the application must be dismissed. The applicant has not demonstrated that the RPD's decision was unreasonable.

I. Events leading to this application

[4] At some time in the early 2000s, the applicant was declared a military target by the United Self-Defence Forces of Colombia (the "AUC"). He and his family applied for protection at the Canadian Embassy in Bogotá, Colombia. On August 18, 2005, Canada accepted them for resettlement in Canada under the Source Country Class stream. The applicant and his accompanying family members travelled to Canada on their Colombian passports.

[5] On November 14, 2005, the applicant landed in Canada as a permanent resident ("PR"), as did his accompanying family members. After they arrived and were processed for landing in Canada, the Canada Border Services Agency returned their Colombian passports to them.

[6] In February 2009, the applicant travelled to Colombia using his Colombian passport. He testified that he planned to stay for only a couple of weeks, to take care of his ill mother. However, he remained in Colombia for most of the next six years and did not return to Canada during that time. He stayed in Colombia to exploit mining opportunities on his family's land in Quibdo, Colombia, where he lived.

[7] In January 2013, the applicant's brother was killed by members of the Clan del Golfo (an offshoot of the AUC) who had been illegally mining the family's land.

[8] In June 2013, the applicant applied for a new Colombian passport. Soon after, he travelled to Panama for business reasons and returned to Colombia. On his return, the applicant learned that the Clan del Golfo had contacted his mother. Believing that he was no longer safe on the family land, he relocated within Colombia (from Quibdo to Bogotá). He also inquired with the Canadian Embassy in Bogotá about a return to Canada. Embassy staff recommended that he apply for PR travel document (although his PR card had expired) and provided him with the applicable form. There was no discussion about his refugee status in Canada.

[9] In March 2014, the applicant applied for the PR travel document. The application was refused because the applicant had not complied with his residency obligations. I understand that in May 2014, the applicant's status as a permanent resident of Canada ceased by operation of paragraph 46(1)(*b*) of the *IRPA*.

[10] In April 2015, the applicant travelled to the United States. On April 28, 2015, he presented himself at the Canadian border. He claimed refugee protection in Canada but was refused due to ineligibility under paragraph 104(1)(*d*) of the *IRPA* as he previously had been provided with protected status.

[11] On May 15, 2015, the RPD notified the applicant that his claim for refugee protection had been terminated under paragraph 104(2)(b) of the *IRPA*. Because the applicant's April 2015

claim was not his first claim received by an officer, paragraph 104(2)(b) of *IRPA* "terminate[d] proceedings in and nullifie[d] any decision of the Refugee Protection Division or the Refugee Appeal Division respecting a claim other than the first claim."

[12] In June 2021, the Minister applied under section 108 of the IRPA to cease the applicant's protected status in Canada. The Minister relied on paragraphs 108(1)(*a*) related to voluntary reavailment and 108(1)(*d*) concerning voluntary re-establishment.

[13] On January 24, 2023, the RPD convened a hearing, at which the applicant testified. Following the hearing, the Minister filed written submissions dated February 24, 2023, supporting the Minister's position on cessation under paragraphs 108(1)(*a*) and (*d*). The applicant filed written submissions dated March 20, 2023.

[14] By decision with reasons dated May 16, 2023, the RPD allowed the Minister's application. The RPD's reasons first analyzed paragraph 108(1)(*d*), concluding that the applicant had voluntarily re-established himself in Colombia. The RPD found next that the applicant had voluntarily reavailed himself of the protections of Colombia. The RPD then addressed paragraph 108(1)(*e*), which had been mentioned in the applicant's written submissions.

[15] The applicant now challenges the RPD's decision in this Court.

II. Standard of Review

[16] I agree with the parties that the standard of review is reasonableness as described in *Vavilov*. See *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50, [2022] 4 FCR 220, at paras 46-57.

[17] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 63; *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Mason*, at paras 8, 59-61, 66; *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194.

[18] It is not the role of the Court to re-assess or re-weigh the evidence, or to provide its own view of the merits: *Galindo Camayo*, at paras 53-54; *Vavilov*, at paras 125-126. Thus, it is not permissible for the Court to come to its own view of the merits of the application and then measure the impugned decision against the Court's own assessment: *Mason*, at para 62; *Vavilov*, at para 83; *Galindo Camayo*, at para 32.

[19] To intervene, the reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility

and transparency. Flaws or shortcomings must be more than a “minor misstep”. The problem must be sufficiently central or significant to the outcome to render the decision unreasonable: *Vavilov*, at para 100.

[20] As noted, the starting point for reasonableness review is the decision maker’s reasons. If a decision has a severe impact on an individual’s rights and interests, the reasons must reflect the stakes: *Vavilov*, at para 133; *Galindo Camayo*, at para 50.

[21] Although the applicant already lost his permanent resident status in 2015, I agree with him that there was a higher duty on the RPD to explain its decision: see *Galindo Camayo*, at para 51. While the standard for reasons is not perfection, the RPD had to grapple with the central issues and concerns raised by the parties and provide a responsive justification that demonstrated it was alert and sensitive to the matter before it: *Vavilov*, at paras 127-128; *Galindo Camayo*, at paras 48-49.

III. Analysis

A. *The Parties’ Positions*

[22] The applicant’s written submissions focused on his argument under paragraph 108(1)(*a*), made also to the RPD, that he did not possess the requisite intention to reavail himself of Colombia’s protection. He maintained that due to a change of circumstances in Colombia, he prolonged his time there because he believed it was safe. When it was clear that the applicant was no longer safe in Colombia, he returned to Canada.

[23] The applicant contended that it was unclear from the RPD's reasons whether it allowed the Minister's application under paragraph 108(1)(*a*), or paragraph 108(1)(*d*), or both. He characterized the reasons as "complex and confusing" and not adhering to the requirement in *Vavilov* for an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrained the decision. According to the applicant, the RPD's decision as a whole reflected an "antiquated approach" to the analysis of section 108 that did not examine its text, context and purpose or the Federal Court of Appeal's decision in *Galindo Camayo*.

[24] The applicant's written submissions made the following principal arguments:

a) the RPD failed to consider the applicant's circumstances in a "holistic and comprehensive manner" in relation to the cessation criteria of voluntariness, intention and reavailment (citing *Galindo Camayo,* at paras 8 and 84). In particular, the applicant submitted that the RPD failed to address the evidence of his subjective intent – that he did not know that returning to Colombia and staying there would jeopardize his refugee status in Canada and no one had told him it would (citing *Galindo Camayo*, at para 66); and

b) the RPD misconstrued the applicant's argument related to country condition evidence and made erroneous findings of fact, related to the applicant's reasons for staying in Colombia longer than he originally planned.

[25] In his oral argument to this Court, the applicant identified alleged reviewable errors in the RPD's reasoning under both paragraphs 108(1)(*a*) and (*d*). He contended that the Federal Court

of Appeal's reasons in *Galindo Camayo* applied to both paragraphs, owing to various references to "section 108" rather than "paragraph 108(1)(a)" in its reasons. The applicant cited *Galindo Camayo,* at paragraphs 20, 23, 58 and 60, to support his argument that the requirements set out in *Galindo Camayo* applied to both provisions at issue.

[26] The applicant's oral submissions focused on the RPD's alleged failure to consider the evidence of his subjective intent not to give up his refugee status in Canada, which was based on his lack of knowledge that staying in Colombia would jeopardize his status and the failure of any Canadian government official to advise him of that risk.

[27] By contrast, the respondent submitted that the RPD's decision was reasonable on the evidence. The respondent contended that the RPD's reasoning under both paragraphs 108(1)(*a*) and (*d*) was reasonable and respected the principles in both *Vavilov* and *Galindo Camayo*.

[28] With respect to re-establishment under paragraph 108(1)(*d*), the respondent observed that the RPD was aware of and applied this Court's decision in *Starovic v. Canada (Citizenship and Immigration),* 2012 FC 827, in which the individual returned to Serbia and remained for 5 years prior to the cessation decision. The respondent also noted that the RPD considered and applied the UNHCR Guidelines concerning cessation and re-establishment, as well as the commentary on re-establishment in a leading textbook: see *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1 February 2019,* HCR/1P/4/Eng/REV.2, at 32; and James C Hathaway & Michelle Foster, *The Law of Refugee*

Status, 2d ed (Cambridge: Cambridge University Press, 2014), at pp. 472-476. The respondent argued that the RPD's re-establishment conclusion overall, and the specific findings challenged by the applicant, were reasonable on the evidence.

[29] On reavailment under paragraph 108(1)(*a*), the respondent submitted that there was no dispute that the applicant used his Colombian passport to return to Colombia and to travel to Panama. The presumption of reavailment applied and the applicant failed to rebut that presumption on the evidence. According to the respondent, the RPD recognized the appropriate criteria for reavailment (voluntariness, intention, actual reavailment) and the principles in *Galindo Camayo*, and applied them reasonably. The respondent argued that the RPD considered the evidence related to intention and subjective intent, including that *Galindo Camayo* had "inserted a stronger component of subjectivity when it comes to assessing the [applicant's] intention to re-avail" (RPD reasons, at para 24). The respondent contended that the applicant was asking the Court to re-weigh the evidence on his argument that he had rebutted the presumption of reavailment.

B. ***Was the RPD's decision unreasonable?***

[30] The RPD conducted two analyses of cessation, first under paragraph 108(1)(*d*) and then under paragraph 108(1)(*a*). Both paragraphs describe circumstances that may cause the rejection of refugee protection (i.e., cessation) under section 108, along with the other circumstances described in paragraphs 108(1)(*b*), (*c*) and (*e*):

Rejection	**Rejet**
108 **(1)** A claim for refugee protection shall be rejected,	108 **(1)** Est rejetée la demande d'asile et le

and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
(**a)** the person has voluntarily reavailed themself of the protection of their country of nationality;	**a)** il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
(b) the person has voluntarily reacquired their nationality;	**b)** il recouvre volontairement sa nationalité;
(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	**c)** il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or	**d)** il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;
(e) the reasons for which the person sought refugee protection have ceased to exist.	**e)** les raisons qui lui ont fait demander l'asile n'existent plus.

[31] As the applicant observed, paragraph 3 of the RPD's reasons stated its determination in one sentence and referred only to its reavailment conclusion under paragraph 108(1)(*a*). However, it is clear from paragraph 4 and from the rest of the RPD's reasons (as well as the underlying record) that both paragraphs of section 108 were at issue. The RPD analyzed cessation under both paragraphs (respectively at paragraphs 6-14 of the reasons, under the hearing "Re-Establishment, 108(1)(d)" and at paragraphs 15-28 under the heading "Re-

availment, 108(1)(a)" and the subheadings "Voluntariness of the Act", "Intentions in Re-availing" and "Actual Re-availment").

(a) Cessation based on re-establishment under IRPA paragraph 108(1)(d)

[32] In my view, the RPD's conclusion and findings under paragraph 108(1)(*d*) were reasonable, in that they respected the factual and legal constraints that applied.

[33] With respect to possible legal constraints bearing on the RPD's analysis under paragraph 108(1)(*d*), the applicant did not challenge the RPD's use of *Starovic*, the UNHCR Guidelines on cessation and re-establishment or the commentary in the Hathaway & Foster textbook.

[34] The applicant contended that the RPD failed to mention and analyze the evidence of his subjective intent during its analysis of paragraph 108(1)(*d*). I find no reviewable error in the RPD's analysis. The RPD's reasons on re-establishment addressed intention and the applicant's testimony on which his position was based:

> [10] The respondent, over the course of six years created a durable residence, building a business and establish [*sic*] normal relations with the state. Six years of residence is prolonged in the panel's view and indicative of regular presence and attachment which is inconsistent with a need for protection. The respondent voluntarily opted to live in Colombia and entrusted his welfare and future to that state. He may have not initially voluntarily returned, but at some point, in the six years, he made a temporary situation permanent and created a *de facto* situation of re-establishment.
>
> [11] The respondent had argued that he had not intended to remain in Colombia and had full intentions of maintaining his status in Canada. He testified that had never been advised by Canadian officials of how his actions could jeopardize his status. The respondent testified he knew he had residency obligations to maintain his status in Canada, but in six years had not made any

> attempt to ensure his status remained secure. When applying for a humanitarian exemption for his loss of permanent residence status, he wrote he had returned to assist his ailing mother and then his brother had died so he had remained longer. No evidence was submitted in support of those statements of his mother's illness etc and his application was rejected.
>
> [12] In those years, the respondent deepened his commitment to remaining in Colombia, rather than Canada. The respondent took over property and business management when he returned to Colombia. His intention was to remain in Colombia, for an extended period. He in all intentions, intended to normalize his relations with his home state. He paid taxes, hired employees, held a residence of his own and generally re-established his life. The key issue is that the respondent entrusted his interests to the protection of Colombia by resettling there and doing so is contrary to the principles of the Convention.
>
> [Underlining added; footnotes omitted.]

[35] The applicant submitted that the facts did not support the RPD's finding in paragraph 11, quoted above, that in the six years in Colombia he had not made any attempt to ensure his status remained secure. He argued that the RPD did not mention that (i) he applied for his Canadian citizenship in 2009 before he left Canada for Colombia, and (ii) in 2013, after his brother's murder, he investigated options to return to Canada and requested assistance on how to travel to Canada from the Canadian Embassy in 2013.

[36] I find no reviewable error on this basis. The RPD did not fundamentally misapprehend, misunderstand or ignore critical evidence: *Vavilov*, at paras 125-126. The RPD was aware and mentioned elsewhere in its reasons that he applied for Canadian citizenship in 2009, *before* the applicant's six years in Colombia began. The applicant did not refer the Court to evidence in the record that he took any steps concerning that citizenship application while he was in Colombia.

In addition, investigating options for a return to Canada starting in 2013 is not inconsistent with the RPD's finding.

[37] The applicant submitted that the RPD made a clear error in paragraphs 13-14 of its reasons because it misunderstood his argument about country condition evidence. He submitted that his view that it was peaceful and safe in Colombia when he returned, owing to an agreement to disarm the AUC, went to intent and his subjective belief, aspects that had to be considered by the RPD. According to the applicant, the RPD took his argument as an allegation of a change in country conditions under paragraph 108(1)(e) which it was not.

[38] I do not agree. First, the applicant specifically referred to paragraph 108(1)(*e*) in his argument to the RPD, so it cannot be faulted for addressing it. Second, the RPD also understood that the applicant's argument was in response to the Minister's position on cessation. The RPD expressly considered the point in its analysis of paragraph 108(1)(*d*), stating in its reasons:

> [13] Although it was argued the respondent had returned due to what he believed to be a change of circumstances, there is little evidence of that change being durable or objective. The respondent testified he [not] did have concerns for his safety when he chose to return as the AUC had disbanded. According to the evidence provided, regarding the AUC demobilization, from 2003-2006, new dissident groups began operating under new names even before the demobilizations officially ended in 2006, which was even before the respondent had left Colombia. He returned in 2009, and successor paramilitary groups continued to operate as previously they had. The panel places no weight in this argument as a factor for his intention to re-establish himself.
>
> [14] The panel notes previous cases of re-establishment, have shown several years in remaining in the country of persecution. The respondent's re-establishment over a six-year period, in his country and ancestral home, is a clear indication that he no longer viewed himself at risk, and that his protection needs ceased. The

> panel finds, the respondent, voluntarily re-established himself in Colombia.
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> [Underlining added.]

[39] In my view, the applicant's true disagreement with the RPD is in how it used the applicant's evidence about his subjective fear and intentions after his return to Colombia, not whether it understood his submissions on his subjective belief.

[40] Based on the Federal Court of Appeal's decision in *Galindo Camayo,* at paragraph 66, the applicant argued that the RPD had to consider all the evidence and conduct an individualized assessment, including the evidence of his subjective intent. As indicated above, I find no reviewable error in the RPD's treatment of this issue or the evidence related to it, under paragraph 108(1)(*d*).

[41] On this issue, I am also unable to give effect to the applicant's argument that the Federal Court of Appeal's analysis of paragraph 108(1)(*a*) in *Galindo Camayo* constrained the RPD's analysis under paragraph 108(1)(*d*) in the manner he contended.

[42] First, as the respondent observed, this legal argument was not raised in the applicant's written arguments to this Court and only arose at the hearing. From what I can see, it was not raised in the applicant's written submissions to the RPD either, although those submissions did not specifically distinguish between the two bases for cessation in section 108 (as had the Minister's earlier written submissions to the RPD). In substance, the question of what must be considered under paragraph 108(1)(*d*) is one of statutory interpretation of that provision, having

regard also to the applicable case law. Under *Vavilov* principles, the RPD is the proper body to interpret section 108: *Galindo Camayo*, at para 55. The applicant should not raise it for the first time in this Court.

[43] Having said that, it is this Court's role to identify constraints on the RPD's decision, including legal constraints. Here, the question is whether all of the Federal Court of Appeal's analysis in *Galindo Camayo* constrained the RPD's decision and assessment of the evidence for cessation by re-establishment under paragraph 108(1)(*d*). In my view, and subject to the caveats in my next paragraph below, the appeal court's decision did not. The appeal in *Galindo Camayo* directly concerned reavailment under paragraph 108(1)(*a*). That is clear from the certified questions as well as the appeal court's analysis. The Federal Court of Appeal did not refer to or analyze paragraph 108(1)(*d*), other than quoting it in an appendix with the rest of section 108. The various paragraphs in *Galindo Camayo* relied on by the applicant do not support his position. Paragraphs 66 and 84 concerned reavailment (not re-establishment) and specifically whether the presumption of reavailment had been rebutted. While some paragraphs of the appeal court's reasons referred to "section 108", the reasons did so in the context of reavailment under paragraph 108(1)(*a*) and in the analysis of whether the RPD in that case engaged in a proper statutory interpretation analysis of the provision by considering the text, context and purpose of section 108. This is the case for paragraphs 58 and 60 of *Galindo Camayo*, also cited by the applicant. Finally, I do not read paragraphs 20 and 23 of *Galindo Camayo* as a constraint that required the RPD to apply the three reavailment elements of voluntariness, intention and actual reavailment under paragraph 108(1)(*a*) to its analysis of re-establishment under paragraph 108(1)(*d*). Indeed, if the applicant's legal argument were accepted, the three elements and the

requirements of *Galindo Camayo* to assess them under paragraph 108(1)(*a*) would also apply to constrain decisions under all of paragraphs 108(1)(*b*), (*c*), (*d*) and (*e*). I do not accept that *Galindo Camayo* did so.

[44] To be sure, I do not suggest that there are no overlapping considerations in analyzing evidence under paragraphs 108(1)(*a*) and (*d*). For example, both expressly provide that the person "voluntarily" reavail or re-establish. Nor do these Reasons offer the Court's interpretation of paragraph 108(1)(*d*) or describe its elements or requirements. Rather, the point is a narrow one: I do not find that all of the analysis in *Galindo Camayo* under paragraph 108(1)(*a*) constituted a legal constraint on the RPD's analysis under paragraph 108(1)(*d*), because the appeal court's decision concerned paragraph 108(1)(*a*), not paragraph 108(1)(*d*).

[45] For these reasons, I conclude that the applicant has not demonstrated that the RPD made a reviewable error in its analysis of cessation under paragraph 108(1)(*d*).

[46] The analysis in this section related to cessation under paragraph 108(1)(*d*) is enough to dismiss this application for judicial review, as paragraphs 108(1)(*a*) and (*d*) are each separate bases for cessation under the *IRPA* and the RPD's decision found that the Minister succeeded on both.

[47] Nonetheless, I will make some additional comments about the RPD's analysis under paragraph 108(1)(*a*) because that was such an important component of the applicant's submissions at the hearing in this Court.

(b) Cessation based on reavailment under IRPA paragraph 108(1)(a)

[48] The applicant's position was, in essence, that the RPD did not consider his evidence of subjective intent in its analysis under paragraph 108(1)(*a*) and that the RPD's reasons did not meet the high standards required by *Galindo Camayo*.

[49] As noted above, the RPD identified the three elements of a reavailment analysis (voluntariness, intention and actual reavailment) as endorsed in *Galindo Camayo*, and engaged in an analysis of each of those issues in its reasons. It referred to the factors to consider in assessing whether the presumption of reavailment has been rebutted: *Galindo Camayo,* at para 84. Immediately before its assessment of the three elements, the RPD stated:

> [17] The basis of the Minister's application is that the respondent has re-availed himself of the protection of Colombia once he obtained a Colombia passport in 2008, he travelled to Panama in 2008 and he returned to Colombia in 2009. He obtained a new passport in 2013 to travel to Panama. The main facts of this application are clear and not in dispute, in that the respondent had used his passport to travel and to return to Colombia in 2009 where he remained for six years.

[50] In its assessment of the second element, intention to reavail, the RPD quoted a passage from *Galindo Camayo* that intention in the cessation context includes an understanding of the consequences of one's actions. The RPD then stated:

> [24] With the recent decision in *Camayo*, the Federal Court of Appeal has inserted a stronger component of subjectivity when it comes to assessing the respondent's intention to re-avail. In other words, obtaining a passport and traveling to the country of nationality is no longer sufficient to impute intent. The respondent returned to Colombia and remained for six years. There were no risk mitigations, he openly lived his life. He opened a business, a

> mining business where he and his brother had upwards of 28 employees. He held a bank account, paid taxes and employees. He acquired a second passport and had travelled in and outside of Colombia. The panel finds, that given the time in Colombia, shows the respondent had a clear intention to re-avail.
>
> [25] Considering, the evidence before it, the panel finds that the respondent's intention was to return to home and had contact Colombia authorities to do so. He had intentions in returning to Colombia and continued to benefit from their actual and diplomatic protection.

[51] In these two paragraphs, the RPD did not expressly refer to the applicant's evidence and position on his subjective intent. However, it did expressly state that in *Galindo Camayo,* the Federal Court of Appeal had inserted a "stronger component of subjectivity" for the assessment of intention to reavail. In addition, as noted above, the RPD had earlier assessed the applicant's intentions under paragraph 108(1)(*d*). Further, in the course of considering the element of voluntariness under paragraph 108(1)(*a*), the RPD expressly recognized the need to assess "the state of the individual's knowledge with respect to the cessation provisions" and stated that evidence that a person has returned to their country of origin in the full knowledge that it may put their refugee status in jeopardy may potentially have different significance than evidence that a person is unaware of the potential consequences of their actions. I note that these statements reflect the contents of the fifth bullet point in paragraph 84 of *Galindo Camayo.* In addition, in its voluntariness assessment, the RPD also referred to the applicant's belief that he could remain in Colombia without jeopardizing his status in Canada.

[52] On the arguments made in this application, there is a tension between (according to the applicant) the requirement to account expressly for evidence of subjective intent as required by *Galindo Camayo,* and (as the respondent argued) the RPD's clear statement that subjective intent

was a stronger component after *Galindo Camayo* and its assessments of the evidence about intention in two places earlier in its reasons. Both points must be assessed in the context of the reavailment principles and the administrative law requirements for reasons in this context: *Vavilov,* at para 91; *Galindo Camayo,* at paras 47-51.

[53] It might have been preferable for the RPD's analysis of intention to reavail under paragraph 108(1)(*a*) to mention specifically, again, the applicant's position and evidence related to his subjective intent so that it was completely clear that the RPD was weighing that evidence in the mix. The RPD's reasons may also have benefitted from a clearer expression of the distinction between voluntariness and intention (a topic that did not occupy much attention on this application). Doing so would have negated some potential ambiguity in the reasoning.

[54] However, I am not persuaded that the RPD made a reviewable error in its analysis of paragraph 108(1)(*a*) by failing to refer expressly to the applicant's position and evidence related to his subjective intent in this specific case. Considering the RPD's express recognition of a "stronger component of subjectivity" required by *Galindo Camayo,* and taking into account its assessment of the evidence in paragraph 24 in the context of its two earlier assessments of the applicant's intention evidence and arguments, I am persuaded that the RPD was alert and sensitive to the applicant's evidence and position on the issue and that it accounted for the state of the applicant's actual knowledge and intent before concluding that he had reavailed: *Galindo Camayo,* at para 71. As paragraph 24 of its reasons (quoted above) confirms, the RPD recognized the importance of subjective intent evidence but found other significant evidence,

particularly the applicant's own actions while in Colombia for six years, to be decisive concerning whether he intended to reavail. See also *Galindo Camayo,* at para 62.

[55] Three other points are relevant to the reasonableness of the RPD's analysis under paragraph 108(1)(*a*). As the Federal Court of Appeal held, an individual's lack of actual knowledge of the immigration consequences of their actions is not determinative. In the appeal court's words, it is a key factual consideration and had to be weighed in the mix: *Galindo Camayo,* at para 70. In my view, that occurred. In addition, the appeal court in *Galindo Camayo* endorsed this Court's statement that reavailment "typically suggests an absence of risk or a lack of subjective fear of persecution. Absent compelling reasons, people do not abandon safe havens to return to places where their personal safety is in jeopardy": *Galindo Camayo,* at para 64, quoting *Ortiz Garcia v. Canada (Citizenship and Immigration),* 2011 FC 1346, at para 8. Again, the RPD considered this. Finally, the broader context of the RPD's reasoning was a determination of whether the applicant's evidence rebutted the strong presumption of reavailment – that the applicant intended to avail himself of the protection of Colombia – arising from the applicant's use of his Colombian passport to return to Colombia: *Galindo Camayo,* at para 63; RPD reasons, at paras 16-17. The RPD found that it did not.

[56] While the RPD's reasons were not flawless, I conclude the applicant has not demonstrated that they contained a reviewable error as the applicant contended under paragraph 108(1)(*a*).

IV. Conclusion

[57] The application is dismissed. Neither party raised a question to certify for appeal and none will be stated.

JUDGMENT in IMM-8577-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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