Federal Court  Cour fédérale

**Date: 20250109**

**Docket: IMM-7602-23**

**Citation: 2025 FC 56**

**Ottawa, Ontario, January 9, 2025**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**Rameez Liaqat**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant Rameez Liaqat is a citizen of Pakistan who was granted Convention refugee protection in Canada in 2016. He became a permanent resident the following year.

[2] The Respondent sought to cease Mr. Liaqat's refugee protection, and hence his permanent residence, because he made five trips to Pakistan between 2017 and 2022 on a

passport issued by that country. The Refugee Protection Division [RPD] granted the Respondent's cessation application on the basis of reavailment to his country of nationality [Decision].

[3] On this judicial review, Mr. Liaqat seeks to have the Decision quashed and his status restored. He argues that he was represented incompetently, giving rise to procedural fairness concerns, and that the Decision is unreasonable.

[4] The Respondent counters that Mr. Liaqat has not met the test for incompetent counsel because he has not shown the result would have been different but for counsel's alleged incompetent acts or omissions. The Respondent further argues that the RPD's reasons are clear, cogent, and comprehensive, and Mr. Liaqat's assertions to the contrary are without merit.

[5] I agree with the Respondent that Mr. Liaqat has not shown that his former representative's conduct rises to the level of incompetence warranting the Court's intervention, or that the Decision is unreasonable. For the reasons that follow, the judicial review application thus will be dismissed.

[6] I deal first with a preliminary issue of the inadmissibility of some of Mr. Liaqat's new evidence on this judicial review, followed by an analysis of the issues of the alleged incompetence of his former representative and the asserted unreasonableness of the Decision.

## II. Analysis

### A. *Preliminary issue: Some of Mr. Liaqat's new evidence is inadmissible*

[7] Mr. Liaqat's new evidence that was not before the RPD comprises a medical report for his mother, as well as a report from his psychotherapist detailing Mr. Liaqat's experience with anxiety and depression following the death of his mother and paternal grandmother. As I explain, I find the psychotherapist report is inadmissible, but I am prepared to admit the mother's medical report.

[8] There are three exceptions to the general rule against the admissibility of material on judicial review that was not before the administrative decision-maker, as described in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 20. These exceptions include (i) general background that does not involve evidence relevant to the merits of the matter decided by the administrative decision-maker, (ii) procedural defects that cannot be found in the record of the administrative decision-maker, and (iii) an absence of evidence before the administrative decision-maker when they made a related finding.

[9] I agree with the Respondent that Mr. Liaqat's reliance on subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, is misplaced. I have three reasons. First, subsection 110(4) of the *IRPA* applies to appeals from the RPD to the Refugee Appeal Division. Second, judicial review is not an appeal. Third, even in the case of a correctness review, a directed decision by a

reviewing court (here, for example, simply quashing the Decision as Mr. Liaqat requests in his judicial review application, instead of also ordering redetermination) is rare. I am unconvinced that the instant proceeding is one of those rare cases.

[10] The psychotherapist report is inadmissible, in my view, because it post-dates the Decision and Mr. Liaqat has not shown to the Court's satisfaction that it meets one of the *Access Copyright* exceptions to the inadmissibility of evidence that arises after an administrative decision, nor that it is relevant to the issue of cessation.

[11] I am prepared to admit, however, the medical report for Mr. Liaqat's mother because it pre-dates the Decision and, as the Respondent essentially conceded at the oral hearing, it relates to the issue of alleged incompetence on the part of Mr. Liaqat's former representative and, hence, to the issue of procedural unfairness (i.e. the second *Access Copyright* exception).

B. *The Applicant has not established incompetence of the former representative*

[12] I am not convinced that the former representative's representation of Mr. Liaqat rises to the level of incompetence warranting the Court's interference with the Decision.

[13] In my view, Mr. Liaqat has not complied in a key respect with the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings* dated June 24, 2022 (last amended October 31, 2023) insofar as the guidelines relate to the protocol for *Allegations against authorized representatives in Citizenship, Immigration and Refugee Cases before the Federal Court* [*Protocol*]. Specifically, Mr. Liaqat has not demonstrated that he

served the former counsel with the Applicant's Record containing allegations of incompetence or that he provided his former representative with a copy of the Court's order granting him leave to commence the judicial review.

[14] The *Protocol* mandates that the current counsel or representative take these steps, and others, to ensure a fair process with the aim of balancing the potential harm to an applicant by reason of incompetent counsel, if shown, with the potential harm to an authorized representative, especially if the allegations are not established. Receipt of the Applicant's Record and the leave order alert the former representative that they then can pursue a motion for intervention, if they are so inclined. As this Court previously has held, the failure to provide former counsel with a copy of the leave order is a sufficient basis for the Court to decline to deal with the issue of alleged incompetent counsel: *Nik v Canada (Citizenship and Immigration)*, 2022 FC 522 [*Nik*] at para 26. The Court nonetheless retains discretion to consider the issue which I exercise in this matter for completeness.

[15] Establishing incompetent representation amounting to a breach of natural justice or procedural fairness involves a conjunctive tripartite test comprising the following elements: (i) prior counsel's acts or omissions constituted incompetence or negligence; (ii) a miscarriage of justice occurred, meaning that, but for the alleged conduct, there is a reasonable probability there would have been a different result; and (iii) the representative had a reasonable opportunity to respond to an allegation of incompetence or negligence: *Rendon Segovia v Canada (Citizenship and Immigration)*, 2020 FC 99 [*Rendon Segovia*] at para 22; *Kandiah v Canada (Citizenship and Immigration)*, 2021 FC 1388 at para 48.

[16] The test is cumulative which means an applicant has the burden of proving all the components of the test for the Court to conclude that an authorized representative was incompetent: *Twizeyumukiza v Canada (Citizenship and Immigration)*, 2024 FC 974 at para 31.

[17] As I allude above with reference to *Nik*, I am not persuaded that Mr. Liaqat has met the third element of the applicable test. In my view, the *Protocol* informs what "a reasonable opportunity to respond" to incompetence allegations looks like, including a meaningful opportunity for the former representative to request leave to intervene in the judicial review (i.e. after leave has been granted). Because there is no evidence that current counsel provided a copy of the leave order to the former representative, I am unable to conclude that the former representative had that opportunity.

[18] Returning to the first element of the test, I am not convinced that the former representative's conduct amounts to incompetence or negligence, when considered in the context of the strong presumption that acceptable counsel conduct falls within a wide range of reasonable professional assistance: *Rendon Segovia*, above at para 22. Mr. Liaqat argues that it was the responsibility of the former representative to brief him about the required documentation, including his mother's medical report, the existence of which he mentioned at the RPD hearing but did not have with him when asked by the RPD member.

[19] I note, however, that the former representative's response to the Notice states that "the client was asked for evidence from the hospital but he was not able to provide anything to support medical condition." In written and oral submissions, Mr. Liaqat's current counsel argued

that former counsel's response was contradicted by Mr. Liaqat's statement at the RPD hearing that "I did not have the idea that I would need that those things in the hearing."

[20] Mr. Liaqat's affidavit states that the former representative was "casual" and "did not properly advise me" about "what should be the supporting documents." He further states that he "had a medical report of the mother but [the former representative] advised me that it is not significant evidence." As noted above, however, there is no evidence before the Court that the Applicant's Record, which contains Mr. Liaqat's supporting affidavit, was served on the former representative.

[21] Further, in my view, the Decision does not contradict the alleged advice that the medical report is not significant evidence. The current counsel characterizes the medical report as evidence of "circumstances beyond his control" mentioned in the RPD's analysis of the voluntariness element of the test for cessation (at para 18 of the Decision). I am not persuaded, however, that this is what the RPD had in mind.

[22] The RPD acknowledges (at para 17) Mr. Liaqat's testimony that three of his trips to Pakistan were to visit his mother who was seriously ill and hospitalized, and that the fourth and fifth trips were made to offer support to his father, for the passing of his father's mother and then his father's wife (i.e. Mr. Liaqat's grandmother and mother, respectively).

[23] The RPD concludes (at para 18) that, although Mr. Liaqat had emotional personal reasons for his return trips to Pakistan, those reasons do not alter the voluntariness of his actions.

According to the RPD, “There is no indication that the Respondent made his return for any compelling administrative purpose; that he was forced or pressured to return to Pakistan by a national authority; or that he was constrained by circumstances beyond his control.”

[24] In light of these findings, I am not convinced that Mr. Liaqat has met his onus of establishing that the former representative’s failure to submit the medical report, even assuming it was available for submitting before or during the RPD hearing, rises to the level of “extraordinary circumstances” warranting the Court’s intervention. As current counsel for Mr. Liaqat acknowledged at the judicial review hearing, and I agree, Mr. Liaqat may have to live with his choice of counsel in light of the high threshold for succeeding on an allegation of incompetence which, in my view, has not been met here: *Ahuja v Canada (Citizenship and Immigration)*, 2025 FC 33 at para 19.

[25] As for Mr. Liaqat’s argument that the former representative should have submitted the medical report after the hearing, I note that the Decision issued only two days later.

[26] In the end, I find that Mr. Liaqat’s complaint about the former representative’s conduct are informed by hindsight: *Galyas v Canada (Citizenship and Immigration)*, 2013 FC 250 at para 84b.

[27] As for the second element of the test, I determine that it too has not been met. Mr. Liaqat has not established to the Court’s satisfaction that the submission of the medical report would have changed any of the RPD’s above findings and conclusions.

C. *The Decision is not unreasonable*

[28] I find that Mr. Liaqat has not met his burden of showing that the Decision is unreasonable, in the sense of whether it bears the hallmarks of justification, transparency and intelligibility in the context of the applicable factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 99-100.

[29] Mr. Liaqat does not challenge the applicable law and test for cessation by reason of reavailment described at paragraphs 7-14 of the Decision. He agrees that the basic requirements are voluntariness, intention and actual reavailment.

[30] He argues, however, that the RPD erred when it misapprehended or misstated the number of days Mr. Liaqat spent in Pakistan on his fifth trip. In my view, the RPD's misapprehension or misstatement is immaterial, or at best peripheral, to the outcome and does not warrant setting aside the Decision. An error of this nature, on which the Decision does not turn or is not determinative of the issue, is not a basis for judicial review: *Gjoka v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 386 at para 61; *Jing v Canada (Citizenship and Immigration)*, 2019 FC 104 at para 36.

[31] Mr. Liaqat relies on paragraph 125 of the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* [*Handbook*] to argue that the RPD erred concerning the presumption of voluntariness when a person applies for a passport of their country of nationality. He submits that visiting an old or sick parent also should apply to those who use a passport, and

not just to those who visit their former home country with a travel document issued by the country of residence. I disagree.

[32] In my view, Mr. Liaqat's argument is contrary to the plain wording of paragraph 125 of the *Handbook*, the first and second sentences of which read, "Where a refugee visits his former home country not with a national passport but, for example, with a travel document issued by his country of residence, he has been considered by certain States to have re-availed himself of the protection of his former home country and to have lost his refugee status under the present cessation clause. Cases of this kind should, however, be judged on their individual merits." (Underlining added.)

[33] Mr. Liaqat argues that applying for a passport does not mean necessarily that the person intends to reavail of the protection of that country. While I do not disagree necessarily, Mr. Liaqat's arguments, to some extent, conflate intention with voluntariness. Further, they attempt to isolate the act of applying for a passport, from the act of travelling on the obtained passport. I am not persuaded that the jurisprudence on which Mr. Liaqat relies is of assistance.

[34] For example, in *Bashir*, the respondent renewed his Pakistan passport because he believed he would need to submit it to (then) Citizenship and Immigration Canada for the purpose of finalizing his permanent residency process: *Canada (Public Safety and Emergency Preparedness) v Bashir*, 2015 FC 51 at para 57. Here, Mr. Liaqat not only applied for a passport but also used it to travel to Pakistan five times.

[35] As another example, in *Starovic*, the Court accepted that "instinct took over reason" when the applicant returned to her husband's country after he suffered a heart attack, but also found that she (1) applied for a Serbia passport several months before her husband suffered his heart attack, (2) remained in Serbia for a long period, and (3) did not seek refuge in a third country, after attending to her husband, when Canadian officials prevented her from returning to Canada: *Starovic v Canada (Citizenship and Immigration)*, 2012 FC 827 at para 17. The Court therefore found it was reasonable for the RPD to conclude the return to Serbia was voluntary.

[36] Mr. Liaqat similarly applied for and received his Pakistan passport about one month before his mother's first hospitalization in 2017 and he made multiple return trips to Pakistan. While reason may have overtaken Mr. Liaqat for the first of his trips, in my view it was not unreasonable for the RPD to conclude (at paras 28-29 of the Decision) that while Mr. Liaqat "may have acted out of a sense of filial duty, … evidence demonstrates that his presence in Pakistan was not absolutely necessary" and that "the circumstances surrounding his travel are not sufficient to rebut the presumption of re-availment as contemplated in the UNHCR Handbook or as determined by the Federal Court."

[37] Concerning the elements of intention and reavailment, Mr. Liaqat argues that merely returning to a person's home country cannot be considered as holding the intent to avail of the country's protection; unless the person returning to the home country actually has obtained state protection, the person has not actually reavailed. He relies on *Din v Canada (Citizenship and Immigration)*, 2019 FC 425 [*Din*] at paras 37 and 45 for these propositions. I disagree.

[38] While Mr. Liaqat's reliance on *Din* is understandable, I am not persuaded that it assists him. His arguments on reavailement represent disagreement with the Decision, in my view. Further, they fail to illuminate how the RPD's assessment of his situation, including his intention to reavail, with reference to the *Galindo Camayo* factors that the RPD considered, is unreasonable: *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 84.

[39] Mr. Liaqat has not pointed to any evidence or arguments that were ignored by the RPD, nor any submissions that were misapprehended. Bearing in mind that judicial review is not an appeal, in my view Mr. Liaqat's submissions seek to reargue the cessation matter that was before RPD, entreating the Court to reweigh the evidence, which is not the function of a reviewing court on judicial review: *Vavilov*, above at para 125.

## III. Conclusion

[40] For the above reasons, the judicial review application will be dismissed.

[41] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

**JUDGMENT in IMM-7602-23**

**THIS COURT'S JUDGMENT is that**:

1. The judicial review application is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7602-23 |
| **STYLE OF CAUSE:** | RAMEEZ LIAQAT v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
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