

Federal Court



Cour fédérale

Date: 20250121

Docket: IMM-9731-23

Citation: 2025 FC 117

Ottawa, Ontario, January 21, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**YALDO HETAN GORGIS GORGIS
SINAM ARSHAK YALDO YALDO**

Applicants

and

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

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Respondent, the Minister of Public Safety and Emergency Preparedness, applied to cease the refugee protection of Yaldo Hetan Gorgis Gorgis (the “Principal Applicant”) and Sinam Arshak Yaldo Yaldo (the “Associate Applicant”) pursuant to paragraph 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”) and section 64 of the *Refugee*

Protection Division Rules, SOR/2012-256. On June 26, 2023, the Refugee Protection Division (“RPD”) granted the Respondent’s request (the “Cessation Decision”).

[2] The Applicants now seek judicial review of the Cessation Decision. The Applicants submit that the RPD erred in its assessment of their psychological evidence and its application of the legal test for cessation.

[3] For the reasons that follow, I find that the RPD’s decision is unreasonable. This application for judicial review is granted.

II. **Background**

A. *Statutory Framework*

[4] Pursuant to paragraph 108(1)(a) of the *IRPA*, an individual’s refugee protection may be ceased if they “ha[ve] voluntarily reavailed themselves of the protection of their country of nationality.”

[5] As stated in the United Nations High Commission on Refugees’ *Handbook on Procedures and Criteria for Determining Refugee Status*, the test for voluntary reavilment has three requirements: 1) the individual must act voluntarily; 2) the individual must intend to reavail themselves of the protection of the country of their nationality; and 3) the individual must actually obtain such protection.

[6] This test was affirmed by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at paragraph 18 (“*Galindo Camayo*”). On the second requirement of intention to reavail, the Federal Court of Appeal determined that “refugees who acquire and travel on passports issued by their country of nationality” are subject to a “presumption” that they “intended to avail themselves of the protection” of that country (*Galindo Camayo* at para 63).

B. *Facts*

[7] The Applicants are citizens of Iraq. They are a married couple and Christian. Some of the Applicants’ children and grandchildren reside in Canada.

[8] In March 2015, the Applicants’ eldest grandchild, M, was diagnosed with acute leukemia. The Applicants travelled to Canada in July 2015 to support M and their family.

[9] In December 2015, the Applicants were granted refugee protection in Canada due to the religious persecution they faced as Christians from ISIS in Iraq.

[10] On July 14, 2016, M passed away from leukemia. She was 12 years old.

[11] In 2018 and 2019, the Applicants travelled to Iraq for a period of 169 days. They stayed with their son and visited their grandson, who had recently undergone surgery, in the hospital. They used Iraqi passports for this visit.

[12] In April 2021, the father of the Applicants' daughter-in-law became injured. Due to conditions in Iraq at the time, the Principal Applicant accompanied his daughter-in-law and infant grandchild on a visit to his daughter-in-law's father. He used an Iraqi passport for this visit as well.

[13] In August 2021, the Respondent applied to cease the Applicants' refugee protection pursuant to paragraph 108(1)(a) of the *IRPA*.

[14] On June 26, 2023, the RPD rendered the Cessation Decision. The RPD found the Applicants failed to rebut the presumption that they intended to reavail themselves of the protection of Iraq by travelling there on Iraqi passports (*Galindo Camayo* at para 63). This is the decision that is presently under review.

III. **Issue and Standard of Review**

[15] The sole issue in this application is whether the Cessation Decision is reasonable.

[16] The parties submit that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 (“*Vavilov*”)). I agree.

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A

decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[18] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

IV. **Analysis**

[19] The Applicants submit that the Cessation Decision is unreasonable. The Applicants argue the RPD mischaracterized a psychotherapist’s report concerning their reduced capacity to make decisions following the death of their grandchild, M. The Applicants also assert that the RPD erred in its application of the legal test for reavilment, assessing their intention based on what they should have known rather than what they did know and unreasonably requiring them to have been “in hiding” in Iraq.

[20] The Respondent submits that the Cessation Decision contains no reviewable errors. According to the Respondent, the RPD acknowledged the psychotherapist’s report and

reasonably assigned it little weight. The Respondent argues that the RPD appropriately applied the legal test for reavailment and the RPD's findings on the Applicants' knowledge of immigration consequences and the precautionary measures they took in Iraq were reasonable in light of the facts and law.

[21] I agree with the Applicants.

[22] The RPD's assessment of the psychotherapist's report was deficient. The RPD summarized the psychotherapist's report as follows: "The findings of the interview suggest that the Respondents are suffering from anxiety and depression due to the Minister's application to cease protection. It further indicates that the Respondents have a significant bond with their family in Canada and if separated would have significant impact on the family." This summary fails to mention a section of the report that directly addressed the Applicants' intention to return to Iraq in 2018. This section reads [emphasis added]:

[The Applicants] came to Canada in July 2015 to support their son [H] after his daughter [M] was diagnosed with acute leukemia in March 2015. Being the first grandchild, and having a very close relationship with her grandparents, [M] wanted [the Applicants] in Canada with her...

On June 14, 2016, [M] passed away which was devastating for [the Applicants]. From November 2018 to May 2019, [the Applicants] returned to Iraq in order to escape their grief and to visit their son [R] and his children in Iraq as they were struggling with health issues and undergoing surgeries. [The Applicants] explained they were not aware that they were not permitted to leave Canada and that due to their grief and stress, were not in a state of mind to make rational decisions. [The Principal Applicant] expressed "Everything seemed dark at that time..."

Research has shown that people suffering from depression and post-traumatic stress can sometimes act impulsively and have difficulty making rational decisions...

It is my opinion that [the Applicants] were unable to properly weigh the risks involved in returning to Iraq as their stress level, depression, and grief were significantly high which has been shown to affect thoughtful and effective decision-making. This, in addition to their deep concern for their grandchildren in Iraq (which was amplified due to having lost a grandchild), caused [the Applicants] to return to Iraq.

[23] This passage was obviously relevant to the Applicants' intention to reavail. The absence of any reference to the psychotherapist's findings on this point demonstrates that the RPD "failed to account for the evidence before it" (*Vavilov* at para 126).

[24] During the hearing, counsel for the Respondent stated that the RPD reasonably assigned little weight to the psychotherapist's report, as M passed away two years before the Applicants first returned to Iraq and the report was based on an interview that took place five years after the Applicants' trip in 2018.

[25] I find these submissions irrelevant. The Applicants do not contest the weight assigned to the report. They submit that the RPD mischaracterized the report. The Respondent's submissions do not address the Applicants' position on this issue.

[26] Nor do these submissions reflect the reasons provided by the RPD. The Applicants correctly brought the Court's attention to the RPD not discounting the psychotherapist's report on the grounds provided by the Respondent's counsel. On reasonableness review, "it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own

justification for the outcome” (*Vavilov* at para 96). I do not accept the Respondent’s request that the Court do so in this case.

[27] Furthermore, the Respondent’s submissions do not accord with the evidence before the RPD. The record indicates that the Applicants’ grandchild M was dying of cancer, with the Applicants witnessing her ordeal over a period of 12 months. The report states the Applicants experienced M’s death as a “devastating” loss. The report further states that “[b]oth [Applicants] are struggling with health issues, most of which arose after their granddaughter [M] fell ill.” These health issues include hypertension, heart palpitations, and stomach issues. The Applicants also experience challenges with their “[p]sychological and [e]motional [f]unctioning,” including “distressing and recurrent nightmares,” “intrusive ideation” based on “traumatic events,” “cognitive issues” such as “short-term memory loss,” “depressive symptoms,” and “acute and frequent anxiety and panic symptoms,” including “headaches, light-headedness, heart palpitations, chest and throat tightening, chest pain, shortness of breath,” and “dissociation.” As noted by the RPD, these were the findings of “a registered psychotherapist with the College of [R]egistered [Psychotherapists] and Mental Health Therapists of Ontario.” The RPD does not dispute the psychotherapist’s findings in the Cessation Decision. These findings merely confirm that the Applicants continued to be affected by M’s death in 2018, two years after her death, and remain affected today.

[28] Nothing on the face of this proposition is unworthy of belief. The evidence of the Applicants’ suffering in the face of this tragedy is clear and uncontroverted. The loss of their granddaughter had and continues to have profound effects upon them. The RPD failed to

account for this evidence. The Respondent's submissions mischaracterize it. And so the Court must intervene, the decision containing a serious error of justification in light of this factual constraint (*Vavilov* at para 105).

[29] Moreover, I agree with the Applicants that the RPD erred in its application of the legal test for reavailment. The RPD was entitled to consider the Applicants' personal attributes (*Galindo Camayo* at para 84). However, it was not entitled to assess the Applicants' intention to reavail based on what their personal attributes suggest they "should have known" about the immigration consequences of returning to their country of nationality (*Galindo Camayo* at para 68 [emphasis in original]). The appropriate legal standard is "whether [the Applicants] did subjectively intend...to depend on the protection of [Iraq]" (*Galindo Camayo* at para 68 [emphasis in original]).

[30] Similarly, the RPD erred by requiring the Applicants to have been "in hiding" during their travels. The relevant consideration is "[w]hether the [Applicants] took any precautionary measures while [they were] in [their] country of nationality" (*Galindo Camayo* at para 84). The Applicants were not obliged to show they were "actually hiding." The RPD's assessment of this factor does not accord with the consideration set out in *Galindo Camayo*.

[31] The RPD's determination that "the [Applicants] were not in hiding" during their 2018 trip to Iraq as they "[made] multiple trips to a public hospital" is likewise at odds with the jurisprudence. A family member's serious illness may constitute a "compelling reason" for travel that can "assist in rebutting the presumption of reavailment" (*Galindo Camayo* at para 84).

Given that the Applicants travelled to Iraq in 2018 to visit their grandson who had recently undergone surgery, it is unreasonable to find their visits to the very hospital where he was in recovery to demonstrate intention to reavail. Similarly, I do not find the Principal Applicant's visits to his daughter-in-law's ailing father to suggest that he failed to take precautionary measures during his trip to Iraq in 2021. To the contrary, the Applicants' evidence was that they "remained indoors at their son's home" except when visiting sick family members (*Galindo Camayo* at para 84). The RPD's determination that the Applicants "demonstrated a lack of subjective fear and an intention to re-avail themselves of the protection of Iraq" lacks justification in light of the constraining facts and law (*Vavilov* at para 99).

V. **Conclusion**

[32] For these reasons, I grant this application for judicial review. The RPD's analysis of the Applicants' intention to reavail themselves of Iraq's protection contains significant legal errors and is not justified in light of the record (*Vavilov* at paras 99-101). Given the seriousness of the reviewable errors in the Cessation Decision and the consequences of this process on the Applicants, I am directing that the Cessation Decision be set aside and the matter remitted to a different panel for redetermination in accordance with these reasons. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-9731-23

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is granted.
2. The RPD’s decision is set aside and the matter remitted to a different panel for redetermination in accordance with these reasons.
3. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9731-23

STYLE OF CAUSE: YALDO HETAN GORGIS GORGIS AND SINAM
ARSHAK YALDO YALDO v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

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