

Federal Court



Cour fédérale

**Date: 20250124**

**Docket: IMM-2928-24**

**Citation: 2025 FC 157**

**Toronto, Ontario, January 24, 2025**

**PRESENT: The Honourable Justice Battista**

**BETWEEN:**

**PADMAH MORADI  
(a.k.a. FATEMEH MORADI)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant was determined to be a Convention refugee in August 2017, but returned to Iran, her country of citizenship, for approximately 22 days in 2019. Because of this visit, the Refugee Protection Division (RPD) allowed an application for cessation of her refugee protection status.

[2] However, the RPD unreasonably applied the test for reavilment and unreasonably treated the Applicant's evidence related to her intention and the precautions she took during her visit to Iran. For the reasons that follow, the application for judicial review is granted.

## II. Background

[3] The Applicant was determined to be a Convention refugee in August 2017, and was granted Canadian permanent residence on January 18, 2019. An Iranian passport was issued to her in October 2018 to assist her in obtaining a divorce. She used that passport for travel to Iran to visit her ailing father for 22 days over August and September 2019.

[4] As a result of her return to Iran, the Respondent commenced an application for cessation of the Applicant's refugee status and the RPD allowed the application. The RPD applied the three-prong test for reavilment set out by the Federal Court of Appeal (FCA) in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Galindo Camayo*]. The test requires a determination of cessation to consider the voluntariness of the refugee's actions, their intention to reavail themselves of protection in their country of nationality, and whether actual reavilment occurred (*Galindo Camayo* at paras 18, 20).

[5] Regarding the voluntariness of the Applicant's actions, the RPD found that the Applicant's presence in Iran was not necessary for the care of her father and that her circumstances were not exceptional for the rebuttal of the presumption that arose from the use of her passport to return to Iran. The RPD concluded that her actions constituted voluntary reavilment.

[6] Regarding the Applicant's intention, the RPD acknowledged the Applicant's testimony that she was unaware that she could not return to Iran. However, the RPD found that the Applicant

was aware of being unable to return “at least since 2019” and concluded that “using her Iranian passport for her travel to Iran and remaining there for three weeks demonstrates that the [Applicant] intended to re-avail herself of Iran’s protection.” The RPD also acknowledged the Applicant’s testimony that she did not encounter any incidents while in Iran despite fearing her husband because she coordinated with her brothers to be protected. However, the RPD found the Applicant’s factual circumstances to be distinguishable from the circumstances in *Galindo Camayo*.

[7] The RPD found that risks remain for the Applicant in Iran, but as an entrepreneur with “business acumen” it was reasonable for her to make inquiries from her lawyer or the Canadian government prior to her return to Iran.

[8] Regarding the existence of actual reavailment, the RPD found that the Applicant’s choice to place herself in a vulnerable position by returning to Iran, her failure to rebut the presumption of reavailment, and her use of an Iranian passport in returning to Iran demonstrated actual reavailment.

### III. Issue and Standard of Review

[9] The sole issue is whether the Officer’s decision is reasonable pursuant to the Supreme Court’s decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], followed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[10] An unreasonable decision either fails to demonstrate rationality that is internal to the reasoning process or is “untenable in light of the relevant factual and legal constraints” (*Vavilov* at para 101).

IV. Analysis

[11] The RPD erred by misapplying the test for assessing the Applicant's intention to reavail herself of Iran's protection and also unreasonably treated her evidence related to her intention and the precautions that she took in Iran to protect herself from a risk of persecution.

A. *Misapplication of the test for assessing intention to reavail*

[12] The RPD misapplied the test for assessing a protected person's intention to reavail themselves of a country's protection in two ways. First, it substituted an objective assessment for what should have been a subjective assessment of the Applicant's knowledge of the consequences of her actions. Second, the RPD treated evidence of the Applicant's passport use as satisfactory in establishing both the intention and the "actual reavailment" components of the reavailment test.

- (1) Substitution of objective assessment for subjective assessment of the Applicant's knowledge regarding adverse consequences

[13] In *Galindo Camayo*, the FCA stated that a protected person's intention to reavail themselves of their former country's protection is relevant to the determination of whether refugee status should be cessated (at paras 18, 20). In assessing a protected person's intention, the FCA authorized consideration of the protected person's subjective knowledge with respect to the immigration consequences of their actions. This consideration is not an objective assessment; it does not consider what the protected person should have known, but what the person actually intended (*Galindo Camayo* at para 68).

[14] The Applicant testified that she did not know that her return to Iran would jeopardize her Canadian status. She stated that she became aware of this risk only when she returned from Iran in September 2019. The parties agreed, as I do, that the RPD was unclear when it stated that the

Applicant “at least since 2019, has been aware that she should not return to her country of alleged persecution.” This statement implies that there were returns to Iran after 2019, but this was not the case.

[15] The RPD did not express credibility concerns regarding the Applicant’s testimony regarding her lack of awareness of the consequences of her return, but it assessed this factor objectively, based on what the Applicant should have known. It stated:

... The panel finds that the Respondent is an intelligent woman who owned an operated a beauty salon in Iran. She has entrepreneur skills and a business acumen. It is reasonable to expect her to have made the requisite inquiries from her refugee lawyer or Canadian government authorities if she was permitted to return to her country of alleged persecution where she fears both state and non-state actors due to her Kurdish ethnicity, her religious faith, and her gender.

[16] In making this determination, the RPD substituted an objective assessment for what should have been a subjective assessment. This was the same error described by the FCA in *Galindo Camayo* at paragraphs 67–68 and 71:

Ms. Galindo Camayo testified that she was not aware that using her Colombian passport to travel to Colombia and elsewhere could have consequences for her immigration status in Canada. The RPD rejected this claim, not because Ms. Galindo Camayo was not credible, but because it found that ignorance of the law was not a valid argument. The RPD noted that Ms. Galindo Camayo was an educated and sophisticated individual who could have sought information as to the requirements that she had to uphold in order to maintain her status in Canada. With respect, this misses the point.

If it were acting reasonably, at this point in its analysis, the RPD should have considered not what Ms. Galindo Camayo should have known, but rather whether she did subjectively intend by her actions to depend on the protection of Colombia. Having failed to find that Ms. Galindo Camayo’s testimony on this point lacked credibility, the RPD is deemed to have accepted her claim that she did not know that using her Colombian passport to return to Colombia and to

travel elsewhere could result in her being deemed to have reavailed herself of Colombia's protection, and that this was not her intent.

...

In order for it to make a reasonable decision, the RPD was required to take account of the state of Ms. Galindo Camayo's actual knowledge and intent before concluding that she had intended to reavail herself of Colombia's protection.

[Emphasis in original.]

[17] The Respondent raised the FCA's determination that subjective knowledge of the consequences of returning to one's country is not "determinative" of an intention to reavail (*Galindo Camayo* at para 70). However, the FCA did refer to this factor as "a key factual consideration" (at para 70), and it did figure prominently in the RPD's analysis. The RPD was required to apply the correct analytical lens to this consideration and its failure to do so renders the decision unreasonable.

- (2) Evidence of passport use to satisfy the intention and "actual reavilment" aspects of the test

[18] The RPD treated the Applicant's use of her Iranian passport as evidence to satisfy both the intention and actual reavilment aspects of the reavilment test, which is evident in paragraphs 32–33 and paragraph 35 of its reasons.

[19] As noted by the FCA, this approach leaves "little room" for an applicant to argue a lack of intent to reavail in circumstances where a passport is used to return to a country of alleged feared persecution (*Galindo Camayo* at para 79). It is an approach that risks replacing the question of reavilment with the question of whether one obtained and used a passport from a country of feared persecution, diluting the considerations described by the FCA for establishing reavilment. Here, again, the RPD unreasonably applied the test set out in *Galindo Camayo*.

B. *Unreasonable treatment of evidence regarding precautions*

[20] The second error regarding the assessment of the Applicant's intention concerns the RPD's treatment of the Applicant's evidence of the precautions she took while in Iran.

[21] The Applicant testified that she sought to keep her travel secret, her brothers provided her with rides to and from the airport, and she did not leave the family home during her visit. The Applicant submitted that these measures demonstrated that she did not intend to entrust her protection to Iran, which is a relevant consideration (*Galindo Camayo* at para 77).

[22] Despite the lack of any adverse credibility findings, the RPD stated that "she has not remained in hiding." This contradicts the clear evidence from the Applicant and her family. It is not clear whether the RPD overlooked or misunderstood evidence pertaining to her precautionary activities, rendering this finding unintelligible.

[23] The RPD also dealt with the Applicant's evidence of precautions by finding it factually distinguishable from the situation in *Galindo Camayo*. Emphasizing that one of the Applicant's feared agents of persecution was the Iranian government, the RPD stated that "[t]he Iranian government was aware that she was in Iran" and dismissed evidence of her precautions, concluding that she did not possess a subjective fear of persecution.

[24] However, the Applicant did not advance evidence of her precautions to establish the factual similarity between her circumstances and those before the FCA in *Galindo Camayo*. The Applicant relied on her evidence of precautions to align this evidence with the principle from *Galindo Camayo* that evidence of precautions is relevant to an intention to reavail. The RPD did not appear

to disbelieve this evidence but also did not explain its impact on the Applicant's submission regarding her lack of intent to reavail. This also renders the decision unintelligible.

V. Conclusion

[25] The FCA has described the enhanced decision-making duty in cessation decisions due to the potentially serious consequences (*Galindo Camayo* at para 51). In the present case, the RPD failed to reasonably apply the reavailment test and failed to reasonably treat the evidence before it. The decision is therefore unreasonable and will be set aside.



**JUDGMENT in IMM-2928-24**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is granted, the decision of the Refugee Protection Division is quashed, and the matter is returned to a differently constituted panel for redetermination.
2. There is no order regarding costs and no question for certification.

\_\_\_\_\_  
“Michael Battista”

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2928-24

**STYLE OF CAUSE:** PADMAH MORADI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 22, 2025

**JUDGMENT AND REASONS:** BATTISTA J.

**DATED:** JANUARY 24, 2025

**APPEARANCES:**

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