

Federal Court



Cour fédérale

**Date: 20250709**

**Docket: IMM-14732-24**

**Citation: 2025 FC 1220**

**Toronto, Ontario, July 9, 2025**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**ROGHAYEH ROUHI FALAKDEHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision dated July 11, 2024, by the Refugee Protection Division [RPD], allowing an application of the Minister of Citizenship and Immigration [the Minister] to cease the Applicant's refugee protection [the Decision].

[2] As explained in greater detail below, this application for judicial review is allowed, because the Decision is unreasonable in that it unintelligibly takes into account what the Applicant should have known about the potential immigration consequences of using her Iranian passport to return to Iran.

## II. **Background**

[3] The Applicant is a citizen of Iran who claimed refugee protection in Canada based on her husband's fear of persecution in Iran due to his involvement in political protests and activism against the Iranian government. The RPD allowed the Applicant's claim on September 20, 2018, and she became a permanent resident of Canada on September 16, 2020.

[4] On December 5, 2021, the Applicant travelled to Iran with her Iranian passport that had been issued on November 15, 2021. The Applicant stayed in Iran for a little over two months to care for her sick father. Upon the Applicant's return to Canada on February 16, 2022, she was interviewed by a Canada Border Services Agency officer [the CBSA Officer]. The Applicant told the CBSA Officer that she was visiting her sick father in Iran, that she had obtained her new Iranian passport in Canada, that she did not have problems entering, leaving, or while in Iran, that she was selling her house in Iran, and that she has a shop in Iran from which she receives money. The Applicant also had with her in Iran her Iranian national identification card, Iranian driver's licence, and an Iranian bank card.

[5] On January 30, 2024, the Minister made an application to cease the Applicant's refugee protection under subsection 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c

27 [IRPA] and section 64 of the *Refugee Protection Division Rules*, SOR/2012-256. The Minister submitted that the cessation application should be allowed because the Applicant re-availed herself of Iran's protection as contemplated by paragraph 108(1)(a) of the IRPA. The RPD held a hearing on May 8, 2024.

[6] In describing her travel to Iran to the RPD, the Applicant stated that a government agent pulled her aside upon her arrival and told her she would be contacted, and that government agents later contacted her brother to request that the Applicant report herself to them. The Applicant stated that she kept a low profile in Iran by relocating to the suburbs with her father, staying at home, not hosting visitors, and hiding her identity from the doctors who visited her father. The Applicant also explained that her brother warned her not to return to Iran.

[7] The Applicant further stated to the RPD that she had issues with the interpreter during her interview with the CBSA Officer and that it was the Applicant's brother, not her, who owned the house and store in Iran.

[8] On July 11, 2024, the RPD issued the Decision that is the subject of this application for judicial review, allowing the Minister's application to cease the Applicant's refugee protection in Canada.

### III. **Decision under Review**

[9] In the Decision, the RPD allowed the Minister's application to cease the Applicant's refugee protection, concluding that the Applicant voluntarily re-availed herself of Iran's

protection as contemplated by paragraph 108(1)(a) of the IRPA. In reaching this conclusion, the RPD assessed the three requirements for voluntary re-availment, being whether (a) the Applicant acted voluntarily; (b) the Applicant intended to re-avail herself of Iran's protection; and (c) the Applicant obtained this protection.

[10] The Applicant argued that she did not act voluntarily, because she felt her trip was necessary to care for her sick father and because she faced pressure from family members to return. The RPD rejected this argument, finding that the Applicant's trip was not necessary because her brother and sister were present in Iran to care for their father.

[11] The RPD then found the Applicant failed to rebut the presumption that she intended to re-avail herself of Iran's protection, which presumption arose when the Applicant obtained her Iranian passport and traveled to Iran using that passport. The RPD balanced the Applicant's lack of knowledge of the consequences of re-availment, her alleged lack of sophistication, and the fact that she took precautions in Iran, against the fact that she returned to Iran where she feared the government, presented herself to Iranian authorities when entering the country, and remained in Iran after the authorities requested that she report to them. The RPD found that there were more factors weighing towards a finding that the Applicant intended to re-avail herself of Iran's protection.

[12] Lastly, the RPD concluded that the Applicant obtained protection from Iran, noting the particularly strong presumption that a refugee has obtained protection from their home country where the refugee voluntarily obtains or renews a passport from their home country and uses it to

travel to this country. The RPD further noted that it was required to assess whether the Applicant obtained diplomatic protection from Iran, rather than assessing state protection. Based on factors discussed in relation to the Applicant's intention to re-avail herself of Iran's protection, the RPD found that she obtained protection from Iran.

[13] Given the foregoing, the RPD allowed the Minister's application to cease the Applicant's refugee status, and her refugee claim was deemed to be rejected.

#### IV. **Issues and Standard of Review**

[14] The sole substantive issue for the Court's determination in this application for judicial review is whether the Decision is reasonable. As contemplated by this articulation of the issue, the standard of reasonableness applies to this analysis, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[15] The Respondent also raises a preliminary issue, submitting that the Minister of Citizenship and Immigration should be named as the Respondent in this application, rather than the Minister of Public Safety and Emergency Preparedness as originally named in the Application for Leave and for Judicial Review filed by the Applicant. The Applicant agrees with the Respondent's submission. I concur with the parties, and my Judgment will so provide.

#### V. **Law**

[16] Upon application by the Minister, the RPD may determine that refugee protection conferred by the IRPA has ceased for any of the reasons listed under subsection 108(1) of the

IRPA (IRPA, s 108(2)). If the Minister's application for cessation is allowed, the refugee claim at issue is deemed rejected (IRPA, s 108(3)). Subsection 108(1) states:

### Rejection

**108 (1)** A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

- (a) the person has voluntarily reavailed themselves of the protection of their country of nationality;
- (b) the person has voluntarily reacquired their nationality;
- (c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;
- (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
- (e) the reasons for which the person sought refugee protection have ceased to exist.

### Rejet

**108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

- a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
- b) il recouvre volontairement sa nationalité;
- c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
- 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) les raisons qui lui ont fait demander l'asile n'existent plus.

[17] In determining whether cessation of refugee status occurred under paragraph 108(1)(a) of the IRPA, three elements must be met: (a) voluntariness, in that the refugee must not be coerced; (b) intention, meaning the refugee must intend by their actions to re-avail themselves of the protection of the country of their nationality; and (c) re-availment, in the sense that the refugee must actually obtain such protection (*Chowdhury v Canada (Citizenship and Immigration)*, 2021 FC 312 at para 8; *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [Camayo] at paras 18, 79).

[18] In contrast, paragraph 108(1)(e) considers whether there has been a “substantial”, “effective”, and “durable” change in the conditions of the refugee’s country of nationality or in the personal circumstances of the refugee, and whether this change supports a continuation of a risk to the refugee (*Karasu v Canada (Citizenship and Immigration)*, 2023 FC 654 at para 67).

[19] Where the RPD finds that refugee protection has ceased pursuant to paragraph 108(1)(e) of the IRPA, the claimant loses refugee status only and does not lose permanent resident status and become inadmissible to Canada. In contrast, a finding of cessation by the RPD pursuant to paragraphs 108(1)(a) to (d) does result in the loss of permanent resident status by operation of paragraph 46(1)(c.1) of the IRPA:

#### **Permanent resident**

**46 (1)** A person loses permanent resident status

**(c.1)** on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d);

#### **Résident permanent**

**46 (1)** Emportent perte du statut de résident permanent les faits suivants :

**c.1)** la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l’un des alinéas 108(1)a) à d), la perte de l’asile;

## **VI. Analysis**

[20] In challenging the reasonableness of the Decision, the Applicant argues both that the RPD erred in failing to consider the application of paragraph 108(1)(e) of the IRPA (notwithstanding that neither party argued the application of that paragraph before the RPD) and that the RPD erred in its application of paragraph 108(1)(a).

[21] My decision to allow this application for judicial review turns on the RPD's analysis under paragraph 108(1)(a), specifically in relation to the Applicant's intention to re-avail.

[22] As the RPD acknowledged, the Federal Court of Appeal explained in *Camayo* at paragraphs 70 to 71 that the determination of a cessation application requires the RPD to consider whether a refugee claimant subjectively intended by their actions to re-avail themselves of the protection of their country of nationality. While a lack of actual knowledge of the consequences of their actions upon their refugee status in Canada may not be determinative of intent, it is an important consideration in the required analysis. The RPD also acknowledged that it must consider what the Applicant knew, not what she should have known, with respect to the immigration consequences of re-availment (*Camayo* at para 68).

[23] However, when the RPD turned to considering this factor, it appears to have conducted an analysis which, although considering what the Applicant knew about the relevant immigration consequences, also took into account what the RPD considered that the Applicant should have known. The RPD acknowledged the Applicant's testimony that her previous counsel did not provide her with any information about the potential consequences of going back to Iran and her testimony that she would not have returned to Iran had she known of the potential consequences of doing so. However, the RPD noted that a period of almost 2 months elapsed between when she decided to renew her Iranian passport and when she travelled to Iran, during which the Applicant could have sought legal advice or consulted Canadian authorities. The RPD also noted that the Applicant's brother had told her not to return to Iran because of the safety risks, and the RPD ultimately concluded that it would have been reasonable for the Applicant to seek further



information about the potential consequences of returning there, with respect to both her safety and her immigration status in Canada.

[24] The Applicant notes these aspects of her testimony and the RPD's reasoning and takes issue with the RPD's analysis, arguing that there was no reason for her to seek advice about the consequences that returning to Iran could have upon her Canadian immigration status if she was unaware of any such potential consequences. The Applicant argues that this reasoning is inconsistent with the applicable jurisprudence, as she could not have intended to re-avail when she had no knowledge of such consequences.

[25] I disagree with the Applicant's position that her lack of knowledge of the immigration consequences of re-availment precluded a finding that she intended to re-avail. As *Camayo* explains, a lack of actual knowledge of such consequences is not necessarily determinative of intent (at para 70). However, I agree with the Applicant that the impugned aspect of the RPD's reasoning is inconsistent with the jurisprudential guidance in *Camayo*. Despite the Respondent's counsel's able submissions at the hearing of this application, the Decision demonstrates that the RPD took into account not only what the Applicant actually knew about the consequences of re-availment, but also what the RPD considered that she should have been able to learn about such consequences through inquiries of counsel or Canadian authorities.

[26] This aspect of the RPD's reasoning is not only inconsistent with *Camayo* but gives rise to concern about the intelligibility of the Decision, as it is unclear how this reasoning affected the

RPD's balancing of the various factors that it took into account in concluding that the Applicant intended to re-avail. These concerns render the Decision unreasonable.

[27] My Judgment will therefore allow this application for judicial review, set aside the Decision, and return this matter to a differently constituted panel of the RPD for redetermination. It is therefore unnecessary for the Court to consider the Applicant's other arguments challenging the reasonableness of the Decision.

[28] Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-14732-24**

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

1. The style of cause is changed to name The Minister of Citizenship and Immigration as the Respondent.
2. This application is allowed, the Decision is set aside, and the matter is returned to a differently constituted panel of the RPD for redetermination.
3. No question is certified for appeal.

"Richard F. Southcott"

---

Judge

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

**DOCKET:** IMM-14732-24

**STYLE OF CAUSE:** ROGHAYEH ROUHI FALAKDEHI v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 7, 2025

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** JULY 9, 2025

**APPEARANCES:**

Vakkas Bilsin	FOR THE APPLICANT
Nimanthika Kaneira	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lewis & Associates LLP Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT