Federal Court Cour fédérale

Date: 20250725

Docket: IMM-11152-24

Citation: 2025 FC 1328

Ottawa, Ontario, July 25, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

GANISTUS KIUAN EMMANUEL RANGIT
THARSIYA GANISTUS KIUAN
ERIK GANISTUS KIUAN
EBIRON GANISTUS KIUAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant family seeks judicial review of a Refugee Appeal Division (RAD) decision dated May 31, 2024, finding that they are excluded from refugee protection under Article 1E of the United Nations Refugee Convention (Refugee Convention) and section 98 of

the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD and the Refugee Protection Division (RPD) both found that the Applicants, citizens of Sri Lanka, have status in Italy that was substantially similar to that of Italian nationals. Therefore, they were excluded from consideration for refugee protection.

[2] The Applicants submit that the RAD's decision is unreasonable because it (1) ignored evidence regarding their status in Italy; and (2) misunderstood or ignored evidence when it concluded that their status had not been revoked at the time of the RPD hearing.

[3] For the reasons that follow, I am granting this judicial review application. The RAD's conclusion about the Applicants status in Italy is inconsistent with the evidence before it. As a result, the decision is not justified and therefore is not reasonable.

I. Background

[4] The Applicants reside in Italy on European Union [EU] Long-Term Residence Permits (Permits). They claim fear of persecution in Sri Lanka because of their Tamil ethnicity, family ties to the Liberation Tigers of Tamil Eelam (LTTE), and the Principal Applicant's (PA) extensive personal involvement in anti-government protests and Tamil diaspora organizations.

[5] The PA, Ganistus Kiuan Emmanuel Rangit, moved to Italy in 1999 as a dependent of his father, who held an Italian work permit. The PA later obtained a Permit, which required him, among other things, to live in Italy for a set number of years; to hold a valid passport; and to provide proof of earnings. The PA applied for Italian citizenship but was refused in May 2015 on

“national security grounds” because of his involvement with Tamil diaspora organizations and his support of the LTTE.

[6] When the PA’s son was born in May 2017, he required a valid passport to remain in Italy under the Permit. The Applicants attempted to obtain passports from the Sri Lankan embassy in Italy but were advised that they had to return to Sri Lanka to obtain new passports.

[7] On December 3, 2017, the Applicants travelled to Sri Lanka to obtain passports. The PA states that he was detained and tortured by Sri Lankan police and was forced to surrender his passport. The Applicants were unable to obtain Sri Lankan passports during their trip and fled back to Italy.

[8] On October 28, 2020, the Applicants arrived in Canada and made a refugee claim. The Minister intervened in their refugee claim, arguing that the Applicants ought to be excluded under Article 1E of the Refugee Convention due to their status as Permit holders in Italy.

[9] On March 18, 2023, the RPD refused their refugee claim, finding that they were excluded from the definition of Convention refugee or persons in need of protection pursuant to Article 1E of the Refugee Convention. The Applicants appealed to the RAD.

[10] In September 2023, the RAD refused their appeal. The Applicants successfully applied for judicial review and the RAD decision was returned for redetermination.

[11] On June 3, 2024, upon redetermination, the RAD again refused their appeal and confirmed the RPD's finding that the Applicants were not Convention refugees or persons in need of protection on the grounds that they held Permits in Italy, which gave them substantially the same rights as Italian nationals. The RAD also found that they had not established that their Permits had been revoked.

II. Standard of review and issues

[12] The Applicants raise two issues reviewable on a reasonableness standard.

A. Did the RAD misunderstand and/or ignore evidence when finding the Applicants' status in Italy had not been revoked at the time of the RPD hearing?

B. Did the RAD ignore relevant evidence and submissions when finding the Applicants enjoyed the basic rights attached to the possession of nationality in Italy?

[13] Upon conducting a reasonableness review, this Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12, 15 [*Vavilov*]). A reasonable decision 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). The Court does not reweigh or reassess the evidence unless there are "exceptional circumstances" (*Vavilov* at para 125).

III. Analysis

A. *Did the RAD misunderstand and/or ignore evidence when finding the Applicants' status in Italy had not been revoked at the time of the RPD hearing?*

[14] The Applicants argue that the RAD erred in finding their Permits had not been revoked at the time of the RPD hearing.

[15] In assessing whether the Applicants could make a refugee claim, the RAD applied the exclusion clause in Article 1E of the Refugee Convention. This Court has held that applying an exclusion broadly rather than restrictively is unreasonable (*Freeman v Canada (Citizenship and Immigration)*, 2024 FC 1839 at paras 17–18 [*Freeman*]). The Applicants argue the RAD did exactly that by applying the exclusion too broadly in their case.

[16] If an applicant has some sort of temporary status in another country which must be renewed, and which could be cancelled, or if the applicant does not have the right to return to the country of residence, then the applicant should not be excluded under Article 1E of the Refugee Convention (*Rrotaj v Canada (Citizenship and Immigration)*, 2016 FC 152 at para 17, citing *Shamlou v Canada (Minister of Citizenship & Immigration)*, 1995 CanLII 19407 (FC) [*Shamlou*]).

[17] The Applicants argue that the RAD misapplied *Shamlou* and failed to address their evidence and submissions that they were unable to renew their Permits due to circumstances beyond their control. The relevant portion of the RAD decision is as follows:

> [19] I disagree with the Appellants that the RPD incorrectly applied the *Shamlou* test in assessing whether their status was substantially similar to that of Italian nationals. While I agree with the Appellants that the RPD incorrectly referred to the Appellants enjoying the same rights as permanent residents, rather than Italian nationals, I find that this was a minor error and did not lead the RPD to incorrectly apply the *Shamlou* test.
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> [20] Specifically, the Appellants argue that holding their EU Long-Term Residence Permits (Permits) require renewal and is conditional, which means that they do not hold status that is substantially similar to that of Italian nationals. I am not persuaded.
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> [21] Country condition evidence indicates that the Permit is permanent and does not expire. Holders of a Permit are entitled to enter Italy without a visa, to work, have access to government provided social benefits and services as well as educational rights and healthcare. In order to use the Permit as an identification document, it must be renewed every five years with a new photogragh [sic]. Every ten years, the Permit must be revalidated by the holder submitting a copy of the Permit, their passport and the residence/family status.
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> [22] The Federal Court has found that the fact that conditions or obligations must be filled as a permanent resident does not mean that the status is not permanent. As such, I find that the Appellants, as Permit holders, have status that is substantially similar to that of Italian nationals. It is now the Appellants' onus to establish, on a balance of probabilities, that they have lost that status as of the day of the RPD hearing. [Footnotes omitted.]

[18] In my view, the RAD's finding that the Applicants could reapply for Permits to remain in Italy is unreasonable. The record included clear evidence to the contrary in the form of: (1) a response from the Italian Consulate confirming that "[a]s a general rule, the residence permits are not valid anymore if the person leave the Italian territory for more than 365 days"; and (2) a translated excerpt of Italy's Article 9(7) of Legislative Decree No. 286, which states that Permits become invalid after one year of absence from the country:

> 7. The residence permit as mentioned under paragraph 1 *is revoked*:
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> a. if acquired fraudulently;
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> b. in case of expulsion, as mentioned under paragraph 9;
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> c. when lacking or coming to lack the conditions for the issuing, as mentioned under paragraph 4;
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> d. in case of absence from the territory of the Union for a period of twelve consecutive months;
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> e. in case of issuing of long-term residence permit by another Member State of the European Union, upon communication by the latter, and however in case of absence from the State's territory for more than six years. [Emphasis in original.]

[19] Despite this evidence, the RAD concluded it provided "limited assistance" because "[i]t does not provide any specific information about the Appellants' Permits and makes a very general statement about the validity of Permits."

[20] The Applicants also rely on an analogous RPD decision that was before the RAD, (RPD Dossiers TB9-17419 and TB9-17487), where the RPD found—based on the same objective National Documentation Package [NDP] evidence for Italy—that individuals lose the status and rights granted by a Permit after more than 12 consecutive months outside the European Union. In that case, as here, the RPD sought and relied on Response to Information Requests (RIRs) on Italian NDP evidence as follows:

> [20] The panel is satisfied, on a balance of probabilities, on the evidence before it, that the principal claimant was granted the Permit during 2018. However, the objective evidence of the NDP for Italy shows that the status and rights accorded under the permit are lost by a person spending more than 12 consecutive months

> outside of the European Union. Two Response to Information Requests in the NDP for Italy confirm that a Permit is "…*voided if the person is absent from Europe for 12 consecutive months*". This objective evidence further stipulates that status accorded under the Permit can be revoked if the resident no longer meets the requirements, such as an annual income requirement.
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> [21] The evidence before the panel is that the claimants have been in Canada (without leaving) since June 2019. Accordingly, based upon this objective evidence, the panel finds, on a balance of probabilities that, at the time of the hearing, having remained out of Italy for over 12 months, the principal claimant's status in Italy will have expired.
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> […]
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> [26] The objective evidence from the NDP for Italy shows that the Permit, while conveying a wealth of substantive rights, confers status which is vulnerable to being lost or taken away from individuals such as the principal claimant on a variety of listed grounds.
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> […]
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> [29] Per *Shamlou*, on the totality of evidence, because the Permit is vulnerable to being cancelled on multiple grounds, the panel finds on a balance of probabilities, that the principal claimant did not have status in Italy substantially similar to that of an Italian/EU national. [Footnotes omitted.] [Emphasis added.]

[21] In my view, the RAD's treatment of this evidence was unreasonable. It failed to meaningfully engage with Article 9(7) of Legislative Decree No. 286—a primary legal source confirming that Permits lapse automatically after 12 consecutive months abroad. Although the RAD dismissed the Italian Consulate's statement and the NDP evidence as "general", it did not dispute the key fact that the Applicants had been outside of Italy for more than 12 months. The evidence was therefore directly applicable. Viewed alongside the prior RPD decision interpreting the same legislative provision, the record provided a clear and unrebutted basis to conclude that

the Applicants' Permits had lapsed by operation of law. The RAD had no reasonable basis to find otherwise.

[22] The RAD erred by giving preferential weight to general statements in the NDP evidence that the "EU long-term residence permit may be revoked in the following cases" instead it treating revocation as discretionary.

[23] This mirrors the error identified in *Gurusamy v Canada (Citizenship and Immigration)*, 2024 FC 1868. In that case, the applicants submitted a Consular letter confirming that long-term residence permits are revoked after 12 consecutive months of absence. The Court held that it was unintelligible for the RAD to reject that evidence and the plain text of Italian law in favour of general statements in the NDP evidence suggesting that revocation of Permits is discretionary:

> [19]] What is unintelligible in this analysis is that the Consulate represents the Italian government. The Consular response is also a government response, and therefore one could easily substitute in the word "Consulate" for the words "government on its own website" to the underlined portion above, to come up with an equally accurate statement. The RAD's analysis is unintelligible because no reasons were provided as to why the latter was chosen over the former. In my view, this justification would have applied equally had the RAD decided to favor the confirmation of the interpretation of the legislation provided by the Consulate. Such a justification is void of reasonability; it is equivalent to saying "I favor A over B because X" when X is true for both A and B. The selection to give weight to one government source over the other is arbitrary, when Mr. Crane took the time to inquire into Mr. Gurusamy's status and received the Italian government's response.
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> […]
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> [23] Having considered the RAD's analysis of the evidence, the Applicant has persuaded me that it unreasonably favoured general

> source information that had been relied on by the Court in past situations, to the specific situation in question, without explaining why that historic information superseded the information provided by the Consulate that related to the personal, individual circumstances of the Applicant. While I accept that the generic information from past situations relied on by the RAD concerned the same law, the applicants in those cases had not obtained personalized evidence from the Italian government relating to their particular situation. [Emphasis in original.]

[24] The RAD also failed to engage with the Applicants' undisputed factual circumstances. The Applicants cannot renew their Permits without valid Sri Lankan passports. They have demonstrated that they cannot return to Sri Lanka safely to obtain them: the PA was previously detained and tortured there, and Italian authorities denied the PA's citizenship on national security grounds. These facts were not in dispute, yet the RAD did not grapple with them.

[25] As *Shamlou* confirms, temporary status that requires renewal—and cannot be renewed due to circumstances beyond the applicant's control—does not justify exclusion under Article 1E. Here, the Applicants provided uncontradicted evidence that: (1) they have been outside Italy for over one year; (2) their Permits lapsed automatically under Italian law; and (3) they cannot renew their Permits without Sri Lankan passports, which they cannot safely obtain. In these circumstances, the RAD's finding that the Applicants failed to show they could not reapply is unreasonable. The RAD ignored both the legal effect of the Permit lapse and the Applicants' uncontested inability to overcome that lapse. Under *Shamlou*, where (1) a person's status has ended and (2) they cannot reinstate it for reasons outside their control, exclusion under Article 1E is not warranted. The RAD's finding that the Applicants are excluded under Article 1E of the Refugee Convention is therefore not justified.

[26] In summary, the RAD failed to assess these circumstances in context and applied Article 1E in a broad, rather than restrictive, manner (*Freeman* at paras 17–18). For these reasons, the decision is not justified in light of its legal and factual constraints (*Vavilov* at para 101).

B. *Did the RAD ignore relevant evidence and submissions when finding the Applicants enjoyed the basic rights attached to the possession of nationality in Italy?*

[27] The Applicants also argue that the RAD erred in finding that they enjoyed the basic rights attached to the possession of nationality in Italy. I agree. This issue relates to step one of the Article 1E test (*Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118 at para 28 [*Zeng*]; *Ru v Canada (Citizenship and Immigration)*, 2021 FC 1218 at para 36):

1. As of the date of the hearing, does the claimant have status in a third country substantially similar to that of its nationals?

   ➢ If yes, the claimant is excluded.

   ➢ If no, proceed to the second question.

2. Did the claimant previously have such status and lose it or have access to such status but fail to acquire it?

   ➢ If no, the claimant is not excluded.

   ➢ If yes, proceed to the third question.

3. Considering and balancing all of the circumstances of the case–including the reason for the loss of status (or the failure to acquire it), whether the claimant could return to the third country now, the risk the claimant would face in their home country, and Canada's international obligations –should the claimant be excluded?

   ➢ If yes, the claimant is excluded.

➢ If no, the claimant is not excluded.

[28] Here, the RAD failed to address evidence indicating that the Applicants' Permits were at risk of cancellation. It was unreasonable to find that they hold status in Italy comparable to that of nationals without addressing their inability to return to Sri Lanka to obtain passports and reapply.

[29] As noted above, the RAD unreasonably found the Applicants' Permits were not revoked despite their absence from Italy for over a year. Given the impossibility of renewal, it was unintelligible to conclude that they enjoy the basic rights associated with Italian nationality.

[30] The RAD erred in applying step one of the *Zeng* test and failed to consider steps two and three. The RAD decision is therefore unreasonable.

IV. Conclusion

[31] This judicial review application is granted. The matter is to be sent back for redetermination to the RAD by a new panel.

JUDGMENT IN IMM-11152-24

THIS COURT'S JUDGMENT is that:

1. This judicial review application is granted, and the matter is returned to the RAD to be reconsidered by a new panel.

2. There is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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