Federal Court Cour fédérale

Date: 20250725

Docket: IMM-4793-24

Citation: 2025 FC 1331

Ottawa, Ontario, July 25, 2025

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

SAID SAHLOUL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] According to some, a legitimate refugee is compelled to leave their national state out of fear of persecution at the first opportunity, and seek the first state possible that will provide safe haven. No other choice is permissible, including the choice to seek asylum in one state over another. To behave otherwise would be incommensurate with the actions of the legitimate refugee and as such, these individuals lack subjective fear.

[2] This contention has not been formed in accordance with the law. The Court should not behold refugee claimants to a mirage that robs them of their agency and imputes dishonesty where there is none. Availing oneself of the first, or closest, opportunity for international protection is not a precondition to finding refuge in Canada.

[3] This matter concerns Mr. Said Sahloul, a Syrian airline pilot living in the United Arab Emirates [UAE]. In 2024, a Visa Officer refused him permanent residency in Canada as a Convention refugee abroad and a member of the humanitarian-protected persons abroad class, because he had not availed himself of the first opportunity for international protection, and did not thus behave as someone with a well-founded fear of persecution. On judicial review, Mr. Sahloul submits that the Officer's decision was unreasonable. I agree. For the reasons that follow, this application is granted.

II. Context

[4] Mr. Sahloul is a Syrian national who has lived in the UAE since May 2003, serving as an airline pilot for Air Arabia since 2016.

[5] On June 11, 2012, Mr. Sahloul returned to Syria to visit his mother and sister. A few days later, he joined a peaceful protest in Damascus along with his family members, in support of civil rights and democracy in Syria. Government forces violently shut down the demonstration. Mr. Sahloul and his family fled the scene and returned to their respective homes.

[6] Upon his return to the UAE, Mr. Sahloul received a call from his mother, who reported to him that the police had come to their family apartment in Damascus. They advised that he was wanted for participating in an unauthorized protest, helping a protestor, and providing aid and shelter to anti-government personnel. The police then warned his mother that they would arrest Mr. Sahloul if he were to return to Syria.

[7] Following these events, several members of Mr. Sahloul's family fled Syria and obtained refugee status in Europe and the United States. He stayed in the UAE, living there as a pilot with his spouse.

[8] In the intervening years, Mr. Sahloul travelled the world in his professional and personal capacities, visiting family and friends in the United States, Türkiye, Germany, Italy, Austria, and the United Kingdom. At no time did he seek refugee protection, despite these countries having ratified the *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954, accession by Canada 4 June 1969) [Convention].

[9] Having been sponsored by a group in Edmonton, on October 2, 2023, Mr. Sahloul and his spouse were interviewed by an Officer at the Canadian Embassy in Abu Dhabi, pursuant to his permanent resident visa application as a Convention refugee abroad and member of the humanitarian-protected persons abroad class.

[10] At the interview, the Officer expressed concern about Mr. Sahloul's past behaviour and travel history to Convention member states. He answered that he had not applied for refugee status

in those states because he was afraid of losing his job and status in the UAE, and was reluctant to subject his family to an arduous and uncertain asylum claims process in those states (the programs under which he is applying in Canada provide greater certainty in this regard). He then explained that his life in the UAE was nevertheless replete with "fear and anxiety" at the thought of being forcefully returned to Syria. The Officer reiterated that this behaviour was incompatible with genuine fear and expressed concern that Mr. Sahloul had been "asylum shopping."

[11] The Decision refusing Mr. Sahloul's application for Convention refugee status is based on the Officer's appreciation of his behaviour: "my concerns were that your behaviour was not that of someone who had a well-founded fear of persecution because you would expect that person to avail themselves of the first opportunity for international protection." On the Officer's reasoning, visiting several state parties to the Convention without seeking their protection is not the behaviour of someone who genuinely fears persecution. In relation to the humanitarian-protected persons abroad class application, the Officer concluded that Mr. Sahloul had not been personally affected by "civil war, armed conflict or massive violation of human rights" in Syria. He was thus denied permanent residency from abroad.

III. Issue and Standard of Review

[12] The sole issue is whether the decision under review is reasonable. In this respect, the role of a reviewing court is to examine the decision maker's reasoning and determine whether the decision is based on an "internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and*

Immigration), 2023 SCC 21 at para 64 [*Mason*]). Although the party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100), the reviewing court must ask "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99).

IV. Analysis

[13] On judicial review, Mr. Sahloul challenges both conclusions of the refusal decision. First, he contends that the Officer's determination of his Convention claim was unreasonable because they failed to grapple with his well-founded fear of persecution in Syria. To this end, he argues that not claiming asylum at the earliest opportunity is not sufficient, in and of itself, to reject a refugee claim. Second, he submits that the Officer's determination of his humanitarian-protected persons abroad claim was unreasonable, because their reasons do not reflect the stakes bearing upon the individual affected by the Decision. More was required of the Officer's reasons, which essentially amount to a bald statement conveying his ineligibility vis-à-vis the protected class.

[14] For the reasons that follow, I agree with Mr. Sahloul. I will address each conclusion in turn, beginning with the Officer's conclusion with respect to the humanitarian-protected persons abroad claim.

A. *The Officer's Reasons on the Humanitarian Claim Are Unresponsive*

[15] The full extent of the Officer's reasons on the humanitarian-protected persons abroad claim is as follows: "I also assessed the PA under R147, country of asylum class. However, it does not

appear that you met the requirements of ‘have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.’”

[16] This analysis is unreasonable because it is bald, conclusory, and plainly unresponsive to the constraints bearing upon the decision. On judicial review, this Court cannot discern the line of reasoning the Officer followed to reach their conclusion—there is nothing beyond the outcome reached.

[17] This lack of analysis is especially problematic in this administrative context. Indeed, where the impact of a decision on an individual’s rights and interests is severe, the reasons provided to that individual must reflect the stakes (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at paras 115–117; *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 50). The stakes of an asylum claim are very high, and a failure to grapple with them may render the decision unreasonable (*Mason* at para 81).

[18] Nothing in the Officer’s reasons demonstrate any sort of engagement with the stakes. On judicial review, this Court is left with an accordingly incomplete sense of whether the Officer genuinely considered the arguments and evidence submitted to them in relation to Mr. Sahloul’s claim.

[19] Plainly speaking, Mr. Sahloul’s uncontested narrative alleges that he was the victim of a massive human rights violation in Syria, a country that has been mired in armed conflict for over

a decade, and which notably forced his family to flee their home. These facts appear nowhere in the Officer's determination as to whether Mr. Sahloul "[had been] seriously and personally affected by civil war, armed conflict or massive violation of human rights in [Syria]."

[20] It was open to the decision maker to weigh the evidence and draw conclusions from it. However, the Officer could not omit and reject important and contradictory evidence without providing transparent or intelligible reasons for doing so (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17). In this case, no such reasons were provided. The Officer's conclusion is therefore unreasonable.

B. *The Officer's Reasons on the Convention Claim Are Not Justified in Light of the Constraints*

[21] The principle of responsive justification similarly applies to the Officer's conclusion on the Convention, though the Officer's reasons on this point are more elaborate and at least present an identifiable line of reasoning. Nevertheless, this line of reasoning is not justified in light of the factual and legal constraints bearing upon the Decision.

[22] Two errors undermine this Court's confidence in the Officer's conclusion on Convention refugee status. First, their unduly abstract treatment of Mr. Sahloul's "well-founded fear" in the circumstances. Second, their reliance on "asylum shopping" as a relevant legal concept in the section 96 determination.

(1) A Refugee's Subjective Fear Is Directed Toward Persecution

[23] On this first point, I note that a refugee claimant must establish that they subjectively fear persecution and that this fear is objectively well founded (*Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 at 723). The absence of either element is fatal to the claim (*Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at para 51).

[24] The Officer's concerns go to the subjective element of Mr. Sahloul's fear. Although they believe his story to be true, the Officer is not convinced that Mr. Sahloul genuinely fears persecution because he did not avail himself of the earliest opportunity to claim protection. The determination is behavioural: on the Officer's appreciation of the evidence, Mr. Sahloul does not present himself to be a person living in fear.

[25] This determination is unreasonable.

[26] To be clear, a claimant's behaviour is a valid consideration when determining a claimant's subjective fear of persecution (*Kikina Biachi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 589 at para 8).

[27] The kind of behaviour relevant to the analysis may include the claimant's delay in applying for refugee protection, but this consideration is not a "decisive factor" (*Avila Rodriguez v Canada (Citizenship and Immigration)*, 2012 FC 1291 at para 57 [*Avila Rodriguez*]). In some circumstances, it may be reasonable to consider a claimant's delay in leaving their country of

nationality in the analysis of their credibility, insofar as it may weigh against the establishment of subjective fear (see e.g. *Agazuma v Canada (Citizenship and Immigration)*, 2021 FC 696 at para 37; *Stephen Oderinde v Canada (Citizenship and Immigration)*, 2023 FC 245 at para 26). However, delay remains just one factor among many in the analysis.

[28] In this vein, I recall the Federal Court of Appeal's guidance in *Shanmugarajah v Canada (Minister of Employment and Immigration)*, 1992 CarswellNat 822, [1992] FCJ No 583 (CA) (QL) at paragraph 3, stating that "it is almost always foolhardy for a Board in a refugee case, where there is no general issue as to credibility, to make the assertion that the claimants had no subjective element in their fear." This guidance has been followed and reaffirmed in several cases from this Court (see e.g. *Camargo v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1434 at para 32; *Sukhu v Canada (Minister of Citizenship and Immigration)*, 2008 FC 427 at para 2; *Avila Rodriguez* at para 62). The basic insight emerging from these cases is broadly as follows: without disputing a claimant's credibility, it will be hard to prove that they lack a subjective fear of persecution.

[29] The Officer has not disputed Mr. Sahloul's credibility, and his narrative is presumed to be truthful (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, 1979 CanLII 4098 (FCA) at para 5). It is accordingly hard to understand why the various statements he provided to the Officer as to his fear of persecution do not establish the required subjective element.

[30] In this respect, I note that the Officer had the opportunity to personally interview Mr. Sahloul and his spouse Ms. Berem at the Canadian Embassy in Abu Dhabi. During this interview, Mr. Sahloul was at pains to explain that he was genuinely afraid of returning to Syria: "We always live in fear in the UAE… What should I do for my family?" He even mentioned that although he and his family live in relative safety within the UAE, "[it] doesn't mean we don't have a [sic] fear and anxiety."

[31] This last consideration speaks to a broader issue in the Officer's analysis: their unduly abstract treatment of fear. On this point, I reiterate that the administrative decision maker's task is to interpret provisions in a manner consistent with their text, context and purpose, applying its particular insight into the statutory scheme at issue (*Vavilov* at paras 115–124). Those entrusted with deciding the merits of asylum claims must therefore be attentive to the specific words enacted by Parliament in section 96 of the *Immigration and Refugee Protection Act* (SC 2001, c 27) [IRPA].

[32] The fear inherent to the refugee definition is not some abstract or generalized feeling. Rather, a plain reading of the relevant provision's text indicates the refugee's fear to be directed toward "persecution." A refugee may not necessarily live in a general state of panic or disquiet, but they must have "a well-founded fear <u>of persecution</u>" (emphasis added).

[33] Officers are not expected to conduct psychiatric evaluations of refugee claimants, or assess their relative degrees of anxiety and stress with respect to their predicament. They are, however, expected to evaluate the extent of a claimant's subjective fear of being persecuted in their country

of nationality. Behaviour is a relevant component of that evaluation, but that behaviour cannot be appreciated without due regard for the statutory framework in light of which it is evaluated.

[34] In this sense, the Officer erred when they failed to consider Mr. Sahloul's behaviour in specific relation to his claim of persecution in Syria, because they assumed that had Mr. Sahloul been subjectively afraid, he would have claimed asylum in one of the many other states he had visited over a lengthy period of time. In doing so, the Officer failed to consider that at no point did Mr. Sahloul return to Syria in the years since the events of 2012, and he never alleged a fear of persecution in the UAE. As he explained to the Officer, the fear and anxiety of his situation has to do with the precarity of his status within the UAE, and the implications of losing this status vis-à-vis Syria. Mr. Sahloul lives in the UAE on temporary status and has no right to remain there once his term as a pilot comes to a mandatory end. He does not have the right to remain in the UAE for an indeterminate period. Since he cannot return to Syria out of fear of persecution, and cannot remain in the UAE indeterminately, he has to eventually find refuge in a safe country.

[35] The only fact distinguishing Mr. Sahloul's situation from that of a "typical" refugee is that he is, relatively speaking, fortunate. He does not reside in the country where he fears persecution, even if his country of residence has not bestowed upon him the rights and obligations attached to the possession of nationality in that country, including a) the right to leave and return to the country of residence (UAE in this case); b) the right to work freely without restrictions; c) the right to study; and d) full access to social services in the country of residence (*Shamlou v Canada (Minister of Citizenship & Immigration)*, (1995), 1995 CanLII 19407 (FC), 103 FTR 241 at para 36 [*Shamlou*]; see also *Lauture v Canada (Citizenship and Immigration)*, 2023 FC 1121 at para 39).

[36] In the years since he fled Syria, Mr. Sahloul has had the rare benefit of time, which he has used to find a preferred country of asylum for him and his family. This degree of agency is not shared by all who seek asylum. But those who do have that relative power of choice cannot be faulted for taking the available time to use it.

[37] There are no doubt situations where biding one's time prior to a refugee claim is what makes most sense. Securing safe passage out of a dangerous situation may require planning and resources, which in turn require the time to make those plans and acquire those resources. Someone persecuted for their sexual orientation or gender identity may live a closeted life so as to avoid violence and hardship, whilst, in the meantime, researching and obtaining entry in their preferred state of refuge. The persecution is no less real, as well as the difficulty of leaving one's home. Fundamentally, the experience of flight is almost inevitably bound to carry some measure of fear and uncertainty—burdens both emotional and logistical. Refugees bear those burdens in different ways.

[38] In this case, it is worth reiterating that a reasonable decision is one that is justified in light of the facts, and the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at para 126). Before the Officer were Mr. Sahloul's uncontested narrative of the events in Syria, his various statements as to his fear of returning to Syria, the plain fact that he never once returned to Syria since the events of 2012, and cogent explanations as to why he did not immediately seek asylum in the countries he visited in the intervening years (the uncertainty of the refugee claims process in those states as compared with the current programs under which he applies in Canada).

Failing to account for these facts, or at least cogently explain why they do not affect the ultimate outcome, seriously undermines this Court's confidence in the result reached by the decision maker.

(2) The Legal Relevance of "Asylum Shopping"

[39] Throughout the Officer's interview with Mr. Sahloul, they expressed concern that he had been "asylum shopping" in the years since his departure from Syria.

[40] The Minister reiterates this concern on judicial review, arguing that "[asylum] shopping should not be allowed." On their submission, "[the] Geneva Convention [sic] exists for persons who require protection and not to assist persons who simply prefer asylum in one country over another."

[41] I respectfully disagree. The Officer's reliance on "asylum shopping" was unmoored from the ordinary meaning, context, or object and purpose of the Convention.

[42] I note that the Convention has been incorporated into Canadian law through the IRPA, and thus possesses the same force given to any other valid statute enacted by Parliament (*Mason* at paras 106–107; see also *International Air Transport Association v Canada (Transportation Agency)*, 2024 SCC 30 at para 93). As I have explained elsewhere, the interpretive methodology to be employed when construing a domestically incorporated international treaty essentially aligns with the modern principle of statutory interpretation as applied in Canadian courts (*Canada (National Revenue) v Shopify Inc*, 2025 FC 968 at para 130 [*Shopify*]). Understanding these principles of interpretation is important, because failure to consider "a key element of a statutory

provision's text, context or purpose" can render a decision unreasonable (*Vavilov* at para 122). Further, the Supreme Court of Canada's guidance is clear that "the Convention is 'determinative of how the IRPA must be interpreted and applied, in the absence of a contrary legislative intention'" (*Mason* at para 106, citing *de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 at para 87; see also *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at para 49).

[43] The interpretation of an international treaty that has been directly incorporated into Canadian law is governed by Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, 23 May 1969, Can TS 1980 No 37 (entered into force 27 January 1980, accession by Canada 14 October 1970) [Vienna Convention] (*Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 at para 11, citing *Thomson v Thomson*, 1994 CanLII 26 (SCC), [1994] 3 SCR 551 at 577–78 [*Thomson*] and *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (SCC), [1998] 1 SCR 982 at paras 51–52). These two provisions set out the general rule of interpretation in international law and provide guidance on supplementary means of interpretation to be used in certain cases.

[44] At the "ordinary meaning" stage of the analysis, Article 31 emphasizes that "the intention of the parties as expressed in the text is the best guide to their common intention" (James Crawford, *Brownlie's Principles of Public International Law*, 9th ed (Oxford: Oxford University Press, 2019) at 365 [Crawford]). The language of the treaty must also be interpreted in light of the rules of general international law in force at the time of its conclusion, and also in light of the contemporaneous meaning of terms (*Shopify* at para 131). This emphasis echoes the Supreme

Court of Canada's recent insistence on text as the "anchor of the interpretive exercise" and "the focus of interpretation," insofar as it reveals "the means chosen by the legislature to achieve its purposes" (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para 24, citing Mark Mancini, "The Purpose Error in the Modern Approach to Statutory Interpretation" (2022) 59 Alta L Rev 919 at 927, 930–931).

[45] The "context" stage of the analysis gives voice to the principle of "integration" in international law, according to which the meaning emerges in the context of the treaty as a whole (including the text, its preamble, and annexes, and any agreement or instrument related to the treaty and drawn up in connection with its conclusion) (see Crawford at 367). This serves a quasi-identical function to the "context" stage of the modern approach to statutory interpretation (*Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at paras 21–24; see also *Thomson* at 577–578).

[46] The "object and purpose" component of the analysis guards against the risk of the other two stages "[becoming] rigid and unwieldly instruments that might force a preliminary choice of meaning rather than acting as a flexible guide" (Crawford at 366). This does not displace the Vienna Convention's explicitly textual approach, but rather ensures that the meaning gleaned from the text does not stray from the parties' intentions in concluding the agreement (*Shopify* at para 133). In this sense, the "object and purpose" stage of treaty interpretation resembles the Canadian requirement to give statutes "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" (see section 12 of the *Interpretation Act*, RSC 1985, c I-21).

[47] The text of the Convention creates the legal category of “refugee.” As with most other legal categories, it includes within its ambit persons who share certain characteristics, to the exclusion of persons who do not. The conferral of refugee protection is defined in subsection 95(1) of the IRPA, in reference to section 96, which directly incorporates Article 1A of the Convention into Canadian law.

[48] Taken at their ordinary meaning, the words of the Convention do not impose upon asylum seekers the requirement to submit a claim at the earliest opportunity, or in the nearest Convention member state. The text simply holds the term “refugee” to apply to “any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”

[49] Nor does the text of the IRPA suggest any such obligation. Though the wording of section 96 and Article 1A differ ever so slightly in form, the scope of protection offered under each is identical, and neither exclude asylum seekers who did not claim protection at the earliest opportunity or nearest location.

[50] A context-sensitive and purposive reading of the Convention supports this interpretation. In this respect, I note that the Convention’s preamble describes the grant of asylum as a shared responsibility among contracting states, and refugee protection as a goal that “cannot therefore be achieved without international co-operation.” Any state party to the Convention can serve as a

refugee's ultimate destination, regardless of its proximity to the state from which the claimant is fleeing.

[51] The objectives of the IRPA with respect to refugee protection are likewise consonant with this reading. Among these objectives, "in the first instance," is that of "saving lives and offering protection to the displaced and persecuted" (paragraph 3(2)(a) of the IRPA). Parliament enjoins this Court to construe and apply the IRPA in a manner that "complies with international human rights instruments to which Canada is signatory" (paragraph 3(3)(f) of the IRPA), and in particular the principle of non-refoulement, as codified in section 115 of the IRPA and enshrined in Article 33 of the Convention (*Mason* at paras 108, 117).

[52] Whether taken at face value or considered holistically, the Convention does not exclude from its scope of protection those "who simply prefer asylum in one country over another." On a direct reading of its preamble, the treaty's framers were rather concerned with "[assuring] refugees the widest possible exercise of [their] fundamental rights and freedoms." The restrictive interpretation of the Convention advanced by the Minister is not supported by the Convention itself.

[53] Beyond the Convention, Parliament has chosen to restrict eligibility for refugee status through a variety of means. Some of these restrictions take the form of exclusion, namely through section 98 of the IRPA, which directly incorporates Articles 1E and 1F of the Convention into Canadian law. Other restrictions take the form of inadmissibility, the grounds of which can be found in Part 1, Division 4 of the IRPA, namely for those who have committed crimes against

humanity, war crimes, or other acts of serious criminality. Parliament has also enacted paragraphs 101(1)(e) and 102(1)(a) of the IRPA, relating to "safe third country agreements," which set out certain grounds of ineligibility for refugee claimants transiting through a "safe third country" from claiming asylum in Canada. The Governor in Council even disposes of the power under section 5 of the IRPA to make regulations on the issue, including through the establishment of "safe third country agreements," of which only the United States is noted, and which precludes certain claimants transiting through that country from claiming asylum in Canada (see *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 at paras 1–2).

[54] These latter grounds of inadmissibility and ineligibility are not rooted in the Convention but exist as a reflection of Canadian policy concerns. Parliament is entitled to give voice to these concerns through law and could restrict the scope of asylum in a variety of ways. Yet none of the grounds inadmissibility or ineligibility noted above have the effect of excluding claimants who, for a host of reasons, might prefer to apply for refugee status in Canada as opposed to another state party to the Convention, even if that country is bordering the state from which the claimants seek protection. Moreover, none of the grounds enacted by Parliament have the effect of excluding claimants who had to transit through another safe country (except for those subject to a safe third country agreement), even if that state is also a Convention member. If Parliament, or the Governor in Council in the case of "safe third country agreements," favour such grounds of exclusion, nothing prevents them from legislating or adopting regulations to that effect. At this stage, Parliament and the Governor in Council have chosen not to do so (*Tesfaye v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 2040 at paras 40–42).

[55] Parliament expects the entities tasked with interpreting the law to have regard for the text, context, and purpose of the provisions with which they engage (*Vavilov* at para 118). This includes officers tasked with making determinations for Convention status abroad. Whatever form the interpretive exercise takes, the merits of their statutory construction must be consistent with the text, context, and purpose of section 96 of the IRPA (*Vavilov* at para 120).

[56] For the reasons set out above, this Court finds the Officer's reliance on "asylum shopping" to stray from the text, context, and purpose of section 96 of the IRPA, and thus is unreasonable.

[57] It is not necessary to address the issue of "asylum shopping" further, but some clarifying comments may be warranted in light of recent Federal Court jurisprudence on the issue, notably my learned colleague's decision in *Freeman v Canada (Citizenship and Immigration)*, 2024 FC 1839 [*Freeman*].

[58] To the extent that "asylum shopping" appears in Federal jurisprudence, it is essentially confined to conclusory statements following the application of Article 1E of the Convention. This ground of exclusion bars the Convention's application "to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country." In this context, "asylum shopping" has been taken to refer to "to circumstances where an individual seeks protection in one country, from alleged persecution, torture, or cruel and unusual punishment in another country (the home country), while entitled to status in a 'safe' country (the third country)" (*Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118 at para 1).

[59] In both name and concept, “asylum shopping” does not appear in any of the international human rights instruments to which Canada is a party (*Freeman* at para 62). Rather, it seems to have emerged in Canadian jurisprudence as a means of describing the conduct discouraged through the application of Article 1E (see e.g. *Exavier v Canada (Citizenship and Immigration)*, 2024 FC 1240 at para 26; *Babalola v Canada (Citizenship and Immigration)*, 2024 FC 1200 at para 17; *Matondo v Canada (Citizenship and Immigration)*, 2024 FC 374 at paras 21–22; *Balongelwa v Canada (Citizenship and Immigration)*, 2023 FC 1716 at para 36; *Hoxhaj v Canada (Citizenship and Immigration)*, 2023 FC 1271 at para 8). In other words, preventing “asylum shopping” is just the conclusory effect of the application of Article 1E or section 98 of the IRPA: a claimant who already benefits from the protection of a safe country cannot seek protection in Canada. That claimant must instead go through other valid channels if they wish to immigrate to this country.

[60] Article 1E of the Convention was not invoked against Mr. Sahloul. The Officer did not conclude, and the Minister does not allege, that he has the rights and obligations attached to the possession of nationality in the UAE. The Minister relies on the concept of “asylum shopping” in relation to Mr. Sahloul choosing Canada for protection, over the many other states that he visited in the years prior. The issue of “asylum shopping” was also central to the Officer’s concerns with his refugee claim.

[61] In my view, this concern was misplaced. Nothing in the IRPA imposes a burden on a refugee claimant to make their choice within a specific timeline, nor to seek refuge in the first country in which doing so would be possible. While a claimant’s behaviour is a relevant factor within the analysis, and the failure to seek protection in a timely manner may lead to a conclusion

that a claimant does not have a subjective fear, that behaviour does not automatically constitute "asylum shopping." Rather, "asylum shopping" is limited to situations whereby an individual seeks Canada's protection yet does not require it because they already have the rights and obligations of a national in a third state where they reside and are safe.

[62] Such a situation is adequately addressed through the application of Article 1E, which has not been deemed relevant to Mr. Sahloul's claim. Indeed, while he does reside in the UAE, there is no allegation that he enjoys a status substantially similar to nationals in UAE (see *Shamlou* at para 36).

[63] Like many asylum seekers, Mr. Sahloul simply made an attempt "to select the least uncertain among uncertain options" (*Freeman* at para 62).

V. Conclusion

[64] For the reasons above, this application for judicial review is granted.

[65] Neither party proposed a question for certification, nor does any such question arise here.

JUDGMENT in IMM-4793-24

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. The decision is set aside and the matter remitted for redetermination before a different decision maker.
3. There is no question of general importance for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4793-24
STYLE OF CAUSE:	SAID SAHLOUL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL (QUÉBEC)
DATE OF HEARING:	MAY 14, 2025
JUDGMENT AND REASONS:	RÉGIMBALD J.
DATED:	JULY 25, 2025

APPEARANCES:

Me Annabel E. Busbridge	FOR THE APPLICANT
Me Lisa Maziade	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bertrand, Deslauriers Avocats Barristers and Solicitors Montréal (Québec)	FOR THE APPLICANT
Attorney General of Canada Montréal (Québec)	FOR THE RESPONDENT