Federal Court  Cour fédérale

Date: 20250731

Docket: IMM-10629-24

Citation: 2025 FC 1342

Ottawa, Ontario, July 31, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

IFTIKHAR AHMED
RUBINA IFTIKHAR

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, husband and wife, are citizens of Pakistan who were found by the Refugee Protection Division [RPD] to be excluded from refugee protection pursuant to section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] due to their previous status in France.

[2] The Applicants bring this Application for judicial review of the RPD's May 24, 2024, decision citing a series of errors including that the RPD unreasonably concluded the Applicants had substantially similar rights as do French nationals in France.

[3] I am persuaded that the Application should be granted. My reasons follow.

II. Background

[4] The Applicants moved to France in 2007 and commenced refugee claims. In June 2008, France accepted the Applicants' claims, and in 2009 they received Refugee Resident Cards. The male Applicant's [Primary Applicant or PA] attempts to work in France were unsuccessful as he could not find employment in his preferred field. The female Applicant [Associate Applicant or AA] did not seek employment. The Applicants explored obtaining French citizenship but were not able to achieve the requisite score on the French language exam to do so.

[5] In August 2009, the PA accepted an offer from the United Nations Organization Stabilization Mission in the Democratic Republic of Congo [MONUSCO]. The Applicants then moved to the Democratic Republic of Congo [DRC], where they lived until August 2022.

[6] In March 2012, the Applicants were given the option to obtain Resident Cards in France, valid until 2019, which they obtained. Their status during this period is at the core of the issues raised in this Application for judicial review.

[7] In October 2012, the Applicants' first son was born in Pakistan. The AA chose to return to Pakistan for various reasons, including the PA's inability at the time to travel with her to France, that her family in France was not able to support her, and that she had the assistance of a sister in Pakistan. In January 2016, the Applicants' second son was born, also in Pakistan.

[8] Believing his contract with MONUSCO would end in 2019, the PA applied for a US and Canadian visitor's visa because the family would lose their ability to reside in the DRC should the PA lose his job. They obtained the US visas, but the Canadian application was denied.

[9] In 2022, the PA did loose his employment with MONUSCO. The family then travelled to the US and entered Canada, making a claim for protection at the point of entry.

III. Decision under review

[10] The RPD began its analysis by canvassing the law regarding exclusion under section 98 of the IRPA. The member first noted that the relevant test in determining whether a person is excluded is found at paragraph 28 of the Federal Court of Appeal's decision in *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118 [*Zeng*]:

> Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third

> country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.
>
> [Emphasis added.]

[11] Citing *Shamlou v Canada (Minister of Citizenship & Immigration)*, 1995 CanLII 19407 (FC) [*Shamlou*], the RPD acknowledged the rights afforded to an applicant in a third country must be substantially the same as those afforded to nationals of that country, and include the right to return to the country, the right to work without restrictions, the right to study, and the right to have access to social services (at paras 35-36). Further, the RPD recognized that the Minister of Citizenship and Immigration [Minister] held the onus to establish a *prima facie* case that the claimant held the above-outlined type of status.

[12] At the first stage of the *Zeng* analysis, the RPD found that the Applicants had Permanent Resident status in France; status that afforded them rights substantially similar to those of a French national. The RPD found the refugee protection entitled the Applicants to a 10-year residence period, renewable as of right and that the right to residency extended to include a refugee's spouse, and minor children. However, the RPD also found the Applicants no longer held that status.

[13] The RPD rejected the argument that the Applicants lost their status in France for reasons beyond their control. Instead, the RPD found that their status had been voluntarily lost because the Applicants' made no effort to renew the their status in 2019, that the PA privileged his career in voluntarily moving to the DRC knowing that he could not leave France for more than three consecutive years, and that the Applicants further complicated their situation by opting to have

their children in Pakistan as opposed to France. The Applicants' inability to bring their children to France was a product of the Applicants' choice to give birth to their children in Pakistan.

[14] The RPD further concluded the Applicants did not have a subjective fear of returning to Pakistan, finding that the Applicants had repeatedly reavailed to Pakistan.

[15] Lastly, the RPD found that the Applicants engaged in asylum shopping noting that despite losing status in France in 2019, the Applicants waited until 2022 to claim refugee status in Canada, after entering the United States, a factor that further undermined the genuineness of their fear.

IV. Issues and Standard of Review

[16] While the Applicants raise a number of issues, in my view, the RPD's treatment of the evidence relating to the Applicant's status in France is determinative and the only issue I need address.

[17] The Parties submit, and I agree, that the applicable standard of review is the presumptive standard of reasonableness. When reviewing a decision on the reasonableness standard, "a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]).

V. Analysis

[18] The Applicants submit that contrary to the RPD's findings they did not, at any point, have permanent resident status in France.

[19] Instead, they argue they were resident card holders in France. They had incorrectly believed and reported in their immigration documents that they were permanent residents but clarified this before the RPD. They submit that, as set out in their evidence and submissions before the RPD, they in fact possessed resident card holder status in France; a status they submit was granted to them in 2012 after they had moved to the DRC for the PA's work. Resident card holder status, they submit, had the consequence of terminating their status as refugees and imposed upon them the obligation not to reside outside of France for more than three consecutive years in order to renew that status. Having continually resided in the DRC from 2009 until 2022, the Applicants submit they were not in a position to renew their status in France.

[20] Relying on *Shamlou*, they argue that they only ever held a temporary status in France, that the status had lapsed under the 3-year rule and further that their resident cards had also officially expired in 2019. The Applicants did not, they argue, have a right to re-enter France nor did they have the right to bring their children into the country – both of which are indicators that they did not have rights substantially similar to a French national.

[21] The Respondent argues that the RPD reasonably concluded that the Minister had demonstrated on a *prima facie* basis that the Applicants had Permanent Resident status in France

and in turn reasonably concluded the Applicants had failed to actively take steps to maintain or renew that status.

[22] I am unable to conclude that the RPD in fact grappled with the Applicants' arguments to the effect that their status in France as resident card holders limited their rights to renew their status and re-enter France, and that there was no process that allowed them to reacquire status with any degree of certainty.

[23] Instead, the RPD appears to accept the Applicants held Permanent Resident status as of 2012 and does so without engaging with the Applicants' arguments and evidence to the effect that they never held Permanent Resident status in France. These arguments were advanced in the Applicants written submissions to the RPD and were central to the Applicants' position that they were not excluded from refugee protection pursuant to section 98 of the IRPA.

[24] The RPD's failure to engage with submissions that were central to the Applicants' position undermines the justification and transparency of the decision, both of which are key hallmarks of a reasonable decision (*Vavilov* at paras 127-128). On this basis alone, the Application will be granted.

[25] Having concluded the decision is unreasonable, it is not necessary that I address the Applicant's reliance on *Freeman v Canada (Citizenship and Immigration)*, 2024 FC 1839, a decision in which Justice Michael Battista concludes it is unreasonable to place an onus on a claimant to prove an inability to reacquire lost status in a third country when considering the

Application of Article 1E of the *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137, and article 98 of the IRPA. While I have not needed to address *Freemen* in considering this Application, it is a decision that may warrant the RPD's close consideration on the redetermination of this matter.

VI. Conclusion

[26] The Application is granted. The parties have not identified a question for certification, and none arises.

JUDGMENT IN IMM-10629-24

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

2. The matter is returned for redetermination by a different decision maker.

3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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