Federal Court  Cour fédérale

Date: 20251001

Docket: IMM-15041-24

Citation: 2025 FC 1596

Ottawa, Ontario, October 1, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

IBRAHIM ONAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Onay, is a citizen of Türkiye and a permanent resident of Canada. He was accepted by the Immigration and Refugee Board [the IRB] in a decision dated October 30, 2013, as a Convention refugee from the Turkish state based on his ethnicity and political opinion. He became a permanent resident of Canada in November 2015.

[2] On September 11, 2023, the Minister of Public Safety and Emergency Preparedness launched an application for the cessation of the Applicant's refugee status because he had

returned to Türkiye in 2017, 2019, 2020, and 2021 using a Turkish passport that he obtained and renewed while in Canada in 2016 and 2019. The IRB's Refugee Protection Board [the RPD] found that the Applicant had reavailed himself of Türkiye's protection pursuant to section 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA] and granted the Respondent's application, and rejecting the Applicant's claim for refugee protection by way of its decision made on July 24, 2024 [the Decision].

[3] The Applicant seeks judicial review of the Decision. The Applicant does not contest the facts. He also conceded at the hearing of his application that the RPD applied the correct statute law and jurisprudence. The Applicant's argument lies in the sufficiency of the RPD's reasons in light of directions given by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*]. He argues that the reasons set out in the Decision are inadequate and fail to show that the RPD panel grappled with the issues in the proceeding.

[4] I disagree with the Applicant. I conclude, after carefully considering his arguments, that he has not established that the Decision is unreasonable. The RPD's reasons are adequate, responsive, and uphold the culture of justification in administrative decisions while complying with the approach set out in *Camayo*.

[5] The Applicant's application is therefore dismissed for the reasons that follow.

I. **Background**

[6] The Applicant is a citizen of Türkiye and was born in 1982. He belongs to a Kurdish family that supports pro-Kurdish rights. The Applicant grew up in a rural village and primarily spoke Kurdish. He faced problems learning Turkish at school and was mistreated and humiliated by his teacher. The Applicant dropped out of school after the 5th grade. His family's pro-Kurdish support caused them and the Applicant to be mistreated and harassed by the Turkish authorities. The Applicant became a member of the pro-Kurdish HADEP (People's Democracy Party) in 2000 and was actively involved in their meetings and election campaigns. He also supported the pro-Kurdish parties that succeeded HADEP.

[7] The Applicant was detained without charge by the Turkish authorities in October 2000, after attending a pro-Kurdish protest. He was later released, decided not to renew his HADEP membership, and moved to Istanbul.

[8] The Applicant nevertheless continued his political activities in Istanbul and was detained in March 2002 on his way to Newroz celebrations. He was later released without charge.

[9] The Applicant completed his compulsory military service between September 2002 and November 2003. He returned to Istanbul and was detained for a third time in July 2005 while singing Kurdish songs with other Kurdish workers at a construction site. Instead of protecting the Applicant from Turkish nationalists who confronted him for singing in Kurdish, the police detained him for one night.

[10] The Applicant was detained by Turkish police for a fourth and final time in February 2009, after he attended a Kurdish language protest. The Applicant was identified during an identity check and detained. He was stripped, beaten, and asked to provide information on other Kurdish people and their political activities. The Applicant was then released without charge.

[11] The Applicant left Türkiye in November 2012, was accepted in Canada as a convention refugee in October 2013 and became a permanent resident in November 2015.

[12] The Applicant renewed his Turkish passport twice while in Canada and used his Turkish passport for travel to Türkiye and Iran on multiple occasions between 2017 and 2021. He initially renewed his Turkish passport in 2016 and, after losing it, renewed it again in 2019.

[13] The Applicant first returned to Türkiye on his Turkish passport in or about January 2017 and stayed for approximately three months to visit and care for his ill mother. He testified before the RPD that, although he had siblings in Türkiye who also cared for his mother and he could have hired help for her without travelling to Türkiye, it was important for him to travel there and care for her himself. He did not take any significant precautionary measures when he was in Türkiye and in fact presented himself to Turkish authorities in order to enter and exit the country. He kept a low profile while he was there.

[14] On April 3, 2017, when he returned to Canada, Canadian immigration officers cautioned the Applicant that returning to Türkiye could cause him to lose refugee protection. The

contemporaneous Global Case Management System [GCMS] notes produced before the RPD read as follows:

> "ON 03 APRIL 2017. SUBJECT ARRIVED AT TPIA T1 ON AC54 FROM ISTANBUL AFTER AVAILING HIMSELF TO TURKEY, A COUNTRY, WHERE HE SOUGHT PROTECTION FROM AS A REFUGEE.
>
> SUBJECT BECAME A PR ON O6NOV2016 UNDER *CR8* CATEGORY.
>
> SUBJECT WAS EXPLICITLY COUNSELLED THAT HE IS NOT ALLOWED TO RETURN TO TURKEY AS HE FEARS FOR HIS LIFE FROM THAT COUNTRY.
>
> SUBJECT THAN STATED THAT HE KNOWS MANY PEOPLE WHO BECAME A PR UNDER SAME CATEGORY, WHO RETURNS TO TURKEY WITOUT ANY PROBLEMS OR ISSUES.
>
> SUBJECT HAS BEEN FULLY COUNSELLED THAT NEXT TIME HE GOES TO TURKEY, THERE WILL BE POSSIBLITY OF CESSATION OF HIS PR STATUS AS HE HAS DEMONTRATED THAT HE NO LONGER HAS FEAR OF RETURN TO HIS COUNTRY OF BIRTH."

[15] At the hearing for the proceeding before this Court, the Applicant's counsel argued that the Applicant has limited English comprehension, and that no interpreter was present when Canadian immigration officers cautioned him on April 3, 2017. The record before the Court contains no evidence that the Applicant failed to understand the caution, or that the GCMS notes, including the summary of the Applicant's statements, are inaccurate or unreliable.

[16] In late 2019, the Applicant traveled to Iran via Türkiye to be engaged for marriage, again using his Turkish passport. On his return trip, during a layover in Istanbul, he left the airport for a few hours to visit his father's grave before continuing to Canada. He testified before the RPD

that there were no direct flights from Canada to Iran and that he did not consider traveling via a country other than Türkiye.

[17] The Applicant was again cautioned by Canadian immigration officials upon his return to Canada. The GCMS notes dated December 4, 2019, produced before the RPD read as follow:

> "Subject arrived at TPIA – T1 off of TK 17 and stated he is coming from a trip to Iran, where he went to get married. He stated he stayed 1 month in Iran.
>
> After further questioning subject stated he went to Turkey to visit his fathers grave. He stated that he missed him so he went only to visit the grave. He was asked if he was informed on his previous trip that he may not return to Turkey and stated you can check…I only went to visit my fathers grave.
>
> Subject was again counselled that his PR status can be taken away for reavailing himself to his country of persecution. He confirmed that he understands.
>
> Subject has acquired a Turkish ppt which he is travelling on #U13636960 issued on 23NOV2016, expiry 07MAR2024."

[18] In December 2020, the Applicant again traveled to Iran via Türkiye and married his fiancée. He and his wife then travelled from Iran to Türkiye in early 2021 and spent 20 days in Türkiye to meet his family before returning to Iran. He later re-entered Türkiye to travel to Canada but had to wait a few days in Türkiye because a Canadian document he was travelling with had expired. The Applicant travelled on his Turkish passport for these trips and interacted with Turkish state authorities during his entries into and exits out of Türkiye, and while awaiting the replacement document from Canada. The Applicant returned to Canada in early April 2021.

[19] The GCMS notes produced before the IRB panel in connection with the Applicant's December 2020 to early 2021 trip reads as follow:

> "Client arrived on 07 April 2021 at LBPIA off TK 017 from Istanbul, Turkey. Client has been absent from Canada since on or around 03 December 2020, having travelled to Iran and Turkey. Client entered/exited the Republic of Turkey on three separate occasions since leaving Canada on 03 December 2020 (03-Dec-2020 until 03-Dec-2020; 01-Jan-2021 until 25-Jan-2021; 20-Mar-2021 until 07-Apr- 2021).
>
> Information has been forwarded to GTEC Hearings & Appeals."

[20] The Respondent launched an Application pursuant to section 108(1)(a) of the IRPA in September 2023 for an order ceasing the refugee protection that had been previously granted to the Applicant on the basis that the Applicant had voluntarily reavailed himself of the protection of his country of nationality, Türkiye.

[21] The matter proceeded to a hearing before an RPD panel in June 2024. The Applicant participated in the hearing and testified before the RPD panel with the assistance of an interpreter. The Decision was delivered shortly after the hearing. The Decision found that the Applicant had reavailed himself of Türkiye's protection within the meaning of subsection 108(1)(a) of the IRPA. As a result, the Applicant's claim for refugee protection was rejected and he lost his status as a permanent resident.

II. **The Decision**

[22] The RPD panel considered the requirements of section 108(1)(a) of the IRPA and the evidence before it. Relying on *Camayo*, the RPD noted that it was required to inquire into

whether the Applicant had acted voluntarily in returning to Türkiye, whether he intended, by his actions, to reavail himself of the protection of Türkiye, and whether he actually obtained Türkiye's protection. The RPD noted that these three elements are cumulative and conjunctive, and that if even one criterion is not met, then refugee status cannot be deemed ceased.

[23] The RPD acknowledged that the cessation of refugee status has particularly harsh consequences on a person who has been granted refugee and permanent resident status and described those consequences in its decision.

[24] Having considered the evidence before it in light of the applicable statute and jurisprudence, the RPD concluded that the Applicant had voluntarily reavailed himself of the protection of Türkiye and had waived Canada's surrogate protection through his obtention and renewal of a Turkish passport and his travels on that passport to Türkiye in 2017, 2019, 2020, and 2021.

[25] The RPD noted that the Applicant conceded that he obtained and renewed his Turkish passport and had traveled to Türkiye on that passport. The RPD reasoned based on the leading jurisprudence that these two actions triggered a rebuttable presumption of intent to reavail himself of Türkiye's protection, and a strong presumption, although rebuttable, that the Applicant obtained Türkiye's actual protection when using his Turkish passport to travel to Türkiye and Iran (*Canada (Citizenship and Immigration) v Safi*, 2022 FC 1125 at para 33; *Camayo* at para 63).

[26] The RPD also noted that the Applicant argued that his returns to Türkiye were for compelling or exceptional reasons and that he did not intend to reavail himself of Türkiye's protection. The RPD then went on to consider in some detail whether the Applicant had returned to Türkiye on his Turkish passport voluntarily with the intent to reavail himself of Türkiye's protection, and whether he actually obtained Türkiye's protection.

[27] The RPD noted that, in light of Federal Court and Federal Court of Appeal jurisprudence, visiting a sick family member may or may not be a compelling or exceptional circumstance, depending on the facts of the matter. The RPD considered the facts of each trip undertaken by the Applicant.

[28] The RPD noted that the Applicant's three-month return to Türkiye in 2017 to visit his ill mother was undertaken while he had siblings who also cared for his mother and while he was aware that he could have hired help to care for her. While it was important to the Applicant to see his mother and to care for her himself, the RPD found that the 2017 trip was voluntary and not an exceptional circumstance.

[29] The RPD also found that the Applicant's 2019 visit to his father's grave in Türkiye, during his transit from Iran to Canada, was voluntary.

[30] The Applicant's third trip, which began in December 2020 and continued into April 2021, was undertaken to get married in Iran and to visit family in Türkiye. The Applicant entered and left Türkiye several times on this trip and took his bride to Türkiye for 20 days to meet his

family. There is no evidence that any of his visits to Türkiye during this trip were involuntary or the result of exceptional circumstances.

[31] The RPD found that all three of the Applicant's trips to Türkiye were voluntary.

[32] The RPD then considered whether the Applicant rebutted the relevant presumptions, specifically:

a) the presumption of intent to reavail himself of Türkiye's protection because he obtained and renewed a Turkish passport; and,
b) the presumption of actual reavailment of Türkiye's protection while travelling on his Turkish passport.

[33] The RPD set out that it must consider a number of factors as described by the Federal Court of Appeal in *Camayo*, in order to assess whether the Applicant had rebutted the presumption of intention. The RPD observed that the factors it had to consider included, but were not limited to, the Applicant's age, education, and level of sophistication; the identity of the agent of persecution, and whether applying for a passport or traveling to the country will expose him to the agent of persecution; what the Applicant did while in his home country, and what precautionary measures were taken, if any; and whether his actions are indicative of a lack of subjective fear of persecution. The RPD observed that it must also consider what the Applicant knew – not what he should have known – with respect to the immigration consequences of reavailment.

[34] The RPD considered:

a) at paragraphs 6 to 10 of the Decision, the content of subsection 108(1) of the IRPA and how it should be interpreted in light of its text, context, and purpose;

b) at paragraph 10 of the Decision, the provisions of international conventions such as the Refugee Convention and the guidelines set out in the UNHCR Refugee Handbook;

c) at paragraph 11 of the Decision, the severe consequences of a cessation Order on the Applicant;

d) at paragraphs 3, 4, and 25, as well as generally throughout the Decision, the parties' submissions;

e) at paragraphs 25 to 28 of the Decision, the Applicant's knowledge of the cessation provisions and of the possibility of the cessation of his refugee status;

f) at paragraphs 22, 24, and 27 of the Decision, the Applicant's age, education level and level of sophistication, and personal characteristics that may impact his level sophistication;

g) at paragraphs 2, 22, 33, and 35 of the Decision, the identity of the Applicant's agents of persecution and whether the Applicant disclosed his whereabouts to the agents of persecution by applying for a Turkish passport and entering Türkiye;

h) at paragraphs 4 and 23 of the Decision, that the Applicant conceded that he voluntarily renewed his Turkish passport on two occasions, once in 2017 and again in 2019, and travelled to Türkiye and Iran while using his Turkish passport in 2017, 2019, 2020 and 2021;

i) at paragraphs 15 to 18, and 23 of the Decision, that the Applicant used his Turkish passport for travel and that he travelled to Türkiye and Iran on several occasions by using his Turkish passport;

j) at paragraphs 15 to 18, 23, and 25 of the Decision, the purpose of the Applicant's travel to Türkiye and Iran on his Turkish passport and that those purposes were all voluntary;

k) at paragraphs 15 to 18 of the Decision, the frequency and duration of the Applicant's travel on his Turkish passport;

l) at paragraphs 15 to 18, 22, and 24 of the Decision, what the Applicant did while in Türkiye, including the absence of significant precautions taken by the Applicant while visiting Türkiye;

m) at paragraphs 22, 24, 25, 27 and 33 of the Decision, whether the Applicant's actions demonstrate that he no longer has a subjective fear of persecution in Türkiye; and

n) at paragraphs 23, 27, and 28 of the Decision, whether the Applicant had otherwise led evidence to rebut the presumption of reavailment.

[35] Having considered the factors relevant to the Applicant's intention, the RPD reasoned and determined as follows in its Decision:

> [27] The presumption of intention to reavail is rebuttable: "it comes down to the number of shekels, minas and talents needed to tip the historic scales" (*Ahmad v. Canada (Citizenship and Immigration)*, 2023 FC 8, para. 33). In the one pan of the scale: the Respondent is relatively unsophisticated. Some of his trips to Türkiye were very brief, including his visit to his father's grave. He believed that his status in Canada might afford him some protection in Türkiye. In the other pan of the scale: the Respondent alleges a fear of the Turkish authorities, and yet he repeatedly presented himself to those very authorities each time he entered and left the country. He was specifically warned after his first trip not to return to Türkiye and yet he did so anyway. He was warned

> again after his second trip, including a specific reference to cessation proceedings, and yet he returned anyway.
>
> [28] The panel finds that the factors above weigh against the Respondent. Despite clear warnings from Canadian immigration officials, he continued to travel to Türkiye, apparently because he knew others who did the same without consequence. The panel finds that the Respondent has not rebutted the presumption of intention to reavail himself of Türkiye's protection and that the Minister has therefore established such intention.

[36] Having found that the Applicant had returned to Türkiye voluntarily and that he was unable to rebut the presumption of intention to reavail himself of the protection of Türkiye when he obtained and renewed his Turkish passport, the RPD turned its mind to whether the Applicant actually obtained Türkiye's protection while travelling on his Turkish passport.

[37] The RPD noted that there is a rebuttable presumption that the Applicant obtained the actual protection of Türkiye when he travelled on his Turkish passport. The RPD noted that the presumption is particularly strong when the refugee traveled to his country of nationality with the passport issued by that country (*Hamid v Canada (Citizenship and Immigration),* 2022 FC 1541 at para 15; *Seid v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1167 at para 14), as is the case here. The RPD held that the Applicant had not rebutted the presumption that arose when he travelled to Türkiye voluntarily on the Turkish passport he obtained after being granted refugee status in Canada.

[38] The RPD found that the Applicant had not rebutted the operative presumptions, and that the Respondent had met its burden of establishing voluntariness, intent, and actual reavailment.

III. **The Issue**

[39] The sole issue in this proceeding is whether the Decision is reasonable. The parties agree, and I with them, that the applicable standard of review is the reasonableness standard discussed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[40] Pursuant to *Vavilov*, a reasonableness review requires the reviewing court to assess the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints (*Vavilov* at para 85).

[41] Formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given (*Vavilov* at para 103). They are not to be assessed against a standard of perfection (*Vavilov* at para 91). That the reasons by the administrative decision maker do not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred is not on its own a basis to set the decision aside (*Vavilov* at para 91).

[42] As set out in *Vavilov* at paragraph 92:

> Administrative decision makers cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge — nor will it always be necessary or even useful for them to do so. Instead, the concepts and language employed by administrative decision makers will often be highly specific to their fields of experience and expertise, and this may impact both the form and content of their reasons. These differences are not necessarily a sign of an unreasonable decision — indeed, they may be indicative of a decision maker's strength within its particular and specialized domain. "Administrative justice" will not always look like "judicial justice", and reviewing courts must remain acutely aware of that fact.

[43] The onus is on the Applicant to demonstrate that "any shortcomings or flaws … are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). A failure to do so leads to the dismissal of the application for judicial review.

[44] Finally, absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker (*Vavilov* at para 125).

IV. **The Legal Constraints**

[45] Reavailment is contemplated by subsection 108(1) of the IRPA and its consequences are set out in paragraphs 46(1) and 40.1(1) of the IPRA as follows:

Cessation of Refugee Protection	**Perte de l'asile**
Rejection	**Rejet**
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:	**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) the person has voluntarily reavailed themself of the protection of their country of nationality;	**a)** il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
(b) the person has voluntarily reacquired their nationality;	**b)** il recouvre volontairement sa nationalité;
(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	**c)** il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
(d) the person has voluntarily become re-established in the country	**d)** il retourne volontairement s'établir dans le pays qu'il a

that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or

quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;

(e) the reasons for which the person sought refugee protection have ceased to exist.

e) les raisons qui lui ont fait demander l'asile n'existent plus.

Cessation of refugee protection

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

Perte de l'asile

(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de la protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

Effect of decision

(3) If the application is allowed, the claim of the person is deemed to be rejected.

Effet de la décision

(3) Le constat est assimilé au rejet de la demande d'asile.

Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

Exception

(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

Loss of Status

Perte du statut

Permanent resident

46 (1) A person loses permanent resident status

Résident permanent

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

(a) when they become a Canadian citizen;

a) l'obtention de la citoyenneté canadienne;

(b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;

b) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;

(c) when a removal order made against them comes into force;

c) la prise d'effet de la mesure de renvoi;

(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);

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;

(d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination to vacate a decision to allow their application for protection; or

d) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou celle d'accorder la demande de protection;

(e) on approval by an officer of their application to renounce their permanent resident status.

e) l'acceptation par un agent de la demande de renonciation au statut de résident permanent.

Cessation of refugee protection — foreign national

Perte de l'asile — étranger

40.1 (1) A foreign national is inadmissible on a final determination under subsection 108(2) that their refugee protection has ceased.

40.1 (1) La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant la perte de l'asile d'un étranger emporte son interdiction de territoire.

Cessation of refugee protection — permanent resident

Perte de l'asile — résident permanent

(2) A permanent resident is inadmissible on a final determination that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d).

(2) 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 d'un résident permanent emporte son interdiction de territoire.

[46] The leading decision on the interpretation and application of subsection 108(1) is the Federal Court of Appeal's decision in *Camayo*. *Camayo* stands for several propositions applicable here.

[47] The first is that the serious impact of a decision to cease refugee status increases the duty on the RPD to explain its decision (*Camayo* at para 51).

[48] Second, because a statute is involved, the administrative decision maker must deal with any statutory interpretation issues that arise by examining the text, context, and purpose of the relevant provisions. However, the RPD's analysis need not be the sort of formalistic statutory interpretation exercise that a court would perform (*Camayo* at para 53). Due allowance must be made for the fact that Parliament has given the responsibility to interpret the statutory provisions to an administrative decision maker, not to a court, and certainly not to the reviewing court (*Camayo* at para 53).

[49] Third, the leading judicial interpretations of subsection 108(1) of the IRPA, set out in Federal Court decisions that are relevant to the case, should be considered and assessed by the RPD, with supporting reasoning (*Camayo* at para 56).

[50] Fourth, the RPD must carry out an individualized assessment of all the evidence before it, including the evidence adduced by the refugee as to their subjective intent and actual knowledge, in determining whether the presumption of reavailment has been rebutted (*Camayo* at para 66). In this regard, the RPD should consider that, by travelling on a passport, the refugee subjectively

intended to depend on the protection of the issuing state (*Camayo* at para 68). However, the decision maker must consider the refugee's lack of subjective knowledge that returning to their home country on a home country passport may constitute reavailment, despite that it is not determinative (*Camayo* at paras 68 and 70).

[51] The Federal Court of Appeal directs the RPD to consider a minimum of 15 factors, weigh all related evidence, and treat no single factor as necessarily dispositive in determining whether a refugee's actions rebut the presumption of reavailment (*Camayo* at para 84).

[52] The RPD's failure to follow the Federal Court of Appeal's direction in *Camayo* may, depending on the manner in which the decision under review is crafted, lead to a finding that the decision is unreasonable.

V. **Arguments and Analysis**

A. ***The Applicant's Arguments***

[53] The Applicant argues that the RPD was incorrect in its determination that his returns to Türkiye in 2017, 2019, and 2020/2021 were voluntary. He relies on paragraph 125 of the UNHCR Handbook to argue that visiting his ill mother, visiting his father's grave, and introducing his wife to his family are compelling reasons and should be accepted as exceptional circumstances that rebut the presumption of reavailment.

[54] The Applicant also argues that the RPD's analysis of his subjective intention was unreasonable because he only made brief trips to Türkiye, mostly at the airport during transit to Iran to visit his fiancée (now wife), and to introduce his new wife to his family in Türkiye.

[55] The Applicant argues that he did not know that applying for a Turkish passport or even entering an airport in Türkiye could jeopardize his refugee status in Canada. He argues that, following *Camayo*, the RPD was required to consider whether he subjectively intended to depend on Türkiye's protections when travelling on a Turkish passport, which involves considering whether he had actual knowledge of the consequences of reavailment (*Camayo* at para 68; *Li v Canada (Citizenship and Immigration),* 2023 FC 792 at para 34).

[56] The Applicant argues that he testified before the RPD that he believed that he would not lose his status since he was a permanent resident of Canada and that he did not know that his refugee status could be jeopardized by stopping in Türkiye during transit.

[57] The Applicant also argues that the RPD failed to properly conduct an independent assessment of his intention and failed to appreciate his lack of sophistication, his 5th grade education, and his inability to comprehend English. In addition, the Applicant argues that the RPD failed to consider all 15 of the factors identified by the Federal Court of Appeal at paragraph 84 of *Camayo* and that this failure alone makes the Decision unreasonable.

[58] The Applicant argues that the RPD unreasonably gave too much weight to his concessions that Canadian immigration officials warned him his refugee status could be at risk

upon his 2017 and 2019 returns to Canada. He argues that the RPD failed to recognize that he has a limited ability to speak and understand English and that he participated in the hearing that led to the Decision with the assistance of an interpreter. He also argues that there is no evidence that an interpreter was present or that the Applicant understood what the Canadian officers said when he was warned upon his re-entries into Canada. The Applicant also notes that there is no mention in the Decision of the Applicant's lack of fluency in English.

[59] The Applicant argues that he continued to fear returning to Türkiye despite returning to Türkiye on several occasions. The Applicant argues that the RPD failed to take into account precautions that he took while in Türkiye, specifically, that he kept a low profile and did not involve himself in pro-Kurdish or political activities while he was there.

[60] As to actual reavailment, the Applicant argues that the RPD failed to consider non-state actors, such as Turkish nationalists, and the Turkish state's failure or unwillingness to protect him from these groups. He alleged that he continued to fear the Turkish state as well as non-state actors including Turkish nationalists, and MHP (Nationalist Movement Party) supporters.

[61] Finally, the Applicant argues that he did not enter Türkiye for the purpose of returning there. He entered Türkiye to take care of his ailing mother, to visit his father's grave while in transit from Iran, and to introduce his Iranian wife to his family still residing in Türkiye. He argues that he did not actually reavail himself of Türkiye's protection.

B. ***The Respondent's Arguments***

[62] The Respondent argues that the RPD engaged closely with the evidence and directed itself according to the applicable jurisprudence, including *Camayo*, and that the Applicant has not established that the Decision suffers from any serious shortcoming that makes it unreasonable.

[63] The Respondent argues that the RPD's analysis primarily relied on the Applicant's repeated reavailment after explicit warnings about the consequences of traveling to Türkiye on a Turkish passport. The Respondent argues that the RPD reasonably concluded that the Applicant failed to rebut the presumption of reavailment in the circumstances.

[64] The Respondent argues the RPD considered but rejected the Applicant's submissions in light of jurisprudence on the presumptions of intention and actual reavailment of protection, and that the Applicant now asks the Court to reweigh the evidence and substitute a different result.

[65] The Respondent also argues that the existence of a reason to return to one's country of origin does not necessarily alter the voluntariness of the act of returning. The weight to be given to family circumstances, and particularly whether they are "exceptional", is a factual matter to be considered by the RPD (*Norouzi v Canada (Immigration, Refugees and Citizenship),* 2017 FC 368 at para 21; *Anvar v Canada (Citizenship and Immigration),* 2023 FC 1194 at paras 31-32). The Respondent argues that the RPD weighed the evidence and reasonably found that it did not rebut the presumption of voluntariness. The Respondent argues that this was entirely within the RPD's discretion as trier of fact and is not unreasonable.

[66] With respect the Applicant's intention, the Respondent argues that the Applicant's actions triggered the application of the presumptions of reavailment and of actual protection and that the evidence led was not sufficient to rebut the presumptions that applied. The Respondent argues that, at paragraph 28 of the Decision, the RPD considered and rejected the Applicant's testimony about his knowledge of immigration consequences. The Respondent argues that the RPD reasonably concluded that the Applicant's level of subjective knowledge did not rebut the presumption of reavailment.

[67] The Respondent argues that the consequences of reavailment were specifically explained to the Applicant on several occasions and that he had actual knowledge of the consequences of his actions as a result. The Respondent argues that the RPD did not err by declining to treat an applicant's claimed lack of subjective intent as determinative. Weighing subjective knowledge, actual knowledge, and the other *Camayo* factors in a multi-factor analysis as required by *Camayo*, may lead to a reasonable decision (*Saha v Canada (Citizenship and Immigration*), 2023 FC 1553 at para 30; *Aslam v Canada (Citizenship and Immigration)*, 2024 FC 4 at para 35).

[68] Finally, as to actual reavailment, the Respondent argues that the RPD properly noted that the Applicant "entered Türkiye on four different occasions, each requiring interaction with Turkish government authorities. He was even stopped for a document check during his first visit but was not detained". The Respondent argues that the Applicant was not in hiding from Turkish authorities; rather, he repeatedly interacted with them without any issues. Additionally, the Applicant relied on Türkiye's diplomatic protection to travel to Iran. The Respondent argues that the RPD reasonably found that this supported a finding of actual reavailment.

C. ***The Decision is Reasonable***

[69] The parties do not dispute the facts or the RPD's identification of the applicable legal framework under paragraph 108(1)(a) of the IRPA for assessing whether the Applicant intended to reavail himself of, and voluntarily did reavail himself of, Türkiye's protection.

[70] The Decision takes into account three significant factual concessions made by the Applicant.

[71] First, the Applicant's concedes that he voluntarily obtained and renewed his Turkish passport on two occasions while in Canada. This concession triggers a legal presumption that the Applicant intended to reavail himself of Türkiye's diplomatic protection, which the Applicant must then rebut by way of admissible evidence, failing which, he will be held to have intentionally reavailed himself of his home country's protection (*Camayo* at paras 63 to 65).

[72] Second, the Applicant concedes that he repeatedly used his Turkish passport to travel to Türkiye, despite the state of Türkiye being his agent of persecution. This fact triggers a strong but rebuttable presumption that the Applicant actually obtained the protection of Türkiye when he travelled on his Turkish passport to enter Türkiye and Iran, a third country (*Camayo* at para 84).

[73] Third, the Applicant concedes that, upon his return to Canada in 2017 and again in 2019, Canadian immigration officials warned him that travelling to Türkiye could lead to cessation of

his refugee status and loss of his permanent resident status. The Applicant, without supporting evidence, claims that he could not understand the English warnings. The Respondent's objective evidence before the RPD was that officials warned the Applicant, and that he replied that many people in his category had become permanent residents without issues after returning from Türkiye. It was open to the RPD to prefer and give greater weight to the objective documentary evidence before it, which showed that the Applicant had been warned that if he travelled to Türkiye again after 2017 his refugee status was at risk of being ceased.

(1) **Voluntariness**

[74] The RPD carefully considered the evidence before it with respect to the Applicant's trips to Türkiye to determine whether they were voluntary or exceptional and, if exceptional, whether they should not weigh against him in assessing voluntariness. The RPD noted the Applicant's evidence that it was important to him to visit his mother while she was ill, while also noting that there was no requirement for him to attend by his mother's side. He had siblings in Türkiye available to assist his mother and he otherwise could have hired someone local to provide her care.

[75] The Court understands the Applicant's desire to visit his ill mother. However, the Applicant's trip to Türkiye on a Turkish passport can reasonably be considered a voluntary act because it was not required, there were other options for his mother's care, and he stayed abroad for three months. The RPD reasonably weighed the evidence before it in finding that the Applicant travelled to Türkiye voluntarily in 2017 and concluded, with jurisprudential support (*Jing v Canada (Citizenship and Immigration),* 2019 FC 104 at para 24; *Zhou v Canada*

(Citizenship and Immigration), 2024 FC 895 at para 24), that the Applicant's travel to Türkiye was voluntary.

[76] Even if the Applicant did not view his 2019 trip as travel to Türkiye, the record shows that he voluntarily entered Türkiye on his Turkish passport, left Istanbul Airport to visit his father's grave, and then returned to the airport to continue to Canada using the same passport. The RPD considered the evidence before it regarding the Applicant's travel to Türkiye in 2019 and came to the reasonable conclusion that the Applicant had entered Türkiye, and not only its airport, voluntarily. The RPD's conclusion that the Applicant's 2019 travel to Türkiye was voluntary is justified and reasonable.

[77] Finally, the RPD found that the Applicant's multiple entries into and exits from Türkiye in 2020 and early 2021, including a 20-day visit to introduce his spouse to his family, were voluntary, and the record supports that finding.

[78] The RPD reasonably found that the Applicant, who had earlier fled Türkiye in fear, nonetheless voluntarily returned in 2017, 2019, 2020, and 2021.

(2) **Intention to Reavail**

[79] The Applicant's voluntary obtention and renewal of his Turkish passport set up a legal presumption that he intended to reavail himself of Türkiye's protection. The question here is whether the RPD reasonably assessed the Applicant's evidence in accordance with the *Camayo* factors in concluding that he failed to rebut the presumption triggered by his conduct.

[80] The RPD noted that it was required to consider a series of factors identified at paragraph 84 of *Camayo* in assessing whether the Applicant had the requisite intention to reavail. The factors, each of which are identified in the RPD's Decision at paragraph 34, above, are all important but none is determinative on its own. As noted by the RPD, it must also consider what the Applicant knew, not what he should have known, with respect to the consequences of reavailment.

[81] The RPD considered the totality of the evidence, noted the Applicant's relative unsophistication, that some of his trips to Türkiye were very brief, and that the Applicant testified that he believed that his status in Canada as a refugee and a permanent residence might afford him some protection while he was in Türkiye and travelling on a Turkish passport. The RPD also considered that Canadian immigration officials had warned the Applicant that his status in Canada was at risk if he continued to travel to Türkiye.

[82] As discussed above in connection with the Applicant's third concession before the RPD, the RPD weighed the evidence before it and found that the Applicant had not rebutted the legal presumption and that he continued to travel to Türkiye despite being warned of the potential consequences. The RPD's conclusion is justified by the evidence before it and followed a logical and coherent path of reasoning that took into account the relevant legal constraints. The RPD's decision on the Applicant's intention to reavail is reasonable.

(3) **Actual Reavailment**

[83] The RPD considered the evidence before it, as well the parties' submissions, and found that the Applicant had actually reavailed himself of Türkiye's protection.

[84] The RPD considered the jurisprudence from this Court and from the Federal Court of Appeal with respect to the issue of actual reavailment within the meaning of section 108(1)(a) of the IRPA. The RPD set out its reasoning and consideration of the evidence before it as follows:

> [33] Despite his alleged fear of the Turkish authorities, the Respondent twice engaged with them to renew his passport. Despite his alleged fear, he entered Türkiye on four different occasions, each requiring interaction with Turkish government authorities. He was even stopped for a document check during his first visit but was not detained. While he had difficulty leaving the country during his last visit, this was only because his Canadian permanent resident card had expired. He had the new card sent to him in Türkiye by a relative in Canada and was able to leave the country without incident.
>
> [34] The Respondent also relied on his Turkish passport to travel to Iran, knowing that the document would facilitate visa-free entry to that country. In doing so, he relied upon the diplomatic protection of Türkiye and the arrangements between that country and Iran.
>
> [35] While in Türkiye, the Respondent kept a low profile. However, he was not in hiding from the authorities, as the government knew that he had entered the country.
>
> [36] The panel finds that the Respondent actually obtained the diplomatic protection of Türkiye.

[85] The reasoning shows that the RPD considered the evidence before it and concluded that the Applicant's conduct reflected the actual obtention of Türkiye's diplomatic protection and that such conduct constitutes actual reavailment. The RPD's reasoning and conclusion as to actual reavailment are justified and reasonable.

(4) **The Agent of Persecution**

[86] The Applicant argued that the RPD's decision is unreasonable because it did not grapple with the Applicant's fear of non-state actors such as Turkish nationalists, nor the Turkish state's failure or unwillingness to protect the Applicant from these groups. The Applicant argues that he alleged fearing the Turkish state as well as and non-state actors including Turkish nationalists, MHP (Nationalist Movement Party) supporters.

[87] The Applicant is correct that the RPD did not grapple with the issue of non-state actors in its Decision. In my view, the RPD was not required to grapple with non-state actors considering that reavailment in this case was considered in connection with the Applicant's recognized agent of persecution rather that who the Applicant had alleged was his agent of persecution in his Basis of Claim form.

[88] The record reflects that the Applicant filed a Basis of Claim form on April 18, 2013, which set out in box 2c) that the "the Turkish authorities […] were the perpetrator of the persecution and mistreatment I had experienced in Turkey".

[89] The RPD's October 30, 2013, decision to grant the Applicant's refugee claim concluded at page 4, lines 13 to 17, as follows:

> "On the evidence before me it is also clear that there is **- the agent of persecution being the state -** is in effective control of its country and given all your profiles I find that there is a serious possibility of persecution throughout Turkey, so therefore there is no place for you to live in safety in that country. Based on the

> foregoing analysis, I find that you are all Convention refugees and I therefore accept all of your claims."
>
> (The emphasis is mine)

[90] The Applicant's sole agent of persecution was the state of Türkiye, and did not include non-state actors as alleged by the Applicant.

[91] Considering the foregoing, the RPD did not make any significant error in not considering non-state actors as the Applicant's agents of persecution because non-state actors were not found to be the Applicant's agents of persecution by the RPD when the Applicant was granted refugee status. While it would have been preferable for the RPD to consider the role of non-state actors in the Applicant's evidence before it, the RPD's failure to do so is, in my view, a minor misstep that does not make the Court lose confidence in the reasonableness of the Decision.

VI. **Conclusions**

[92] The Applicant has not met his burden of establishing that the RPD decision is unreasonable. I further find that the RPD's decision is reasonable in light of the evidence and the legal constraints that act upon it.

[93] The Applicant's application for judicial review is therefore dismissed.

[94] The parties did not propose a question to be certified in connection with this proceeding. I agree with the parties that no such question arises.

JUDGMENT in IMM-15041-24

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.

2. There is no serious question of general importance involved in this proceeding that should be certified.

"Benoit M. Duchesne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

John Cintosun	FOR THE APPLICANT
Christopher Ezrin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John Cintosun Law P.C. Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT