

Federal Court



Cour fédérale

Date: 20251002

Docket: IMM-11279-24

Citation: 2025 FC 1626

Toronto, Ontario, October 2, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

ABDULLAH KABAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] This matter concerns the cessation of the Applicant's refugee status. The Applicant, Mr. Abdullah Kaban, seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board. In that decision, the RPD allowed an application brought by the Minister of Public Safety and Emergency Preparedness [MPSEP] and concluded that the

refugee protection previously granted to the Applicant had ceased, and his claim for refugee protection was deemed to be rejected.

[2] For the following reasons, I believe this application should be granted.

II. BACKGROUND

A. *Facts*

[3] The Applicant, Abdullah Kaban, is a 32-year-old Kurdish man from Agri, Türkiye. He has a grade 9 education.

[4] Growing up, he remembers his community experiencing anti-Kurdish violence and harassment from Turkish soldiers.

[5] During his mandatory military service, he was harassed and assaulted for being Kurdish and speaking his language. On one occasion, his commanding officer caught him speaking to his mother on the phone in Kurdish. The officer kicked him in the groin, causing injuries that required surgery and resulted in the loss of one of his testicles.

[6] The Applicant's family were active supporters of pro-Kurdish political parties. He, his father, and his brother were all harassed and arrested by Turkish police on several occasions for their political activities.

[7] After the 2015 general elections in Türkiye, conditions for politically active Kurds deteriorated. In 2016, the Applicant's brother fled to Canada and made a successful refugee claim. The Applicant was arrested and tortured by police twice in March 2017 for his involvement in protests and participation in Kurdish cultural events.

[8] The Applicant fled Türkiye in March 2017 and arrived in Canada in May 2017. He made a refugee claim in Canada, which was accepted on July 6, 2017.

[9] The Applicant became a permanent resident of Canada in February 2019.

(1) Trips to Cuba

[10] The Applicant travelled to Cuba in 2019 and 2020 using his Turkish passport, which he obtained in 2017 before fleeing Türkiye.

(2) First Trip to Türkiye – December 16, 2020 - May 4, 2021

[11] In late 2020, the Applicant's mother, who has a history of serious health problems, fell ill. She pled with the Applicant to visit her in Türkiye. The Applicant's uncle had also passed away in November 2020.

[12] The Applicant's mother was hospitalized in December 2020. A week later, the Applicant travelled to Türkiye to see her using his Turkish passport.

[13] The Applicant spent his entire visit staying at his parent's home in Agri. He rarely left the house, only visiting his mother at the hospital twice, out of fear of the Turkish authorities. He also visited his uncle's home once to offer condolences to his uncle's wife. When the Applicant went to visit his mother in the hospital, he borrowed a friend's national identity card to avoid being detected by Turkish authorities.

[14] The Applicant's mother had surgery and was discharged approximately two or three weeks after he arrived in Türkiye. The Applicant took care of his mother after she was discharged.

[15] The Applicant's mother began encouraging the Applicant to get married. The Applicant wanted to make his mother happy, and so he agreed.

[16] The Applicant's mother arranged a marriage while the Applicant was still in Türkiye and there was a banquet with between 100-150 guests to celebrate. In addition to attending the wedding, the Applicant also left his parent's home to register the marriage and to travel to a dam to take photographs.

[17] After his mother recovered enough that she could walk, the Applicant returned to Canada. This was in the middle of the COVID-19 pandemic and the Applicant's brother illicitly procured a negative COVID-19 PCR test for the Applicant so that he would not have to engage with Turkish authorities.

[18] The Applicant returned to Canada on May 4, 2021. He was questioned by CBSA authorities at Toronto Pearson Airport about why he had travelled to Türkiye. The officers also asked whether he still felt that it was dangerous for him to be in Türkiye. He explained that he had to visit his sick mother and grieve his uncle, and that it was still dangerous for him in Türkiye as a Kurdish person. The Applicant testified that he was not warned that he should not return to Türkiye or travel on his Turkish passport.

(3) Spousal Sponsorship

[19] On July 12, 2021, the Applicant applied to sponsor his wife's application for permanent residence as a member of the Family Class.

(4) Second Trip to Türkiye – December 26, 2021-March 8, 2022

[20] The Applicant travelled to Türkiye a second time on December 26, 2021, with a stopover in Tbilisi, Georgia, because his mother was ill, bedridden, and pleading him to visit.

[21] Again, the Applicant stayed in his parents' home in Agri and only left once to visit his sister. He was also able to visit his wife, who was living with his parents.

[22] The Applicant returned to Canada on March 8, 2022, and was questioned by CBSA officers at Toronto Pearson Airport. The officer's notes state that:

Client stated "YES" he was aware from his last travel to turkey when cessation package was submitted that he was not to return to turkey, however he disregarded to suggestion.

[23] However, at his cessation hearing at the RPD, the Applicant testified that he first learned that visiting Türkiye could jeopardize his immigration status when he received the cessation application from the MPSEP in September 2023. The Applicant also testified that the CBSA agents at the second interview in March 2022 did not offer him a translator. The Applicant testified that he speaks some English, but not fluently, and that he did not understand many of the questions and only gave “yes” or “no” answers.

[24] Sometime after this trip, the Applicant’s wife was able to join him in Canada. They now have two Canadian-born children.

B. *Procedural History*

[25] On September 28, 2023, the MPSEP made an Application for Cessation of Refugee Protection.

[26] The RPD held a hearing on May 14, 2024, and issued a decision allowing the application on June 6, 2024.

III. ISSUES and STANDARD OF REVIEW

[27] The Applicant argues that the RPD’s assessments of: 1) the voluntariness of his return to Türkiye; and 2) his intention to avail himself of the protection of the Turkish state were unreasonable.

[28] The parties agree that the applicable standard of review in this matter is reasonableness: *Wu v Canada (Citizenship and Immigration)*, 2023 FC 1071 at para 6 [Wu]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1481 at para 25 [Singh]; *Aydemir v Canada (Citizenship and Immigration)*, 2022 FC 987 at para 20; *Thapachetri v Canada (Citizenship and Immigration)*, 2020 FC 600 at para 10; *Edirimanna v Canada (Citizenship and Immigration)*, 2023 FC 1339 at paras 11-12 [Edirimanna].

IV. ANALYSIS

A. *General principles*

[29] Refugee protection is the primary mechanism by which the global community protects those individuals who cannot obtain such protection within their own country. It is for this reason that it is often referred to as a back-up, or surrogate, form of protection, one that is offered only where an individual cannot obtain such protection at home. This being the case, one principle of refugee status is that it is meant to endure only until the refugee can either: 1) reclaim the protection of their own state; or 2) obtain durable national protection in another state.

[30] As such, when a person returns to their country of origin, or where the reasons for a person's flight from their country have resolved, their refugee status *may* be found to have ceased. This is known as "cessation," and it is enshrined at Article 1C of the 1951 Refugee Convention. It has also been incorporated into Canadian law, at subsection 108(1) of the *Immigration and Refugee Protection Act* [IRPA], which provides:

Rejection

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

- (a) the person has voluntarily reavailed themselves of the protection of their country of nationality;
- (b) the person has voluntarily reacquired their nationality;
- (c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;
- (d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or
- (e) the reasons for which the person sought refugee protection have ceased to exist.

Rejet

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

- a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
- b) il recouvre volontairement sa nationalité;
- c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
- d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;
- e) les raisons qui lui ont fait demander l'asile n'existent plus.

[31] Where the Minister successfully brings a cessation application before the RPD, the refugee claim of the individual is deemed to be rejected.

[32] In this case, the Respondent alleged that the Applicant's refugee status should be found to have ceased pursuant to s.108(1)(a) of the IRPA, because he voluntarily reavailed himself of the protection of Türkiye, his country of nationality.

[33] The test for reavilment consists of three essential elements: 1) the refugee must have acted voluntarily; 2) the refugee must have intended to reavail himself or herself of the protection of the country of nationality; and 3) the refugee must have actually obtained that protection: *Canada (Minister of Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 79 [*Galindo Camayo*].

[34] Where an individual has returned to their country of origin using the passport of that country, there is a presumption that the individual intended to reavail themselves of the protection of that country: *Galindo Camayo* at para 63. The presumption is, however, rebuttable with sufficient evidence of compelling, fact-specific reasons: *Galindo Camayo* at para 65; *Wu* at para 22.

[35] A cessation finding has profound consequences for the affected individual because it can lead not only to their loss of refugee status, but also to the loss of their permanent resident status and potential removal from Canada: *Galindo Camayo* at paras 50-51; *Omer v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1295 at para 39; *Edirimanna* at para 15. Moreover, the consequences in this case go beyond the situation of Mr. Kaban, as his wife is now a permanent resident of Canada, and he has two Canadian-born children.

[36] Where, as in the cessation context, the impact of a decision on an individual's rights is severe, the reasons for that decision must reflect those stakes: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov] at para 133. In this context, there is an increased duty to provide reasons that explain the decision-maker's rationale and meaningfully engage with the central issues and arguments: *Galindo Camayo* at paras 49-51; *Singh* at para 28; *Edirimanna* at para 16.

B. *The RPD Erred in Considering the Applicant's Intentions in Returning to Türkiye*

[37] Applying the *Vavilov* framework, I believe this application must be granted because the RPD unreasonably considered the Applicant's evidence related to his intentions in returning to Türkiye.

[38] I begin by pointing to several similarities between the facts at issue in this case, and those considered by the Federal Court of Appeal in *Galindo Camayo*.

[39] First, as in *Galindo Camayo*, the Applicant returned to his country of origin because of an ill parent. Indeed, the evidence on this point appears to have been stronger in the case at bar, as the evidence in *Galindo Camayo* was that Ms. Galindo Camayo's ill father was in Canada on at least one of her returns to Colombia: see *Galindo Camayo* at para 24.

[40] Second, as in *Galindo Camayo*, the Applicant in this case testified that he did not understand the immigration consequences that could flow from either his return to Türkiye, or his travel on a Turkish passport. Indeed, Mr. Kaban's testimony was that he only learned that his status was in question after he received the Minister's cessation application in the mail.

[41] Third, like in *Galindo Camayo*, Mr. Kaban clearly testified that in returning to Türkiye, he remained afraid that he could be at risk, that he did not intend to avail himself of Türkiye's protection, and that he took precautions to protect himself while he was there. Ms. Galindo Camayo testified that she hired private security guards to protect her, while in this case, Mr. Kaban testified that he largely remained in his home, that he used a friend's identity card when he left the home to visit his mother in the hospital, and that he had his brother obtain a negative COVID test for him, since he was afraid to go out.

[42] Finally, as in *Galindo Camayo*, the RPD in this case drew no adverse inferences with respect to Mr. Kaban's credibility. As a result, "the facts the RPD had to work with were those presented by the parties, and the case turned solely on whether the facts met the requirements of section 108": *Galindo Camayo* at para 25.

[43] With the above in mind, I am concerned that the RPD misconstrued the Applicant's testimony as it related to his intention to reavail himself of the protection of the Turkish state. Some examples will help to illustrate. First, in its section on the voluntariness of the Applicant's return, the RPD stated:

While the Respondent may have felt compelled to travel to Türkiye to see his mother, the panel finds that the Respondent's mother was living with his father and brother who would have been able to offer his mother support, on a balance of probabilities.

[44] The problem with this statement is that it is contrary to the Applicant's testimony. The Applicant testified that after his mother returned home from the hospital, it was he who helped

her with eating and her physical movement. He further testified that his father is aged and could only give limited support, and that his brother had to take care of the family farm.

[45] Second, on the issue of the Applicant's precautions while in Türkiye, the RPD stated:

The panel further finds that the Respondent only made two trips to the hospital during the month that she was hospitalized and spent the rest of the time at his parents' home watching television.

[46] This statement is problematic because it appears to have taken the Applicant's expression of ongoing subjective fear of mistreatment in Türkiye, which was not questioned, and distorted it into an indication that he did not really need to return to Türkiye to see his mother. Respectfully, this was neither an accurate, nor a fair reflection of the Applicant's testimony. As noted above, the Applicant testified that he did fear the authorities when he returned to Türkiye, which is why he rarely left the family home. He further testified that he only went to the hospital on two occasions because of his fear of mistreatment, and that when he did go to the hospital, he took the precaution of travelling with a friend's national identity card.

[47] Third, on the question of the Applicant's wedding while in Türkiye, the RPD did not seem to appreciate the nature of his testimony, which was that the sole reason for his return was to see his mother, that he had no intention of getting married when he returned to Türkiye, that the marriage was an arranged one, and that it was his mother's wish that he be married while in Türkiye.

[48] I am aware that the RPD provided the first two of the above comments in the context of considering the voluntariness of the Applicant's return. Nevertheless, the Applicant's care for his

mother, and the precautions that he took in returning to Türkiye, were also relevant in determining whether the Applicant intended to reavail himself of that state's protection. As such, the RPD's findings above also, in my view, undermined the reasonableness of its assessment on the Applicant's intentions in returning to Türkiye.

[49] I also acknowledge that in its "intention to reavail" section, the RPD relied primarily on the Applicant's wedding in Türkiye to conclude that he had failed to rebut the presumption that he intended to reavail himself of the protection of that country. However, as noted above, in this section, the RPD did not reference the fact that the Applicant had no intention of getting married on his return to Türkiye, that the wedding was an arranged one, and that he agreed to it because it was his mother's wish to see him married. Once again, the RPD did not question the Applicant's credibility. As such, in my view, it was simply not possible to square the Applicant's testimony (that the sole reason for his return was to see his ailing mother) with the finding that an arranged marriage to which he acquiesced to appease his mother somehow undermines the validity of his lack of intention to reavail.

[50] Put somewhat differently, I have concluded that the RPD failed to adequately justify how an arranged marriage that was neither the Applicant's idea, nor his intention, serves to undermine his testimony that he never sought to reavail himself of the protection of the Turkish state.

[51] The Federal Court of Appeal's decision in *Galindo Camayo* makes it abundantly clear that in considering an individual's reasons for returning to their country of origin, that person's own subjective understanding of their situation is, at the very least, highly relevant to the

analysis. The question is whether the individual intended by their actions to depend on the protection of their country of origin: *Galindo Camayo* at paras 66, 68, 77.

[52] The Respondent contends that the RPD decision is reasonable because the decision-maker thoroughly weighed the relevant facts and provided reasons for concluding that there was no “compelling or exceptional” basis for the Applicant’s return to Türkiye. This finding was reasonable, according to the Respondent, because “the Applicant simply testified that his purpose [for returning to Türkiye] was to make his mother happy.” Respectfully, this once again does not represent a complete or fair representation of the Applicant’s testimony.

[53] The Respondent also points to several decisions of this Court in which the RPD’s cessation findings were upheld, including cases where an individual returned to their country of origin to be with an ill relative, or to get married. Respectfully, however, I believe that the present case is more aligned with the facts considered by the Federal Court of Appeal in *Galindo Camayo* than any of the decisions cited by the Respondent.

[54] For example, the Respondent relies on the decision of my colleague Justice Ahmed in *Caballero v Canada (Citizenship and Immigration)*, 2022 FC 1143. However, I would point out that in that case the applicant returned to Colombia, his country of origin, on nine occasions, and the applicant’s own testimony in that case was that at least several of the visits were not related to any “urgent family matter.” I acknowledge that in *Caballero* there was also evidence that the applicant was married in a relatively large wedding during one of his returns to his country of origin. The Court relied on this fact to find that it was reasonable for the RPD to conclude that the applicant had not, in fact, maintained a low profile, as he had claimed. Respectfully,

however, this case is only a superficial analog to the present case, where the accepted evidence was that the Applicant did not intend to get married, and that the marriage was arranged at his mother's behest.

[55] The Respondent also relies on *Naqvi v Canada (Citizenship and Immigration)*, 2024 FC 365. However, this decision is not particularly instructive as the RPD in that case made negative credibility findings with respect to the applicant's ongoing fear of harm; such findings are conspicuously absent from the present case.

[56] The *Nilam* case relied upon by the Respondent is similarly unhelpful, as in that case there was evidence that the respondent had travelled back and forth between India and his native Sri Lanka for the purpose of a hair transplant: *Canada (Citizenship and Immigration) v Nilam*, 2015 FC 1154. As the Court noted, such a reason "could hardly have been considered to have been compelling under any definition of the term."

[57] Both before and after the Court of Appeal's decision in *Galindo Camayo*, this Court has emphasized that it is important for decision-makers in cessation proceedings to determine the actual subjective intentions of individuals who have returned to their countries of origin. As noted by James Hathaway in the *Law of Refugee Status*: "[u]nless the refugee's motive is genuinely the entrusting of her interests to the protection of the state of her nationality, the requisite intent [to reavail] is absent": James C Hathaway, *The Law of Refugee Status*, (Toronto: Butterworths, 1991) at 195, see also *Yao v Canada (Citizenship and Immigration)*, 2023 FC 920, and the cases cited therein at para 36.

[58] Based on the above, I am convinced that the RPD did not reasonably grapple with this central question in the cessation analysis.

C. *The RPD did not have regard to the Applicant's original grant of refugee protection*

[59] While the above provides a sufficient basis on which to grant this application for judicial review, the Applicant also argued, primarily in oral argument, that the RPD erred in failing to adequately consider the basis underlying his original grant of refugee protection.

[60] I agree that in assessing the subjective element of an individual's actions, it is important for decision-makers to assess the original basis of an individual's claim for refugee protection. This is because the precise nature of an individual's claim is relevant to the question of whether, through their actions, they have exhibited an intention to reavail themselves of the protection of their state.

[61] The Applicant's circumstances help to illustrate why this is the case. As noted above, the Applicant's claim for refugee protection was granted because of his Kurdish ethnicity, and because of his political activity. The RPD cessation panel recognized this, indicating in its reasons that at least one element of his claim was against Turkish society due to his Kurdish ethnicity. Moreover, in granting his claim, the original RPD panel cited the large body of documentary evidence on the generalized mistreatment of Kurds in Türkiye.

[62] However, as the Applicant notes, his refugee case was never based on a claim that he was a high-profile dissident or that he was actively wanted by the authorities. The claim, rather, was that over the years he was subject to mistreatment and societal discrimination on the combined

basis of his Kurdish ethnicity and his political activity. In oral argument, the Applicant maintained that this somewhat lower-level risk profile should have been considered in assessing the Applicant's subjective intentions in returning to Türkiye. I agree. If the task in cessation proceedings is to determine whether an individual voluntarily wishes to avail themselves of the protection of their country of origin, the underlying reason for their departure is undoubtedly relevant to the analysis.

[63] For example, where an individual is granted refugee protection based on cumulative discrimination, it can hardly be said that their temporary return to their country, on its own, undermines their ongoing subjective fear of persecution. In my view, this requirement to look at the underlying claim for refugee protection is consistent with the factors that the Court in *Galindo Camayo* indicated should be considered: see para 84. This was also identified as a relevant factor in *Bhatti v Canada (Citizenship and Immigration)*, 2024 FC 1806 at para 33.

[64] Given that this matter will be reconsidered, it will be incumbent on the next panel to carefully consider the original basis for the Applicant's refugee status in determining whether, in that context, the Applicant genuinely intended to reavail himself of Türkiye's protection.

V. CONCLUSION

[65] For all of the above reasons, this application for judicial review is granted and the matter will be returned to the RPD for reconsideration in accordance with these reasons. The parties did not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-11279-24

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted.
2. The matter is remitted to a different decision-maker for redetermination.
3. There is no question of general importance to certify.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11279-24

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DATED: OCTOBER 2, 2025

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