Federal Court  Cour fédérale

Date: 20251009

Docket: IMM-11453-24

Citation: 2025 FC 1672

Ottawa, Ontario, October 9, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

MARLEZ FAROUK R FAHMY
a.k.a MARLEZ FAROUK ROSHDY FAHMY KELINY
a.k.a. MARLEZ FAROUK ROUSHY FAHMY KELINY

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPARDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD), dated June 17, 2024, that allowed the Minister of Public Safety and Emergency Preparedness Canada (Minister)'s application for cessation of the Applicant's refugee protection pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (*IRPA*) (the Decision).

[2] The Applicant argues that the Decision is unreasonable, and that the RPD erred in finding that she had intentionally reavailed herself of protection in Egypt, because she was unaware of the immigration consequences of her actions.

[3] The Respondent argues that the Decision is reasonable, and that the Applicant is incorrect, subjective knowledge of the consequences of reavailment is not determinative in a cessation application.

[4] For the reasons that follow, this application is dismissed.

II. Background

[5] The Applicant is a citizen of Egypt and a Coptic Christian by faith. The Applicant alleged that she feared persecution in Egypt from her now ex-husband who was allied with the Muslim Brotherhood and was abusive.

[6] On May 27, 2013, the Applicant and her then two minor children were found to be Convention refugees. They obtained permanent residence status on April 17, 2014.

[7] The Applicant traveled back to Egypt on four separate occasions between 2020 and 2022:

- On August 21, 2020, she traveled to Egypt and remained there for 14 days to visit her ailing father;
- On December 15, she traveled to Egypt and remained there for 9 days to attend her father’s funeral;

- On February 18, 2022, she traveled to Egypt and remained there for 10 days to undergo in vitro fertilization (IVF) treatment; and
- On May 11, 2022, she traveled to Egypt and remained there for 13 days to undergo IVF treatment.

[8] The Applicant obtained an Egyptian single-journey travel document through the Egyptian Embassy in Ottawa that she used to travel to Egypt in August 2020.

[9] On August 25, 2020, the Applicant renewed her Egyptian passport and on May 18, 2022, the Applicant replaced her Egyptian passport to correct a misspelling of her name. Both documents were issued by the Government of the Arab Republic of Egypt.

[10] On September 9, 2022, the Minister brought an application to the RPD pursuant to subsection 108(2) of the *IRPA* and Rule 64 for the *Refugee Protection Division Rules*, SOR/2012-256, for the cessation of refugee protection granted to the Applicant.

[11] On June 17, 2024, the RPD allowed the Minister's application for the cessation of the Applicant's refugee protection pursuant to subsection 108(2) of the *IRPA*.

III. Issues and Standard of Review

[12] The parties submit, and I agree, that the applicable standard of review applicable to a cessation decision and in this case is reasonableness (*Malak Ibrahim v Canada (Public Safety*

and Emergency Preparedness), 2023 FC 710 at paras 12–14; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*) at paras 25, 86).

[13] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[14] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[15] The sole issue in this Application is, was the Decision reasonable?

IV. Legislative Provisions

[16] The applicable statutory framework in this Application is set out in the *IRPA* at section 108, subsection 40.1(2) and paragraph 46.1(c.1):

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	a) il se réclame de nouveau et volontairement de la

themself of the protection of their country of nationality;	protection du pays dont il a la nationalité;
…	[…]
(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).	(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).
(3) If the application is allowed, the claim of the person is deemed to be rejected.	(3) Le constat est assimilé au rejet de la demande d'asile.
…	[…]
40.1 (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).	40.1 (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 (1) A person loses permanent resident status:	46 (1) Emportent perte du statut de résident permanent les faits suivants :
…	[…]
(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;

… […]

V. Analysis

A. *Legal test for cessation*

[17] The well established conjunctive test for the cessation of protection pursuant to section 108 of the *IRPA* requires that three conditions must be met: the person acts voluntarily; the person intends their actions to reavail themselves of the protection of their country of nationality; and the person actually obtains such protection (*Kovacs v Canada (Citizenship and Immigration)*, 2022 FC 1532 at para 21, citing *Nsende v Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 at para 13; *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 (*Camayo*) at para 18; *Norouzi v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 368 at para 9; *Cerna v Canada (Citizenship and Immigration)*, 2015 FC 1074 (*Cerna*) at para 12; and *Canada (Public Safety and Emergency Preparedness) v Bashir*, 2015 FC 51 at para 40).

[18] This Court has held that there is a presumption that refugees who obtain and travel on a passport issued by their country of nationality have intended to avail themselves of the protection of their country of nationality. This is because a passport entitles the holder to travel under the protection of the issuing country. Where a refugee travels to their country of nationality on a passport issued by their country of nationality the presumption is stronger. This is because they are under diplomatic protection as a traveler, and they are entrusting their safety to the authorities of their country of nationality upon arrival (*Camayo* at para 63).

[19] In addition, this Court has held that absent compelling reasons, successful refugee claimants do not abandon the safety of their country of refuge to return to a place where their safety is at risk (*Camayo* at para 64, citing *Ortiz Garcia v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1346 at para 8).

[20] The presumption of reavailment is rebuttable, the onus is on the refugee claimant to provide sufficient evidence to rebut the presumption (*Camayo* at para 65).

[21] The Federal Court of Appeal set out a non-exhaustive list of factors for the RPD to consider in its assessment of a claimant's intention in a cessation application. These factors include: the individual's knowledge with respect to the cessation provisions; the personal attributes of the individual such as her age, education and level of sophistication; the identity of the agent of persecution; did the individual act voluntarily to obtain a passport from the country of origin and did the individual use the passport for travel purposes to their country of nationality; were there compelling reasons for the travel; what the individual did while in the country in question; did the individual take precautionary measures while in their country of nationality; and do the actions of the individual demonstrate that they no longer have a subjective fear of persecution in the country of nationality therefore surrogate protection may no longer be required (*Camayo* at para 84).

[22] Finally, I will note that the Federal Court of Appeal has clarified that no one factor is necessarily determinative, rather the totality of the evidence must be considered and balanced to determine if the individual's actions are sufficient to rebut the presumption of reavailment (*Camayo* at para 84).

B. *RPD Decision*

[23] A review of the reasons for Decision illustrates that the RPD considered the interpretive principles set out at paragraphs 118–125 of the United Nations High Commissioner on Refugees Handbook on Procedures and Criteria for Determining Refugee Status (UNHCR Handbook) and the Federal Court of Appeal (*Camayo* at para 84). In particular, the RPD considered the Applicant's intention and voluntariness of the reavailment.

[24] The RPD considered the issue of voluntariness and found that:

- The evidence did not indicate that the Applicant was compelled by Canadian or Egyptian authorities to obtain or renew her Egyptian passport;
- The Applicant testified that she voluntarily renewed her Egyptian passport, and that she obtained a second passport to correct the spelling of her name;
- The Applicant traveled to the Dominican Republic on her Egyptian passport;
- The Applicant's first trip to Egypt in August 2020 fit within the exceptional circumstances that rebutted the presumption of reavailment;
- The Applicants second, third, and fourth trips to Egypt did not fit within the circumstances that rebutted the presumption of reavailment;
- The RPD found that the return to Egypt to attend her father's funeral visits to obtain IVF treatment were voluntary, not required by Egyptian or Canadian authorities and were not justifiable as exceptional circumstances, accordingly the Applicant failed to rebut the presumption of reavailment.

[25] The RPD went on to find that the Applicant's actions demonstrated an intention to reavail herself of Egyptian diplomatic protection. The RPD noted that the Applicant is a well-educated, businessperson—a land surveyor who regularly traveled. The RPD noted that the Applicant argued that she did not appreciate the consequences of her actions; however, the RPD found that her belief was not sufficient to rebut the presumption of reavailment.

[26] The RPD also found that the evidence illustrated that the Applicant's actions demonstrated that she did not have an ongoing fear of persecution in Egypt, as the evidence illustrated that she took minimal precautions to ensure her safety.

[27] Finally, the RPD found that the Applicant had actually reavailed herself of diplomatic protection in Egypt. The Applicant returned to Egypt on four separate occasions and traveled to the Dominican Republic on her Egyptian passport. The RPD found that the Applicant conflated the concept of state and diplomatic protection and found that reavailment pursuant to paragraph 108(1)(a) of the *IRPA* is in respect of diplomatic protection.

C. *Reasonableness of the RPD Decision*

[28] The Applicant argues that the RPD decision is unreasonable, because the RPD failed to consider her subjective understanding of the consequences of her actions (*Cerna*).

[29] The Applicant argues that the RPD failed to conduct an individual analysis that properly accounted for her circumstances, rather the RPD considered the test for cessation in a mechanic manner.

[30] The Respondent argued that the RPD's Decision is reasonable, and a review of the reasons illustrates that the RPD considered the factors set out by the Federal Court of Appeal in *Camayo* and the evidence submitted by the Applicant.

(1) Voluntariness

[31] The Applicant argued that the RPD unreasonably found that she voluntarily reavailed herself by travelling on her Egyptian passport. She argues that she demonstrated she was not aware of the consequences of her actions and the RPD conclusions are speculative. Further, the Applicant notes that the RPD found that the trips to Egypt were not "necessary"; however, she argued that the test is not necessity but rather, are there "compelling reasons" for travel (*Camayo*).

[32] The Respondent argued that the RPD reasonably found that the Applicant had acted voluntarily. There was an absence of evidence that the Applicant was instructed by Canadian or Egyptian authorities to apply for her Egyptian passport or that she was constrained by circumstances beyond her control to return to Egypt. The Respondent argued that the trips to access IVF treatment were voluntary and were not compelling reasons to return to Egypt.

[33] I agree with the Respondent, there is no evidence that the Applicant was instructed by authorities to apply for her Egyptian passport. A review of the record indicates that the Applicant knew she was unable to return to Egypt on her Canadian Refugee travel document and she took voluntary steps to acquire an Egyptian passport to facilitate her return.

[34] I am similarly persuaded by the Respondent that the Applicant's return travel to Egypt on two separate occasions for IVF treatment were voluntary within the meaning of the test for cessation of refugee protection. In my opinion, the RPD reasonably determined that travel for this purpose was voluntary in the sense that IVF treatment is available in Canada and elsewhere (*Bujbaczi v Canada (Citizenship and Immigration)*, 2025 FC 88 at paras 33–36).

[35] While I understand the Applicant had concerns about the timing of treatment in Canada. I am not persuaded by the Applicant's argument that the RPD's use of the term "necessary" renders the decision unreasonable. A review of the totality of the Decision supports the view that the RPD considered the purpose of the Applicant's travel and found that the reasons for travel, to attend to a family members funeral/burial, and get treatment for IVF, were not compelling reasons to rebut the presumption of reavailment. I agree.

(2) Intention

[36] The Applicant argued that the RPD erred in finding an intention to reavail herself of Egyptian protection, because her reasons for return were exceptional, and she was not aware of the consequences of her actions. The Applicant asserts that the RPD must consider if the Applicant had actual knowledge of the consequences of her actions.

[37] The Respondent argued that the RPD correctly reasonably considered the Applicant's circumstances, recognizing that the presumption of reavailment is rebuttable. The Respondent submitted that the Applicant's arguments are an invitation for this Court to reweigh the evidence to reach a different conclusion, which is not the appropriate role for a Court on judicial review.

[38] While I agree with the Applicant that her actual knowledge of the consequences of her actions is a factor, this alone is not determinative of the question of intent. Rather the decision-maker must consider all factors and circumstances to develop a complete picture of the individual's intent (*Ahmad v Canada (Citizenship and Immigration)*, 2025 FC 668 at para 46).

[39] A review of the totality of the evidence demonstrates that the RPD reasonably found that the Applicant intended to reavail herself of Egypt diplomatic protection. As noted by Justice Brown in *Ali v Canada (Citizenship and Immigration)*, 2023 FC 383 at paras 45–50, citing *R v Seymour*, 1996 CanLII 201 SCC at para 19, intention may be determined based on inferences a trier of fact may draw from the evidence.

[40] The Applicant's belief that her actions would not result in reavailment is a factor but is not necessarily determinative of the intention to reavail. The reasonableness of an individual's belief must be assessed by considering all the evidence (*Lu v Canada (Citizenship and Immigration)*, 2024 FC 94 at para 41).

[41] In the present case, the Applicant returned to Egypt on four separate occasions. The evidence illustrated that the Applicant took few or minimal precautions to ensure her safety, the evidence illustrated that she stayed at her family home. With respect, the RPD reasonably found that the Applicant could have easily been located there (*Abechkrishvili v Canada (Citizenship and Immigration)*, 2019 FC 313 at para 26).

[42] The RPD reasonably found that the Applicant's actions did not demonstrate an ongoing fear of persecution and that she voluntarily and intentionally reavailed herself of the diplomatic protection of Egypt. In my view the RPD reasons are justified, transparent and intelligible.

[43] I agree with the Respondent, the Applicant is inviting this Court to reassess the evidence submitted to the RPD and reach a different conclusion. It is well established that this is not the proper role for a reviewing Court, rather the administrative decision-maker, alone considers the evidence and determines issues of admissibility, weight, and inferences that ought to be drawn. The Court is only to interfere where there is a fundamental error that undermines the reasonableness of the decision (*Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 3). The Applicant has not pointed to a reviewable error that warrants this Court's intervention.

(3) Actual reavailment

[44] The Applicant argued that the RPD erred in finding that the relevant protection in a cessation application is diplomatic protection rather than state protection. The Applicant argued that the situation in Egypt for victims of domestic violence and Coptic Christians remains unchanged from when she successfully made her claim as a Convention refugee. Accordingly, she will not have adequate state protection.

[45] I agree with the Respondent that this argument is without merit and is contrary to the jurisprudence of this Court which clearly indicates that "it is not necessary to demonstrate state protection in order to establish actual reavailment and that diplomatic protection would suffice" (*Naqvi v Canada (Citizenship and Immigration)*, 2024 FC 365 at paras 33). Further, this

interpretation is consistent with the UNHCR Guidelines (*Aydemir v Canada (Citizenship and Immigration)*, 2022 FC 987 at para 45, 47-48). Finally, I will note that this Court recently noted that "Actual reavailment is concerned only with diplomatic protection, which is established when an applicant is actually issued a passport by their country of nationality (*Veerasingam* at para 21)" (*Ahmad* at para 52).

[46] The facts of this case fit squarely within the circumstances that this Court has said demonstrate evidence of actual reavailment; the record indicates that the Applicant returned to Egypt on four separate occasions and acquired travel documentation, including two passports from Egypt, that she used to travel to Egypt and the Dominican Republic.

[47] The RPD reasonably found that the Applicant voluntarily acquired a travel document and two passports from Egyptian authorities and used those documents to return to Egypt for non-compelling reasons. Further, the RPD reasonably found that the Applicant did not demonstrate that she took precautions to ensure her safety and to avoid contact with her agents of persecution when she was in Egypt. Accordingly, the RPD's finding that the Applicant obtained actual diplomatic protection from Egypt is reasonable.

VI. Conclusion

[48] I understand that the consequences of the Applicant's actions are severe. However, the Applicant has not pointed to any errors in the Decision that would warrant this Court's intervention on the application for judicial review.

[49] A review of the Decision illustrates that the RPD's Decision considered the appropriate statutory and legal frameworks and grappled with the totality of the evidence. The Decision is reasonable.

[50] Ultimately, the Applicant's own actions are what lead to this situation. After successfully making a claim for Convention refugee protection, the Applicant voluntarily obtained Egyptian travel documents—a travel authorization and the renewal of two passports; made four trips to Egypt using Egyptian travel documents; and used her Egyptian passport to travel to other destinations. Cumulatively, these actions were reasonably considered to be evidence of reavailment and a cessation of refugee protection consistent with section108 of the *IRPA*.

[51] The parties did not pose questions for certification and I agree that there are none.

JUDGMENT in IMM-11453-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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