Federal Court Cour fédérale

Date: 202601009

Docket: IMM-12887-23

Citation:2026 FC 24

Ottawa, Ontario, January 9, 2026

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MUSA DURMUS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

I. Overview

[1] The Applicant, Musa Durmus, received refugee protection in Canada over twenty years ago. After over 12 years in Canada, he returned to Türkiye and remained for approximately nine years. Mr. Durmus changed his name in Türkiye, married and had two children. Shortly after he returned to Canada, with his wife and two children, the Minister brought an application for cessation of his Convention refugee status. The Refugee Protection Division ("RPD") allowed the Minister's application and found that Mr. Durmus had voluntarily reavailed himself of the

protection of Türkiye under section 108(1)(a) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*]. This resulted in Mr. Durmus losing his protected person status.

[2] Mr. Durmus challenges the RPD's cessation decision on judicial review. Mr. Durmus does not challenge the procedure followed by the RPD. His challenge is to the substance of the decision and therefore I am reviewing the RPD's decision on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[3] It is unnecessary for me to address all the issues Mr. Durmus has raised. The determinative issue for me is the RPD's treatment of Mr. Durmus' name change in Türkiye. The RPD accepted that Mr. Durmus had changed his name and lived under a different name in Türkiye for most of the nine years he was living there. The RPD's treatment of this key issue and how it impacted its analysis of his intention to reavail and whether he received "actual" protection is not adequately explained. The decision is unreasonable because it does not allow us to "understand the decision maker's reasoning on a critical point" and leaves unanswered questions that are central to determining the application (*Vavilov* at para 103). I am allowing the application for judicial review.

II. Background

A. *Procedural History Leading to Cessation Decision*

[4] Mr. Durmus is a citizen of Türkiye. He has a grade five-level education and limited knowledge of English. He was granted refugee protection in Canada in January 2001. His claim was based on his fear of persecution due to his political activity and Kurdish identity.

[5] Mr. Durmus has not ever had permanent residence in Canada. He applied for permanent residence shortly after his refugee claim was granted but his application remained in progress for many years and remained pending when he left Canada in January 2012.

[6] The circumstances surrounding his departure from Canada in January 2012 are not clear and were not ultimately determined by the RPD. The Minister alleged that a few days prior to leaving Canada, Mr. Durmus deposited counterfeit cheques at a Canadian bank. Approximately ten months later, the York Regional Police issued a warrant for Mr. Durmus' arrest. Mr. Durmus alleged that he returned to Türkiye because his father had a surgery the year prior, his own mental health difficulties relating to his repeated interviews with the Canadian Security Intelligence Service ("CSIS") and the lengthy delay in processing his permanent resident application.

[7] Mr. Durmus travelled to Türkiye on his Turkish passport. It is not clear from the materials before me or the RPD's decision whether this passport had been renewed in Canada. Mr. Durmus alleged that shortly after arriving in Türkiye, he was arrested and beaten by government officials.

[8] Shortly after, Mr. Durmus paid a bribe to have his first name legally changed and then obtained a national identification card and a Turkish passport with this new name. For approximately the next nine years, Mr. Durmus lived in Türkiye. He was employed there, got married, bought a home and had two children.

[9] Mr. Durmus also alleged that he was politically active in Türkiye during this time and that in 2016 was detained and beaten on account of his political activity.

[10] In March 2021, Mr. Durmus left Türkiye with his wife and children. They went to the United States via Mexico. Approximately two months later, in May 2021, Mr. Durmus entered Canada. Mr. Durmus' wife and children later entered Canada and were permitted to file refugee claims. Their refugee claims were accepted on the basis of their association with Mr. Durmus.

[11] The RPD in Mr. Durmus' family's case found: "…given the past detentions of the claimants' husband/father and his heavy involvement in Canadian Kurdish community activities, that there is a serious possibility that the claimants would face harm if they were to return to Türkiye due to their familial connection to him that would amount to persecution."

B. *Decision under Review*

[12] The Minister brought an application to cessate Mr. Durmus' refugee status in October 2022. The Minister argued that Mr. Durmus' protected person status could be cessated on two grounds: that he reavailed himself of the protection of Türkiye under section 108(1)(a) of *IRPA* and re-established himself in Türkiye under section 108(1)(d) of *IRPA*. The RPD held a cessation hearing on June 1, 2023.

[13] In September 2023, the RPD granted the Minister's application, finding Mr. Durmus had voluntarily reavailed himself of the protection of Türkiye. The RPD did not consider the re-establishment ground under section 108(1)(d).

[14] The RPD did not make a finding on the circumstances that led to Mr. Durmus' departure from Canada. The RPD found that even if it accepted Mr. Durmus' version of events, his return to Türkiye was voluntary. The RPD weighed various factors, including Mr. Durmus' lack of understanding of the immigration consequences of his return to Türkiye and the security precautions he took, specifically his name change, but found that overall, given the length of time and the nature of Mr. Durmus' activities in Türkiye, his intention to reavail had been established. The RPD further found that Mr. Durmus received actual diplomatic protection.

III. Analysis

A. *Legal Framework for Reavailment under Section 108(1)(a)*

[15] As acknowledged by the RPD in its decision, a finding that a protected person's status has ceased under section 108(1)(a) of IRPA has severe consequences. For Mr. Durmus, it means a loss of refugee protection status, an inability to continue with his application for permanent residence, an inability to apply for a pre-removal risk assessment or an application for permanent residence on humanitarian and compassionate grounds for one year following the decision, and removal from Canada "as soon as possible" (*IRPA*, ss 25(1.2)(c)(i), 46(1)(c.1), 48(2), 63(3), 101(1)(b), 108(3), 112(2)(b.1)). The severity of these consequences increases the obligation on the RPD to explain its decision (*Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*] at para 51; *Vavilov* at paras 133-135).

[16] In order to allow the Minister's cessation application under section 108(1)(a) of *IRPA*, the RPD must be convinced that Mr. Durmus acted voluntarily, that he intended to reavail himself of

the protection of Türkiye, and that he actually obtained such protection (*Camayo* at para 79). The onus is on the Minister to establish all three of these elements on a balance of probabilities.

[17] The RPD's analysis of whether Mr. Durmus acted voluntarily when he returned to Türkiye is not being challenged on judicial review. The RPD's evaluation of Mr. Durmus' intention to reavail himself of Türkiye's protection and whether he actually received such protection are at issue.

[18] The Federal Court of Appeal in *Camayo* confirmed that where a refugee travels on a passport they have obtained or renewed from the country where they feared persecution/risk to life, they are presumed to have intended to avail themselves of the protection of that country. That presumption can be rebutted (*Camayo* at para 63). The onus shifts from the Minister to the protected person to rebut the presumption (*Camayo* at paras 65-66). The RPD must conduct an individualized assessment of the evidence, including "any evidence relating to the protected person's subjective intent in obtaining, relying on a passport and/or travelling to their country of nationality" (*Camayo* at paras 65-66). Some non-exhaustive factors highlighted by the Federal Court of Appeal that may be relevant to this analysis included: whether the refugee took any safety precautions while in their country of nationality, whether they had knowledge of the Canadian immigration consequences of their return, and the frequency and duration of the travel (*Camayo* at para 84).

[19] The Federal Court of Appeal in *Camayo* cautioned that the "test for cessation should not be applied in a mechanistic or rote manner." The core question throughout the RPD's evaluation

"should be on whether the refugee's conduct—and the inferences that can be drawn from it—can reliably indicate that the refugee intended to waive the protection of the country of asylum" (*Camayo* at para 83).

B. *RPD's Treatment of Name Change*

[20] The key issue on judicial review is the manner in which the RPD treated Mr. Durmus' name change and its impact on its analysis of Mr. Durmus' intention to reavail, and whether he received actual protection.

[21] The RPD accepted Mr. Durmus' evidence that shortly after he arrived in Türkiye, he was detained by government officials and beaten. The RPD also accepted that soon after, Mr. Durmus paid a bribe to a judge and had his name changed. His last name remained the same, but his first name was different. Mr. Durmus then obtained a National Identity Card using his new name and eventually a passport using this name. It was on this passport that Mr. Durmus left Türkiye and travelled to Canada. The RPD does not mention any specific incidents after the name change where Mr. Durmus was identified by the Turkish government as the same individual prior to the name change.

[22] The RPD's evaluation of the impact of the name change is limited. The RPD found that the name change was not a "significant security precaution" for two reasons: i) it was only his first name; and ii) it was done through the court system and therefore, it would be likely he could still be associated with his former name by the government. The RPD's analysis on this issue is limited to the following:

> He did not take any significant security precautions, other than to change his name, but even then he only changed his first name – and as he did this in court, it is likely that the Turkish government would have a record of this change and would be able to associate the Respondent with his former name.

[23] While the RPD acknowledged that Mr. Durmus changed his name shortly after arriving in Türkiye and obtained identity documents with his new name in Türkiye, the RPD's conclusion that the name change had limited significance for the rest of its analysis is not adequately explained.

[24] The RPD's assumption is that a because a judge (who acted on a bribe) authorized the name change, the Turkish government would likely have a record of this change. The RPD does not explain what evidence it relied upon to reach this conclusion. In my view, this is a weak implausibility finding. This Court has repeatedly held that implausibility findings in the refugee context must only be made in "the clearest of cases" (*Al Dya v Canada (Citizenship and Immigration)*, 2020 FC 901 at paras 27- 32; *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7). This is not the "clearest of cases" – there needed to be more to ground this finding than a commonsense assumption of how an illegal name change would be made known to government authorities.

[25] The RPD also did not see the name change as a significant precaution because Mr. Durmus only changed his first name. Without more explanation, I cannot follow the RPD's reasoning on this point. For example, I do not know whether Mr. Durmus' last name is particularly unique in Türkiye. Certainly, further changes to his identification would constitute a greater precaution, but the finding that a formal change of name that was then used to obtain new

identity documents with the new name in Türkiye is not a *significant* precaution requires further explanation. This is particularly the case here where the RPD relies heavily on Mr. Durmus' actions in Türkiye following the name change.

[26] The RPD's limited explanation of its reasoning on the implications of Mr. Durmus' name change on the rest of its analysis is not a minor misstep; it could have affected the RPD's analysis of two of the elements of the test for cessation due to reavailment – whether Mr. Durmus had the intention to reavail himself of Türkiye's protection and whether he actually obtained such protection.

[27] The name change would be relevant to the RPD's analysis of Mr. Durmus' intention to reavail because it was a precaution he took to not be identified early on in his long stay in Türkiye and as I understand, he used this name to conduct his affairs (including his employment, marriage, housing, political activities) in Türkiye. These same activities were relied upon by the RPD to support the conclusion that Mr. Durmus intended to reavail.

[28] The name change is also potentially relevant to whether the presumption that he intended to reavail himself of the protection of Türkiye even applies. The presumption applies where a refugee travels on a passport they have obtained or renewed from the country where they feared persecution/risk to life. As noted, it is not clear from the RPD's decision whether Mr. Durmus travelled back to Türkiye on the same passport he left on or whether he renewed the passport in Canada. The RPD seems to rely on the fact that Mr. Durmus obtained a new passport in Türkiye and then travelled with it to ground the presumption that he intended to reavail. Given this was a

passport with a different name than the one he used to obtain refugee protection, there needed to be further explanation of the implication of the name change on this analysis.

[29] The name change on the passport obtained in Türkiye and used to travel may also impact the RPD's analysis of whether Mr. Durmus actually obtained protection, the third element of the test for establishing reavailment (see this Court's recent discussion of the improper use of a new presumption at the third element of the test in *UC v Canada (Minister of Citizenship and Immigration),* 2025 FC 1945).

[30] As the Federal Court of Appeal explained in *Camayo* at para 83, cessation cases are "largely fact-dependent". The name change is a novel fact that required further consideration. I am not confident that, based on the limited reasoning provided, the RPD sufficiently explained its reasoning about the implications of the name change on central elements of the test for establishing cessation due to reavailment. This is a sufficient basis on which to find the decision unreasonable, quash it and send it back to be redetermined. Neither of the parties raised a question for certification and I agree none arises.

JUDGMENT in IMM-12887-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;
2. The RPD decision dated September 14, 2023 is quashed and the matter is sent back to be redetermined by a different decision-maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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