Federal Court  Cour fédérale

Date: 20200714

Docket: IMM-6830-19

Citation: 2020 FC 761

Ottawa, Ontario, July 14, 2020

PRESENT: Mr. Justice Norris

BETWEEN:

AFSANEH SALAMAT RAVANDI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant, Afsaneh Salamat Ravandi, is a thirty-five-year-old citizen of Iran. In 2007, she fled Iran for Turkey to escape a forced marriage arranged by her father. In October 2009, a Canadian visa officer in Turkey determined that Ms. Ravandi is a Convention refugee. In March 2010, Ms. Ravandi became a permanent resident of Canada.

[2] In June 2011, Ms. Ravandi obtained an Iranian passport. (She had not had one previously.) Using this passport, she returned to Iran from Canada twice: first in July 2011, when she stayed for five months, and again in January 2013, when she stayed for thirty-eight days. On these trips, Ms. Ravandi became engaged to and then married an Iranian man. (Needless to say, her husband is not the man to whom her father had arranged for her to be married.) Ms. Ravandi returned to Canada with her husband in February 2013.

[3] On March 24, 2014, the Minister of Public Safety brought an application under subsection 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for a determination by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada that Ms. Ravandi's refugee protection had ceased. More particularly, as set out in the Notice of Application, the Minister submitted that Ms. Ravandi had "voluntarily re-availed herself of the protection of her country of nationality" and, as a result, her refugee protection had ceased under paragraph 108(1)(a) of the *IRPA*. In support of the application, the Minister filed, among other things, a copy of Ms. Ravandi's Iranian passport showing her trips to Iran and an interview with Ms. Ravandi by a Canada Border Services Officer on December 18, 2013, in which she was questioned about these trips.

[4] The cessation hearing took place on October 2, 2019. Ms. Ravandi represented herself. Regrettably, the recording equipment malfunctioned. As a result, there is no record of the proceeding.

[5] For written reasons dated October 17, 2019, the RPD granted the Minister's application on the basis that Ms. Ravandi had reavailed herself of the protection of Iran and, as provided for in paragraph 108(1)(a) of the *IRPA*, this results in the loss of refugee protection. The RPD member also stated: "These conclusions are entirely dispositive of this case, and I need not consider any other issues that may arise under subsections 108(1)(b) through (e) [of the *IRPA*]."

[6] Ms. Ravandi now applies for judicial review of this decision under subsection 72(1) of the *IRPA*. She does not challenge directly the determination that she reavailed herself of the protection of Iran. Rather, she submits that, by adducing evidence her father was in jail in Turkey when she was in Iran in 2011 and 2013, she put in play the issue of whether the reasons for which she sought refugee protection had ceased to exist and, as a result, that her refugee protection had ceased under paragraph 108(1)(e). Consequently, according to Ms. Ravandi, the member's passing reference to paragraph 108(1)(e) in the decision does not meet the requirements of responsive justification as they have been articulated in *Vavilov v Canada (Citizenship and Immigration)*, 2019 SCC 65, given what was at stake for her in the cessation application. Ms. Ravandi places particular emphasis on the fact that she faced not only the loss of refugee protection but also, because the Minister sought cessation on the basis of reavailment under paragraph 108(1)(a), the loss of her permanent resident status and a determination that she is inadmissible to Canada yet these serious collateral legal consequences would not have followed from a finding that her refugee protection had ceased under paragraph 108(1)(e) on the basis of changed circumstances: see section 40.1 and paragraph 46(1)(c.1) of the *IRPA*. She submits that the RPD's brief treatment of paragraph 108(1)(e) does not reflect what was at stake

for her in deciding that her refugee protection ceased because of reavailment under paragraph 108(1)(a) as opposed to changed circumstances under paragraph 108(1)(e).

[7] As I will explain, I agree with Ms. Ravandi that it follows from *Vavilov* that, where the RPD has a choice to make between different grounds on which to cease refugee protection and opts for a ground that carries deleterious collateral consequences for the individual instead of a ground that does not entail those consequences, the reasons provided for doing so must reflect what is at stake for the individual – namely, not only the loss of refugee protection but also those deleterious collateral consequences. However, she has not persuaded me that avoidance of the collateral consequences she now faces as a result of the RPD's decision – namely, the loss of her permanent resident status and inadmissibility to Canada – was a reasonable possibility in her case. As a result, while the RPD's reasons for not addressing changed circumstances are very brief, viewed in the context of the entire decision and the case as a whole, they meet the requirements of justification, intelligibility and transparency. This application for judicial review must, therefore, be dismissed.

II. DECISION UNDER REVIEW

[8] Section 108 of the *IRPA* reads in relevant part 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	**108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel

person in need of protection, in any of the following circumstances:	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;
…	…
(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	**Perte de l'asile**
(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 protection des réfugiés, de tels des faits mentionnés au paragraphe (1).
Effect of decision	**Effet de la décision**
(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.

[9] As noted, the Minister sought a determination under subsection 108(2) that Ms. Ravandi's refugee protection had ceased because she had reavailed herself of the protection of Iran, her country of nationality – *i.e.* that Ms. Ravandi was a person described in paragraph 108(1)(a). The Minister did not rely on any other grounds for cessation apart from this.

[10] The RPD member articulated his understanding of the RPD's jurisdiction to consider grounds for cessation as follows:

> The RPD has jurisdiction to address any grounds for cessation arising from the Minister's application, and to determine cessation on the basis of any grounds identified in the application. The RPD is not compelled to consider, nor prevented from considering, alternate grounds. It is not necessary for the RPD to consider other possible grounds for cessation if it concludes that one ground of cessation has been satisfied. However, where there is uncontradicted and undisputed evidence of cessation under a particular ground, the RPD should consider that ground [footnote omitted].

[11] In the footnote I have omitted, the member cites *Canada (Citizenship and Immigration) v Al-Obeidi*, 2015 FC 1041, at paragraph 22. Justice O'Reilly states the following there:

> In sum, on a cessation application by the Minister, the Board can consider any ground set out in s 108(1) of IRPA. If the respondent refugee persuades the Board, or concedes, that his or her status has ceased by virtue of a change of country conditions (s 108(1)(*e*)), the Board has discretion to consider other grounds. It is neither compelled to do so, nor prevented from doing so. However, where there is uncontradicted and undisputed evidence that the refugee's status has ceased under another ground (e.g. acquisition of citizenship in a country capable of protection), the Board should consider it.

[12] As will be seen below, this paragraph is a cornerstone for Ms. Ravandi's arguments on this application for judicial review.

[13] After setting out section 108 of the *IRPA*, the RPD member then stated the following:

> On the evidence before me, the pertinent provisions under section 108(1) for the present case are subsections 108(1)(a) and 108(1)(e) – reavailment and changed circumstances.

[14] Although the member does not elaborate, there is no issue that the evidence of reavailment was filed by the Minister while the evidence of changed circumstances is found in two documents Ms. Ravandi was permitted to file at the cessation hearing despite their late submission. One of the documents was an online news article dated November 13, 2007, describing Ms. Ravandi's father's arrest in Turkey for smuggling opium from Iran into Turkey. The other was a Receipt of Payment from a Turkish prison dated April 18, 2013, documenting her father's receipt of a wire transfer of money while in custody at that prison. The receipt states that her father's admission date to prison was May 30, 2010, and that his status was that of "convict". There is no indication of the duration of his sentence.

[15] In ruling that he would permit the two documents to be filed, the RPD member summarized their potential relevance as follows:

> Taken together, the documents imply that the claimant's [*sic*] father, who was a principal agent of persecution of the claimant before she fled Iran for Turkey, was in Turkish custody between November 13, 2007 and at least April 18, 2013 – which includes the time period during which the respondent twice travelled back to Iran. The documents purport to lend credence to statements that the respondent made to Canadian Border Services Agency (CBSA) officers in her interview on December 18, 2013 wherein she indicated that her father did not know that she was back in Iran despite her two prolonged visits to the country, and her having had close contact with her mother and other relatives while she was back in Iran. Further, the documents also imply that circumstances had changed such that the respondent's two returns to Iran now may appear objectively more reasonable than they would appear had the respondent's father still found himself in the picture.

[16] The RPD found that both documents were authentic, that they were credible and reliable, and that they established that Ms. Ravandi's father was in Turkish custody between November 13, 2007 and at least April 18, 2013.

[17] Ms. Ravandi testified at the cessation hearing. Since there is no recording or transcript of that proceeding, there is no direct evidence of what she said there. Ms. Ravandi did not provide an affidavit in support of this application for judicial review. The only indication that she may have provided oral evidence potentially relevant to the issue of changed circumstances is the RPD member's statement in the decision that Ms. Ravandi had testified that she had learned that her father was in prison in Turkey before she returned to Iran from Canada and this "suggests that she took this into consideration when she returned to Iran."

[18] It appears that at the hearing Ms. Ravandi also testified about her other agents of persecution – the man to whom her father had promised her in marriage and his family. She explained that they lived in a town about an hour and a half's drive from where she stayed in Iran. While she did not see them when she was there, she did not take any particular precautions to avoid them. There is no indication in the record before me that Ms. Ravandi testified that they had lost interest in her or were prepared to let bygones be bygones.

[19] From the record before me, there does not appear to have been any other evidence before the RPD that was potentially relevant to the issue of changed circumstances apart from what I have just reviewed. Indeed, it appears that the focus of Ms. Ravandi's response to the Minister's application for cessation was not changed circumstances but what the member termed "humanitarian and compassionate grounds." The member was impressed with Ms. Ravandi as a witness. He also noted that she had done "as well as can be expected of a self-represented person to argue her case before the RPD on the basis of humanitarian and compassionate grounds." The member was clearly sympathetic to Ms. Ravandi given the situation in which she

found herself. However, as he correctly noted, the law afforded him no jurisdiction in that proceeding to consider humanitarian and compassionate grounds for relief.

[20] Returning to the grounds for cessation, the RPD member first considered reavailment under paragraph 108(1)(a) of the *IRPA*. The member correctly stated that the test for reavailment has three requirements: the protected person must act voluntarily; she must intend to reavail herself of the protection of the country of nationality; and she must actually obtain that protection. The member also correctly indicated that the Minister had the burden of proving reavailment on a balance of probabilities. The member then stated that, for reasons he would set out, he was satisfied that the three elements of reavailment were met and, consequently, that Ms. Ravandi had reavailed herself of the protection of Iran within the meaning of paragraph 108(1)(a) of the *IRPA*. Since this determination is not challenged directly on this application, it is not necessary to set out the member's reasoning in support of it.

[21] After giving his reasons for finding that Ms. Ravandi had reavailed herself of the protection of Iran, the member concluded as follows:

> I conclude that the respondent has reavailed herself of the protection of Iran. The Minister's application for cessation is granted, and the respondent's claim for protection is deemed rejected. These conclusions are entirely dispositive of this case, and I need not consider any other issues that may arise under subsections 108(1)(b) through (e).

[22] Accordingly, the Minister's application for cessation of Ms. Ravandi's refugee protection was allowed pursuant to paragraph 108(1)(a) of the *IRPA* and Ms. Ravandi's claim for protection was deemed rejected pursuant to subsection 108(3) of the Act.

III. STANDARD OF REVIEW

[23] The parties submit and I agree that the RPD's decision should be reviewed on a reasonableness standard.

[24] Following *Vavilov*, reasonableness is now the presumptive standard of review, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (at para 10). In my view, there is no basis for derogating from the presumption that reasonableness is the applicable standard of review here. Justice Ahmed recently reached the same conclusion in *Thapachetri v Canada (Citizenship and Immigration)*, 2020 FC 600 (at para 10).

[25] An assessment of the reasonableness of a decision must be sensitive and respectful yet robust (*Vavilov* at paras 12-13). Reasonableness review focuses on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). 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). The decision maker's reasons should be read in light of the record and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-95). When considering whether a decision is reasonable, "the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). As the Court also emphasized,

"it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies" (at para 86, emphasis in original).

[26] The Court also held that, to be reasonable, a decision must be based on "internally coherent reasoning" and it "must be justified in relation to the constellation of law and facts that are relevant to the decision [citations omitted]" (*Vavilov* at para 105). Further, "the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers" (*ibid.*). Such constraints can inform the assessment of the reasonableness of a decision.

[27] Among the legal or factual considerations that could constrain an administrative decision maker in a particular case that the Court identifies is the impact of the decision on the affected individual. The Court held that, where "the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (*Vavilov* at para 133). As the Court explained: "The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood" (*ibid.*). Earlier, when discussing generally the importance of giving reasons for administrative decisions, the Court had noted that reasons "shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79, citing *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48 at paras 12-

13). The Court returned to the issue of arbitrariness in its discussion of the impact of a decision as a relevant consideration in assessing the reasonableness of that decision, observing that "concerns regarding arbitrariness will generally be more acute in cases where the consequences of the decision for the affected party are particularly severe or harsh, and a failure to grapple with such consequences may well be unreasonable" (*Vavilov* at para 134).

[28] Having been given the jurisdiction to determine applications to cease refugee protection, the RPD has been entrusted with an "extraordinary degree of power" over the lives of the subjects of those applications (cf. *Vavilov* at para 135). A corollary to this power is a "heightened responsibility" on the part of the RPD to ensure that its reasons demonstrate that it has considered the consequences of a decision and that those consequences are justified in light of the facts and law (*ibid.*). As will be discussed below, in some cases, these consequences include not only the loss of refugee protection – a serious matter in and of itself – but also the collateral legal consequences of the loss of permanent resident status and inadmissibility to Canada.

[29] The burden is on Ms. Ravandi to demonstrate that the RPD's decision is unreasonable. To succeed in having the decision set aside, she must establish that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). As has just been discussed, among the factors that can determine the requisite degree of justification, intelligibility and transparency is the impact of that decision on Ms. Ravandi.

IV. ANALYSIS

[30] It is indisputable that the loss of refugee protection because of a determination that it has ceased under subsection 108(2) of the *IRPA* is a serious matter with significant potential consequences for the person affected. Moreover, as set out above, if the person affected is a permanent resident and refugee protection is found to have ceased under any of paragraphs 108(1)(a) through (d) of the *IRPA*, this determination entails not only the loss of refugee protection but also the loss of permanent resident status. The person also becomes inadmissible to Canada. The seriousness of such collateral legal consequences is evident from the bare facts of Ms. Ravandi's case. As a result of the RPD's determination, she has lost the permanent resident status she has held since March 2010 and she is inadmissible to the country that has been her home for a decade. As the RPD member aptly observed, Ms. Ravandi had been living under the Sword of Damocles since March 2014, when the Minister filed the application to cease her refugee protection on the basis of reavailment.

[31] Importantly, Parliament has determined that these collateral legal consequences do not follow for all refugees whose protection is found to have ceased; rather, they follow only for those whose protection is found to have ceased under paragraphs 108(1)(a) through (d) of the *IRPA*. They do not follow for a refugee whose protection is found to have ceased under paragraph 108(1)(e) on the basis that "the reasons for which the person sought refugee protection have ceased to exist" (see subsection 40.1(2) and paragraph 46(1)(c.1) of the *IRPA*). Thus, by determining upon which ground cessation is ordered – any of those found in paragraphs 108(1)(a) through (d) or, instead, the one found in paragraph 108(1)(e) – the RPD

determines (indirectly) whether these collateral legal consequences will arise in a given case or not.

[32] On this application for judicial review, Ms. Ravandi does not challenge directly the RPD's determination that her refugee protection ceased under paragraph 108(1)(a) of the *IRPA*. There is no suggestion that, viewed in isolation, that determination and the reasons for it provided by the RPD do not exhibit the requisite degree of justification, intelligibility and transparency given the seriousness of the question at issue – namely, whether she should lose refugee protection. Rather, as I understand it, her position is a more subtle one. She contends that, given the significantly more serious impact on her (given the collateral legal consequences) of a determination that her refugee protection ceased under paragraph 108(1)(a) because of reavailment as opposed to under paragraph 108(1)(e) because of changed circumstances, the RPD's failure to address the comparatively more serious impact of such a determination and justify its decision in light of this leaves the decision lacking the requisite degree of justification, intelligibility and transparency.

[33] As I have said, I agree with Ms. Ravandi that, where the RPD has a choice to make between, on the one hand, finding that refugee protection has ceased under any of paragraphs 108(1)(a) through (d) or, on the other hand, under paragraph 108(1)(e), and it opts for the former rather than the latter, it is required to explain the choice with reasons that demonstrate that it has considered the consequences of that decision and that those consequences are justified in light of the facts and law. The reasons would have to explain why that decision best reflects

the legislature's intention given the significantly different impacts of the respective determinations, as defined by Parliament.

[34] One way this could arise is where the evidence could support a finding under both paragraphs 108(1)(a) and 108(1)(e) but the parties put forward a joint position that cessation should be found on the basis of paragraph 108(1)(e) and not paragraph 108(1)(a). Even though the RPD is not required to accept the parties' joint position and has the discretion to consider other applicable grounds of cessation (see *Al-Obeidi* at para 21, and *Tung v Canada (Citizenship and Immigration)*, 2018 FC 1224 at para 31), in my view, having regard to the deleterious collateral consequences that would follow from not accepting the joint position, *Vavilov* (especially paragraphs 127-28 and 133-35) places a significant burden on the RPD to justify why, if such were the case, it found refugee protection had ceased on a ground other than the one proposed jointly by the parties.

[35] Similarly, even in the absence of a joint position, if the Minister only sought cessation on the basis of changed circumstances yet the evidence was capable of supporting a finding on another ground, there would be a significant burden on the RPD to justify why, if such were the case, it found refugee protection had ceased on a ground other than the one advanced by the Minister.

[36] Doubtless there could be other scenarios where the RPD is presented with a real choice among the grounds for cessation and, for its decision to be reasonable, it would have to grapple with the respective collateral consequences of its choice. Should it opt for a determination that

entailed comparatively more significant adverse collateral consequences than would another option that was reasonably open to it, it would have to justify that decision in accordance with *Vavilov*, especially paragraphs 133-35 of that judgment. However, as I have also already indicated, in my view the RPD was not presented with such a choice in this case.

[37] In framing the issues to be decided, the RPD member noted that, on the evidence before him, the pertinent provisions of the *IRPA* were paragraphs 108(1)(a) and 108(1)(e) – that is, reavailment and changed circumstances. Ms. Ravandi states that the RPD has broad discretion to consider any of the grounds of cessation set out in subsection 108(1) of the *IRPA*: see *Al-Obeidi* at paras 21-22 and *Tung* at paras 28-29. This discretion must be exercised reasonably and its exercise must be supported with adequate reasons: see *Lu v Canada (Citizenship and Immigration)*, 2019 FC 1060 at para 38. Further, section 108 of the *IRPA* does not constrain the RPD to consider potential grounds for cessation in any particular order: see *Lu* at paras 33-34. Consequently, as Ms. Ravandi correctly observes, in theory the RPD member could have approached the issues he had identified in either order – reavailment first and then changed circumstances (as actually happened) or changed circumstances first and then reavailment. She goes on to argue that, whichever order the issues were addressed, an outcome where she did not face the collateral consequences of loss of permanent resident status and inadmissibility was a reasonable possibility. Consequently, according to Ms. Ravandi, the RPD member was required to provide an adequate justification for why he opted to find that cessation was made out on a ground that entailed these deleterious collateral consequences for her. Specifically, the justification given for not addressing changed circumstances fails to meet this test and, as a result, the decision must be set aside as unreasonable.

[38] As I will explain, I am not persuaded that, whichever order the issues are addressed, there was ever a reasonable possibility that the determination of the Minister's cessation application would not result in the loss of Ms. Ravandi's permanent resident status and her inadmissibility to Canada. In other words, Ms. Ravandi has not persuaded me that she ever realistically faced lesser stakes than the loss of permanent residence and inadmissibility to Canada along with the loss of her refugee protection. Consequently, no further justification was required for why the RPD did not consider paragraph 108(1)(e) of the *IRPA* beyond that which was given.

[39] To begin with how the RPD member actually approached the issues before him, Ms. Ravandi argues that, after dealing with reavailment, the member should have gone on to consider changed circumstances because there was uncontradicted and undisputed evidence that her refugee status had ceased on this ground as well. She relies on the holding in *Al-Obeidi* at paragraph 22 – "where there is uncontradicted and undisputed evidence that the refugee's status has ceased under another ground [. . .], the Board should consider it" – in support of this submission.

[40] For the following reasons, I am not persuaded that, having found refugee protection had ceased because of reavailment, the RPD member was required to go on to consider changed circumstances. Further, even if he had gone on to do so, I am not persuaded that it would have made any difference to the outcome for Ms. Ravandi.

[41] First, since I must review the member's reasoning process on a reasonableness standard, Ms. Ravandi must demonstrate not merely that the member "should" have gone on to consider

changed circumstances but that it was unreasonable for him not to have done so. An important factor in the assessment of the reasonableness of the member's reasoning process is the submissions of the parties before him. As the Supreme Court explained in *Vavilov*, the "principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties" (at para 127). A decision maker's "failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it" (*Vavilov* at para 128). As Justice Walker held in *Lu*, where more than one of the paragraphs of subsection 108(1) may apply, "the RPD should assess the evidence and submissions of the parties in respect of each of the paragraphs in question" (at para 38). However, there is no indication that Ms. Ravandi (or the Minister, for that matter) asked the RPD to consider changed circumstances even if it was satisfied that refugee protection had ceased on the ground of reavailment.

[42] Be that as it may, while this is an important consideration, for present purposes I do not think it would be fair to treat it as determinative. Even though I do not know what position, if any, Ms. Ravandi took before the RPD regarding the interplay between reavailment and changed circumstances, I do know that she was self-represented. So that the substance of her position on this application for judicial review can be addressed, I am prepared to extend her some latitude in this respect. As well, it is noteworthy that, when framing the issues at the outset of his decision, the RPD member himself was of the view that changed circumstances was "pertinent" given the evidence filed by Ms. Ravandi. In this limited sense at least, the issue of changed circumstances was in play before the RPD along with reavailment.

[43] Second, I am not persuaded that the ratio from *Al-Obeidi* on which Ms. Ravandi relies applies here. Justice O'Reilly held: "If the respondent refugee persuades the Board, or concedes, that his or her status has ceased by virtue of a change of country conditions (s 108(1)(e)), the Board has discretion to consider other grounds" (at para 22). It is in describing the exercise of that discretion that Justice O'Reilly then makes reference to "uncontradicted and undisputed evidence that the refugee's status has ceased under another ground" (*ibid.*). This is the reverse of the present case, where the issue is whether the RPD should have considered another ground besides reavailment, not whether it should have considered another ground besides changed circumstances.

[44] Third, even if the ratio of *Al-Obeidi* applies, I am not persuaded that there was "uncontradicted and undisputed evidence" that Ms. Ravandi's refugee status had ceased because of changed circumstances. At most, in framing the issues before him, the RPD member found that, given the evidence before him, paragraphs 108(1)(a) and (e) were the "pertinent" provisions. He certainly did not find that the evidence of changed circumstances was "uncontradicted and undisputed." Nor, in my view, does the evidence merit this description when viewed in light of the test for cessation on this ground. Even assuming no issue was taken with the evidence that Ms. Ravandi's father was in prison when she visited Iran in 2011 and 2013, there was no evidence of the length of his sentence. Further, there was no evidence that circumstances had changed in any way with respect to Ms. Ravandi's other agents of persecution.

[45] Fourth, and perhaps most importantly, even if the RPD had gone on to consider changed circumstances (whether it was required to or not) and was satisfied that refugee protection had ceased on this ground as well, I am not persuaded that this would have made any difference for Ms. Ravandi.

[46] Paragraph 46(1)(c.1) of the *IRPA* states that a person loses permanent resident status "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)." The omission of paragraph 108(1)(e) from this provision means that a person does not lose permanent resident status on a final determination that their refugee protection has ceased on that ground. However, paragraph 46(1)(c.1) does not say that a person loses permanent resident status "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) *unless it is also found to have ceased for the reason described in paragraph 108(1)(e)*." The same is true of inadmissibility under subsection 40.1(2) of the *IRPA*. Further, there does appear to be a principled basis for treating cessation under paragraph 108(1)(e) differently. Unlike the grounds set out in paragraphs 108(1)(a) to (d), under paragraph 108(1)(e), refugee protection ceases even though the person did not do anything to bring about this result. This rationale arguably loses its force when refugee protection is lost not only because of changed circumstances but also because of something the person did.

[47] On behalf of Ms. Ravandi, the highest Mr. Cannon put his position was that it is an open question what would happen with someone whose refugee protection was found to have ceased

under one or more of the reasons described in paragraphs 108(1)(a) to (d) and for the reason described in paragraph 108(1)(e). The limited submissions I heard on this point have not persuaded me that Ms. Ravandi would have been in a better position had her refugee protection been found to have ceased because of both reavailment and changed circumstances as opposed to because of reavailment alone.

[48] Turning to the hypothetical scenario under which, instead of commencing his analysis with reavailment, the RPD member considered changed circumstances first, Ms. Ravandi submits that the member could reasonably have disposed of the Minister's application on this ground alone. Since this would have put her in a better position than she now finds herself (because she would have avoided the deleterious collateral consequences of a finding of reavailment), the member was required to provide a reasoned justification for not determining the Minister's application on this basis.

[49] Assuming for the sake of argument that considering reasonable hypotheticals is an appropriate way to analyze what was at stake for Ms. Ravandi, I am not persuaded that, if the member had commenced with changed circumstances instead of reavailment, there is a reasonable outcome that would have left Ms. Ravandi in a better position than she is in now.

[50] I begin by noting that there is no indication that the RPD was asked to consider changed circumstances first. However, as discussed above, while this is an important consideration, I do not think it would be fair to treat it as determinative in this case.

[51] More significant for present purposes is that the evidence of changed circumstances is far from compelling. It is very much an open question whether Ms. Ravandi's father's imprisonment in Turkey on a sentence of unknown duration could constitute the sort of durable change necessary to establish that, in the words of paragraph 108(1)(e), "the reasons for which the person sought refugee protection have *ceased to exist*" (emphasis added). Further, as I have already noted, there was no evidence that circumstances had changed in any way with respect to Ms. Ravandi's other agents of persecution.

[52] Given the state of the evidence and the applicable legal test, it is far from obvious that the RPD could reasonably find that refugee protection had ceased because of changed circumstances. And if the RPD was not persuaded the refugee protection ceased because of changed circumstances, it would be unreasonable for it not to go on to consider reavailment, the ground advanced by the Minister in the first place, given the evidence capable of supporting that finding. In the absence of any challenge to the actual reavailment finding, there is no reasonable basis for thinking that the member would not have found that the test for reavailment was satisfied in this hypothetical scenario as well. In other words, there is no reasonable basis for thinking that the outcome for Ms. Ravandi would have been any different. Her refugee protection would have ceased on the basis of reavailment, not changed circumstances.

[53] The more difficult question is what would happen if, contrary to the foregoing, the RPD found that refugee protection had ceased because of changed circumstances. Would it be reasonable for the RPD to stop the analysis there and not consider reavailment? If so, this would

leave Ms. Ravandi in a better position than she is now because she would retain her permanent resident status and would not be inadmissible to Canada.

[54] *Al-Obeidi* strongly suggests that it would not be reasonable for the RPD to stop its analysis with a finding that refugee protection had ceased on the basis of changed circumstances. The evidence of reavailment appears to be "uncontradicted and uncontested." It was certainly not contradicted or contested by the Minister, who had led it. To the extent that I can discern Ms. Ravandi's position from the RPD's reasons, it appears that she did not contest the essential factual allegations underlying the Minister's application on the basis of reavailment. (Of course, whether the legal test for reavailment was satisfied is a different question.) Given the state of the evidence, following *Al-Obeidi*, the RPD would be required to go on to consider reavailment notwithstanding a positive finding under changed circumstances. And if it did so, there is no reasonable basis to think that the RPD would not find refugee protection to have ceased because of reavailment as well. As discussed above, this would not leave Ms. Ravandi any better off than she is now.

[55] There is some force to this argument. However, I have concluded that I do not need to answer the underlying question because it is simply too speculative to support a reasonable hypothetical. Having regard to the limited evidence of changed circumstances and the legal test that applies, I am not persuaded that the premise upon which this part of the hypothetical scenario is based – namely, that the RPD could reasonably find that refugee protection had ceased because of changed circumstances – is true. For this reason, Ms. Ravandi has not

persuaded me that this is a reasonable route by which she could have arrived at a better outcome than the one she faces.

[56] In summary, I agree with Ms. Ravandi that the stakes for her in the cessation application were high. However, I do not agree with how she has framed those stakes – that is, as a choice between, on the one hand, a cessation determination that entailed the loss of her permanent resident status and her inadmissibility to Canada and, on the other hand, one that did not. In my view, there was never a reasonable basis for the RPD to order cessation for reasons that did not also lead to the loss of Ms. Ravandi's permanent resident status and to her inadmissibility.

[57] Applying the test of responsive justification articulated in *Vavilov*, what this means is that there was no need for the RPD to "grapple" with the consequences of determining that Ms. Ravandi's refugee protection had ceased on the basis of reavailment instead of changed circumstances, to explain why that decision best reflects the legislature's intention, or to demonstrate that it had considered the consequences of this choice and justified them in light of the facts and the law (cf. *Vavilov* at paras 133-35). Put another way, on the issue of collateral legal consequences, the RPD was not required to justify the outcome entailed by its determination because no better outcome for Ms. Ravandi than the one arrived at was a reasonable possibility.

[58] The RPD's determination that refugee protection had ceased on the basis of reavailment – a determination which, to repeat, stands unchallenged in this application – provided the requisite degree of justification, intelligibility and transparency, even considering all that was at stake for

Ms. Ravandi. Since an outcome without the deleterious collateral legal consequences of this determination was not a reasonable possibility on the facts of this case, the RPD's statement that, because the reavailment finding was "entirely dispositive" of the matter, it was not necessary to "consider any other issues that may arise under subsections 108(1)(b) through (e)," also exhibits the requisite degree of justification, intelligibility and transparency notwithstanding the collateral consequences that follow from the reavailment finding.

V. CONCLUSION

[59] For these reasons, the application for judicial review is dismissed.

[60] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-6830-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6830-19
STYLE OF CAUSE:	AFSANEH SALAMAT RAVANDI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

HEARING HELD BY VIDEOCONFERENCE ON JUNE 25, 2020 FROM OTTAWA, ONTARIO (COURT) AND VANCOUVER, BRITISH COLUMBIA (PARTIES)

JUDGMENT AND REASONS:	NORRIS J.
DATED:	JULY 14, 2020

APPEARANCES:

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