

Federal Court



Cour fédérale

Date: 20221003

Docket: IMM-2539-22

Citation: 2022 FC 1371

Ottawa, Ontario, October 3, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Applicant

and

SAMAYEH ZINALI

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a Refugee Protection Division (RPD) decision that rejected an application to cease the Respondent's refugee protection pursuant to section 108(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA]. The Applicant made the application because the Respondent, Samayeh Zinali, had obtained an Iranian passport and returned to Iran on several occasions.

[2] The Respondent originally fled Iran because she feared persecution as an adherent of the Baha'i religion. She came to Canada as a refugee, having been granted overseas refugee

protection by a Visa Officer in Turkey, and became a permanent resident upon her arrival in Canada in October 2013.

[3] The Respondent subsequently obtained an Iranian passport, and returned to Iran from December 2014 until July 2015 to help look after her grandchildren so that her daughter could spend time with her husband who had experienced a stroke and was in hospital. She returned to Canada, but went back to Iran again in May 2016, after she experienced a period of extreme distress and depression following the death of her son in Canada. Her daughters in Canada suggested that she return to Iran because her daughter there would have more time to care for her. The Respondent's condition began to improve, but she learned that another son who was in Finland was experiencing medical issues. Her daughters arranged for a visit and made travel plans so that the Respondent could go to Finland to visit with her son. She subsequently returned to Iran before coming back to Canada.

[4] In September 2018, the Respondent applied for Canadian citizenship and indicated that she had travelled twice to Iran. She also indicated that she had obtained an Iranian passport in January 2014, later disclosing that she had obtained a further one in June 2018. Upon learning of this, the Applicant applied for cessation of her refugee protection.

[5] The RPD refused the application because it found that the Respondent had rebutted the presumption that she intended to obtain the protection of the Iranian state when she obtained her passport and returned to that country. The RPD found that she had gone back for exceptional reasons, and had taken steps to remain out of the purview of state officials while she was there, and it accepted her evidence that she continued to fear persecution as a Baha'i in Iran. In light of

this, the RPD concluded that the Respondent did not intend to seek state protection, and she had therefore not reavailed.

[6] The Applicant seeks judicial review of the RPD's decision, claiming that it failed to grapple with all of the relevant circumstances in examining the Respondent's subjective fear of the authorities in Iran, and also that the RPD made significant errors of fact by failing to take into account her trip to Finland to visit her son. The Applicant submits that these flaws are central to the analysis the RPD was required to undertake and therefore provide grounds to overturn the decision.

[7] I am not persuaded.

[8] The standard of review that applies is reasonableness, in accordance with the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Under this 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). One key element of this is that "absent exceptional circumstances, a reviewing court will not interfere with [the decision-maker's] factual findings. The reviewing court must refrain from 'reweighing and reassessing the evidence considered by the decision maker'..." (*Vavilov* at para 125).

[9] Applying the *Vavilov* framework to the circumstances here, I find that the Applicant's arguments largely amount to a request that the Court re-weigh the evidence.

[10] Dealing first with the argument that the RPD did not grapple with the purpose and circumstances of the Respondent's return to Iran following her visit with her son in Finland, I am not persuaded that this is a reviewable error. A review of the transcript of the hearing reveals that the Applicant's Hearing Officer made repeated references to two trips in questioning the Respondent, and this makes sense because she made two trips to Iran from Canada.

[11] Later in the hearing, in the course of making final submissions, the Hearing Officer referred to the trip to Finland as a "third trip", but did not request to question the Respondent further about it. The trip to Finland had been canvassed during the course of the hearing, and the RPD was clearly aware of it, as is clear from its decision.

[12] The fact that the RPD mistakenly referred to the Respondent's trip to Finland as a "detour" in her return trip to Canada can perhaps be explained by her testimony, because that is how she described it. There is no dispute, however, that she did not travel directly from Finland to Canada, but rather she went back to Iran and then later returned to Canada. However, the RPD's error on this factual point is not material, because it clearly articulated the purpose of her trip to Finland, noting that it was to visit her son who had experienced significant medical problems. There is no suggestion that either the purpose of her trip to Finland or her return to Iran were in any significant way different from her other trips, and the RPD properly recognized this.

[13] Although the Applicant argues that the Respondent failed to meet her burden of rebutting the presumption of reavilment regarding this third trip, I am not persuaded that this conclusion flows from the RPD's minor error as to the route she travelled. If there were evidence that the

Respondent had gone to Finland with a Baha'i group or had otherwise put herself in danger of drawing the attention of the authorities by virtue of her activities there or on her return, the failure of the RPD to evaluate that in assessing her subjective intention would have been a significant flaw in its reasoning. The Applicant cannot point to any such evidence, and that is understandable because the matter was not canvassed when the Respondent was questioned.

[14] The RPD's error on her travel itinerary is the type of minor misstep on a peripheral matter that is referred to in *Vavilov*. As the Supreme Court of Canada makes clear in that decision, the onus is on the Applicant to show that an error is "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). It has not done so here.

[15] The Applicant next argues that the RPD erred in finding that the Respondent did not control the timing of her trips, and thus it failed to assess this issue in considering whether the length of her stays in Iran was indicative of a lack of subjective fear of the authorities.

[16] I am not persuaded. I agree with the Respondent that the transcript of the hearing indicates that the Respondent was largely reliant on her daughters to arrange her travel, and that she effectively went where they told her to go. The Applicant does not dispute that the evidence shows the Respondent to be a woman of limited capacity, and that she was incapable of making her own travel arrangements. The RPD's findings of fact are based in its assessment of the evidence, and the Applicant has not demonstrated the type of "exceptional circumstances" that would warrant interfering with its findings (*Vavilov* at para 125).

[17] The Applicant's third argument is that the RPD failed to grapple with the Respondent's subjective intention and whether her actions were inconsistent with a continuing fear of Iranian authorities. The Applicant notes that the Respondent voluntarily engaged with Iranian state officials when she obtained her passport and then renewed it, and when she used that passport to travel to and from Iran. The Applicant contends that the RPD failed to consider this, and therefore it failed to apply the criteria set out in previous decisions, affirmed most recently by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Galindo Camayo*].

[18] I am not persuaded. Once again, the RPD's findings on this question are supported by the evidence and consistent with the jurisprudence. The RPD's analysis is entirely consistent with the guidance set out in paragraph 83 of *Galindo Camayo* that the "focus of the analysis 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 [Canada]."

[19] The RPD was aware that the Respondent's actions in returning to Iran using her Iranian passport triggered the presumption of reavailment. In *Seid v Canada (Citizenship and Immigration)*, 2018 FC 1167 at paragraph 14, this Court characterized the presumption in such cases as "particularly strong". The RPD went on to acknowledge that the presumption can be rebutted, and that that using a passport from the country of nationality to visit an ill family member may not amount to reavailment if the other circumstances of the return are not consistent with an intent to reavail (citing *Canada (Citizenship and Immigration) v Antoine*, 2020 FC 370).

[20] The RPD observed that the Respondent took steps to avoid coming to the attention of Iranian officials to the extent she could do so, such as by not leaving her daughter's house during the first trip except for one brief walk to visit her son-in-law at the hospital. She did not visit her brother or sister in Iran despite not having seen them for many years, and she did not do anything that could have connected her to her Baha'i faith – which was the basis of her fear of persecution. There is no evidence in the record to suggest that her passport could identify her as a member of the Baha'i community, or that the government keeps a list of adherents that it uses upon entry into the country.

[21] In many respects, this case is similar to the situation in *Canada (Citizenship and Immigration) v Safi*, 2022 FC 1125, where Justice Strickland upheld the RPD's decision on the basis that it had applied the factors set out by the Court of Appeal in *Galindo Camayo*, and its findings were supported by the facts. In particular, the claimant's lack of knowledge that he was not permitted to return to his country of origin, and the purpose and circumstances of his two trips indicated that he continued to fear authorities in Afghanistan, and the RPD's finding that he had rebutted the presumption was found to be reasonable. In another recent decision, *Aydemir v Canada (Citizenship and Immigration)*, 2022 FC 987, the RPD's failure to focus on the claimant's subjective intention in returning to his country of origin was found to be unreasonable.

[22] In this case, the RPD did analyze the Respondent's subjective intentions, as well as the purpose of her trips, her behaviour while in Iran, and all of the other relevant circumstances. This is consistent with the requirements of *Galindo Camayo* and with the recent case law.

[23] On this argument, I find the Applicant is asking the Court to re-weigh the evidence.

Again, I am not persuaded that there are any exceptional circumstances that warrant interfering with the RPD's findings of fact regarding the Respondent's subjective intent and her ongoing fear of Iranian authorities.

[24] For all of these reasons, the application for judicial review is dismissed.

[25] There is no question of general importance for certification.

JUDGMENT in IMM-2539-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2539-22

STYLE OF CAUSE: THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS v SAMAYEH
ZINALI

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 29, 2022

**JUDGMENT AND
REASONS:** PENTNEY J.

DATED: OCTOBER 3, 2022

APPEARANCES:

Robert L. Gibson

FOR THE APPLICANT

Douglas Cannon

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE APPLICANT

Elgin, Cannon & Associates
Vancouver, British Columbia

FOR THE RESPONDENT