

Federal Court



Cour fédérale

**Date: 20221027**

**Docket: IMM-8697-21**

**Citation: 2022 FC 1481**

**Ottawa, Ontario, October 27, 2022**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**RAMPAL SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Mr. Rampal Singh, is a citizen of India. After arriving in Canada in 2011, he sought and was granted refugee protection. In 2020, the Minister of Public Safety and Emergency Preparedness [Minister] applied, pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for cessation of the Applicant's protection on the grounds he had voluntarily reavailed himself of the protection of India.

[2] In a decision dated November 12, 2021, the Refugee Protection Division [RPD] allowed the Minister's application thereby determining that the Applicant's protection claim had ceased pursuant to subsection 108(2) of the IRPA. The Applicant brings this application for judicial review of the RPD decision under subsection 72(1) of the IRPA arguing that the decision is unreasonable.

[3] For the reasons that follow, I am of the opinion that the decision is unreasonable and the Court's intervention is warranted. The application for judicial review is granted.

## II. Background

[4] After arriving in Canada in 2011, the Applicant sought protection because he feared members of the Jaat community within his village as well as the Indian police. His claim was accepted on March 31, 2016 and he obtained permanent resident [PR] status on July 13, 2017. His PR card was issued on September 6, 2017.

[5] After having obtained PR status, the Applicant returned to India three times between 2017 and 2020 using his Indian passport.

[6] He first returned between December 27, 2017 and April 11, 2018 to be with his mother, who was hospitalized. The Applicant told the RPD that his mother was in and out of the hospital during his first trip back to India, and eventually her health improved. He stated that his parents no longer live in the village he fled in 2011, and that his sister in India was unable to care for his mother, as she was newly married and taking care of her husband's family. He stated that a

police officer visited his parents' home upon his arrival in India, verified his identification and permitted him to stay with his parents after a bribe was paid.

[7] In October 2018, a Border Services Officer [BSO] interviewed the Applicant as he was returning to Canada from the United States [US]. The BSO questioned him about his return to India given the fact that he had sought and obtained protection from that country and had received his PR status. According to the BSO's notes, he explained to the Applicant that if he was returning to the country in which he feared persecution, there was no need for him to be qualified as a refugee. The BSO also noted that the Applicant appeared "slightly confused."

[8] Between January 21, 2019 and March 7, 2019, the Applicant returned to India for a second time. This trip was for the purpose of supporting his father, who was scheduled for surgery. He told the RPD that his mother remained unwell and his sister was occupied with a newborn. The police again visited his parents' residence to confirm his identity and another bribe was provided. During this visit, the Applicant attended the wedding of a cousin but stated that he kept a low profile while in India and took precautions in attending the wedding.

[9] The Applicant's third return to India was in November 2019 to get married – a marriage his parents had arranged. He celebrated his wedding with about 50 relatives in attendance, went to Goa on a five-day honeymoon and then posted pictures to social media. He and his wife stayed with his parents. He reported that he tried to return to Canada in March 2020 but COVID-19 travel restrictions prevented him from doing so. He remained in India and returned to Canada in early September 2020.

[10] The Applicant is employed in Canada as a long-haul truck driver. To facilitate his work-related cross-border travel he used his Indian passport to obtain a US visa.

[11] On August 31, 2020, the Minister applied for the cessation of refugee protection on the grounds that the Applicant voluntarily reavailed himself of the protection of his country of nationality (paragraph 108(1)(a) IRPA).

### III. Relevant Law

[12] Article 1C of the *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 (entered into force: 22 April 1954, accession by Canada on 4 June 1969) addresses the circumstances in which a recognized refugee ceases to have that status. This includes where a person voluntarily reavails themselves of the protection of their country of nationality:

**Article 1 - Definition of the term “refugee”**

[...]

(C) This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; [...]

**Article premier. - Définition du terme “réfugié”**

[...]

C. Cette Convention cessera, dans les cas ci-après, d'être applicable à toute personne visée par les dispositions de la section A ci-dessus :

1) Si elle s'est volontairement réclamée à nouveau de la protection du pays dont elle a la nationalité; [...]

[13] The provisions of the *Convention* are reflected at section 108 of the IRPA, which is reproduced in full below. Paragraph 108(1)(a) addresses reavailment:

**Cessation of Refugee Protection**

**Rejection**

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

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

**Cessation of refugee protection**

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased

**Perte de l'asile**

**Rejet**

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

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

**Perte de l'asile**

(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des

for any of the reasons described in subsection (1).

**Effect of decision**

(3) If the application is allowed, the claim of the person is deemed to be rejected.

**Exception**

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

réfugiés, de tels des faits mentionnés au paragraphe (1).

**Effet de la décision**

(3) Le constat est assimilé au rejet de la demande d'asile.

**Exception**

(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

[14] Interpretation of the term “reavail,” as it is used in the *Convention* and paragraph 108(1)(a) of the IRPA, has been guided by paragraphs 118 to 125 of the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (*Nsende v Canada* (*Minister of Citizenship and Immigration*), 2008 FC 531 at para 12 [*Nsende*]). In cessation proceedings, the Minister has the initial burden of demonstrating the protected person has: (1) acted voluntarily; (2) intended, by the action taken, to reavail themselves of the protection of their country of origin; and (3) did actually avail themselves of the protection of their country of origin (*Camayo v Canada* (*Citizenship and Immigration*), 2020 FC 213 at para 36 [*Camayo FC*] citing *Nsende* at para 13). Each of the above noted elements must be demonstrated; the three-part test is conjunctive.

IV. Decision under Review

[15] In allowing the cessation application, the RPD summarized the Minister's allegations and the evidence, and then provided a brief overview of the applicable law. The RPD then proceeded to consider each of the elements of the three-part cessation test.

A. *Voluntariness*

[16] The RPD found the Applicant had acted voluntarily in returning to India. The RPD observed that his return had not been compelled by either India or Canada. The RPD further found the trips in December 2017 and January 2019 were not justified by exceptional circumstances, because there were other family members in India able to assist the Applicant's mother and father with their health issues, and they were receiving medical attention.

[17] The RPD also found the November 2019 trip was unnecessary, because the Applicant returned to India to have a public wedding reception and honeymoon. The RPD further found the Applicant could have returned to Canada on his scheduled March 15, 2020 flight rather than remaining in India until September 2020 as border restrictions did not take effect until March 16. The RPD held that the Applicant's actions in returning to India to get married were contrary to those anticipated of a refugee.

B. *Intention*

[18] The RPD dismissed the Applicant's argument that he lacked the intent to reavail because he did not know he could not return to India or travel with his Indian passport. The RPD found the Applicant should have been aware that there might be consequences resulting from his travel to India and relied on the October 2018 BSO interview cautioning against such travel. The RPD further held that the Applicant should have sought advice or made inquiries if he was confused about the consequences of returning to India but did not.

[19] The RPD noted that this Court's jurisprudence reflected divergent views on the issue of intent, citing the decision of Justice Janet Fuhrer in *Camayo FC*. The RPD summarized the holding in *Camayo FC* as requiring a genuine motive on the part of a protected person to entrust their interests to the protection of the state of nationality – intent cannot be inferred simply based on evidence of passport issuance or renewal. The RPD also noted that *Camayo FC* recognized that the determination of cessation applications involved a fact-driven analysis and concluded the facts distinguished this matter from the circumstances in *Camayo FC*.

[20] The RPD accepted that an individual's subjective intent to avail themselves of the protection of their state of nationality was a relevant consideration but noted it was not the only consideration. The RPD found the Applicant's intent to reavail, in this instance, could be inferred based on his actions in returning to India on multiple occasions even after being cautioned by the BSO.



[21] The RPD also acknowledged the Applicant's testimony that he made efforts to hide from his agents of persecution. The panel dismissed this evidence and concluded the Applicant was not hiding while in India. The RPD noted the Applicant had openly driven his parents to the hospital on his first trips, attended a public wedding in February 2019, attended a public market and his own wedding in December 2019, and later travelled to Goa for a few days on his honeymoon.

C. *Actual Availment*

[22] The RPD held there was no doubt that by entering and exiting India on his Indian passport, registering his presence with police there and representing himself as the son of his parents, the Applicant had obtained the diplomatic protection of India. The RPD also took note of the Applicant's use of his Indian passport to obtain a US visa for work, again representing himself as a citizen of India.

[23] The RPD concluded the three criteria in *Nsende* had been met and allowed the Minister's subsection 108(2) IRPA application.

V. Issues and Standard of Review

[24] The Applicant and Respondent agree that the application for judicial review raises a single issue: was the RPD's cessation decision reasonable?

[25] The parties also agree that the presumptive standard of reasonableness is applicable in reviewing the RPD's decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 30, [Vavilov]; on this point: *Siddiqui v Canada (Citizenship and Immigration)*, 2016 FCA 134 at para 11, *Ravandi v Canada (Citizenship and Immigration)*, 2020 FC 761 at para 24).

## VI. Analysis

### A. *General Principles*

[26] Protected persons who obtain and rely on passports issued by their country of nationality place themselves under the country's diplomatic protection. Should they choose to return to their country of nationality, they further entrust their safety to that country. These circumstances result in a strong presumption that the protected person intended to avail themselves of their country of nationality's protection (*Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 63 [*Camayo FCA*]).

[27] This presumption is rebuttable; the onus is on the protected person. Where the protected person introduces evidence seeking to rebut the presumption, the RPD is required to engage with and undertake an individualized assessment of that evidence. The assessment should also address 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 FCA* at paras 65, 66).

[28] The interpretation and application of section 108 of the IRPA in cessation proceedings may have a serious and particularly harsh consequence for the affected individual. This triggers an increased duty on the RPD to provide reasons – the primary mechanism by which the reasonableness of a decision is demonstrated – and to explain its decision when addressing the central issues and concerns raised by the affected individual (*Camayo FCA* at paras 49-51 citing *Vavilov* at paras 81, 127, 128, 133, 134, 136).

[29] Where a protected person advances evidence to rebut the presumption of reavilment, the Court of Appeal, in *Camayo FCA*, has recently identified a non-exhaustive series of factors to which the RPD should have regard when determining if the presumption has been rebutted:

[84] Thus, in dealing with cessation cases, the RPD should have regard to the following factors, at a minimum, which may assist in rebutting the presumption of reavilment. No individual factor will necessarily be dispositive, and all of the evidence relating to these factors should be considered and balanced in order to determine whether the actions of the individual are such that they have rebutted the presumption of reavilment.

- The provisions of subsection 108(1) of *IRPA*, which operate as a constraint on the RPD in arriving at a reasonable decision: *Vavilov SCC*, above at paras. 115-124;
- The provisions of international conventions such as the *Refugee Convention* and guidelines such as the *Refugee Handbook*, as international law operates as an important constraint on administrative decision makers such as the RPD. Legislation is presumed to operate in conformity with Canada's international obligations, and the legislature is "presumed to comply with ... the values and principles of customary and conventional international law": *Vavilov SCC*, above at para. 114, citing *R. v. Hape*, 2007 SCC 26 at para. 53; *R. v. Appulonappa*, 2015 SCC 59 at para. 40; see also *IRPA*, paragraph 3(3)(f).
- The severity of the consequences that a decision to cease refugee protection will have for the affected individual. 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 SCC*, above at paras. 133-135;

- The submissions of the parties. The principles of justification and transparency require that an administrative decision maker's reasons meaningfully engage with the central issues and the concerns raised by the parties: *Vavilov SCC*, above at paras. 127-128;
- The state of the individual's knowledge with respect to the cessation provisions. Evidence that a person has returned to her country of origin in the full knowledge that it may put her refugee status in jeopardy may potentially have different significance than evidence that a person is unaware of the potential consequences of her actions;
- The personal attributes of the individual such as her age, education and level of sophistication;
- The identity of the agent of persecution. That is, does the individual fear the government of her country of nationality or does she claim to fear a non-state actor? Evidence that a person who claims to fear the government of her country of nationality nevertheless discloses her whereabouts to that same government by applying for a passport or entering the country may be interpreted differently than evidence with respect to individuals seeking passports who fear non-state actors. In this latter situation, applying for a passport or entering the country will not necessarily expose the individual to their agent of persecution. This may be especially so when all the individual has done is apply for a passport: applying for a passport may have little bearing on the risk faced by a victim of domestic violence, for example, or her level of subjective fear;
- Whether the obtaining of a passport from the country of origin is done voluntarily;
- Whether the individual actually used the passport for travel purposes. If so, was there travel to the individual's country of nationality or to third countries? Travel to the individual's country of nationality may, in some cases, be found to have a different significance than travel to a third country;

- What was the purpose of the travel? The RPD may consider travel to the country of nationality for a compelling reason such as the serious illness of a family member to have a different significance than travel to that same country for a more frivolous reason such as a vacation or a visit with friends;
- The frequency and duration of the travel;
- What the individual did while in the country in question;
- Whether the individual took any precautionary measures while she was in her country of nationality. Evidence that an individual took steps to conceal her return, such as remaining sequestered in a home or hotel throughout the visit or engaging private security while in the country of origin, may be viewed differently than evidence that the individual moved about freely and openly while in her country of nationality;
- Whether the actions of the individual demonstrate that she no longer has a subjective fear of persecution in the country of nationality such that surrogate protection may no longer be required; and
- Any other factors relevant to the question of whether the particular individual has rebutted the presumption of reavilment in a given case.

B. *The decision is unreasonable*

[30] Neither party argues against the application of the presumption of reavilment in this case and the need to consider factors outlined in *Camayo FCA*. The Respondent submits that in assessing whether the presumption had been rebutted the RPD considered many of the factors identified in *Camayo FCA* despite not having the benefit of the guidance provided by *Camayo FCA*. The Respondent argues an individualized assessment of all of the evidence, including evidence of the Applicant's subjective intent, was undertaken. It was submitted that in concluding the presumption of reavilment had not been rebutted, the RPD reasonably concluded

the Applicant “could or should have known of the immigration consequences of his actions” (Respondent’s Memorandum at para 27). The Respondent distinguishes this case from *Camayo FCA* on the basis that the Applicant had been alerted to issues related to travel to India yet chose not to heed that caution or further investigate the issue. Having considered these submissions, I am nonetheless persuaded that the decision is unreasonable.

[31] A reasonableness review does not focus uniquely on the outcome of a decision-making process. Instead review on a reasonableness standard engages a consideration of whether (1) the decision-making process reflects the attributes of justification, transparency and intelligibility; and (2) the outcome falls within a range of possible, acceptable and defensible outcomes in respect of the facts and law (*Vavilov* at para 86). It is not open to a reviewing court to disregard a flawed analysis to uphold what might be a justified or reasonable outcome. A potentially reasonable outcome will be set aside where it is arrived at by way of an unreasonable chain of analysis (*Vavilov* at para 87). In this case, recognizing the context of the decision – a cessation application where the consequences are significant to the Applicant – the RPD’s analysis as it related to the voluntariness and the intention branches of the reavilment test was unreasonable.

(1) Voluntariness

[32] In addressing the first branch of the tripartite test, the RPD concluded that there were no exceptional circumstances warranting any of the return trips to India. The RPD’s chain of analysis, particularly as it relates to the first two trips to India, which were reported as being absolutely necessary to care for the Applicant’s ill parents, is lacking in justification and transparency.

[33] The evidence indicates the first return to India was made with the understanding that the Applicant's mother showed no sign of "proper recovery" (Applicant's Record at 84) and the second trip was necessitated by the unique health care needs of his father – needs that were disclosed in the evidence. The Applicant's evidence acknowledged the presence of a sister in India but specifically noted her inability to provide care due to her family situation and cultural norms. The RPD addressed this evidence in two short sentences at paragraph 9 of its decision: "There were other family members in India who could and who did assist his parents. They were under the care of medical professionals."

[34] It is not clear the family members to which the RPD was referring. The mother's affidavit speaks in passing of a family member having assisted the father in taking her to hospital. The RPD made no direct reference to this evidence in the reasons. The decision did not indicate whether the RPD took issue with the daughter's availability, considered extended family members to be available to assist with care, or adopted the view that family assistance was simply not required given the availability of hospital care. The RPD was not required to engage in an extensive analysis, but was required to meaningfully grapple with the evidence before concluding that family assistance was available and that no exceptional circumstances existed to justify the travel. The failure to do so undermines the reasonableness of the RPD's conclusions in a context where the Court of Appeal has recognized an increased obligation to provide reasons and explain a decision.

[35] The RPD's treatment of the voluntariness question was unreasonable as it related to the first and second trips to India. However, I am satisfied that the RPD's treatment of the evidence

relating to the third trip was reasonable – it was open to the RPD to reasonably find the Applicant’s third visit to get married was neither compelled nor absolutely necessary. For this reason, I am not prepared to intervene based on the RPD’s voluntariness analysis alone.

(2) Intention

[36] The RPD’s treatment of the intention branch of the test was also unreasonable.

[37] The RPD acknowledged that the Applicant was seemingly confused when cautioned as to the risks of returning to India and held that the prudent course of action would have been to seek advice, which the Applicant did not do. The RPD relied heavily on the Applicant’s failure to act in a manner the RPD believed to be objectively appropriate in inferring intent to reavail.

[38] In *Camayo FCA*, Justice Anne MacTavish rejects this approach (at para 68). The Court of Appeal held that the RPD must not consider what an Applicant objectively should have done but instead must consider the Applicant’s subjective intent. In this case, did the Applicant’s actions demonstrate that he subjectively intended to depend on India for protection?

[39] The RPD properly acknowledged that subjective intent was relevant to the issue of intent to reavail and did not take issue with the evidence that the Applicant did not understand the potential consequences of travelling to India on his Indian passport.

[40] The evidence before the RPD relating to the Applicant’s subjective intent included: (1) the BSO statement that the applicant appeared confused when cautioned about travel to India; (2)



the Applicant's valid Indian passport was returned to him by Canadian officials with the granting of his PR card and he understood he could use it; (3) the Applicant was unaware he could obtain a Canadian travel document; and (4) the Applicant understood his PR card would provide the protection of Canada "wherever I am." Consideration of this evidence would also have inevitably required the RPD to consider the Applicant's personal attributes to the extent they are disclosed in the record, a factor identified in *Camayo FCA* as relevant when analyzing whether the presumption of reavilment has been rebutted. However, none of this evidence is actively considered, or grappled with, by the RPD.

[41] The RPD's mere acknowledgement that subjective intent is a relevant issue does not provide the Court or the Applicant with responsive reasons, the hallmark of a reasonable decision. In expressing this view, I am not suggesting a decision maker is required to expressly address all issues. The jurisprudence makes clear that no such obligation is to be imposed. However, evidence relating to subjective intent was central to the very issue the RPD was required to determine.

[42] The reasons do demonstrate that the RPD considered the Applicant's reported efforts at concealing himself while in India. However, the RPD relied primarily, if not exclusively, on the Applicant's travel and failure to obtain advice to infer an intent to reavail. The RPD decision at paragraph 22 reads: "However, I am of the opinion that the Respondent's intentions are inferable from his actions and his action was to return to India on multiple occasions even after he was cautioned." [Emphasis added.]

[43] The RPD's failure to grapple with the submissions and evidence relating to the Applicant's subjective intent, together with the RPD's reliance on its objective view of how the Applicant should have proceeded if confused as to the consequences of travel to India, render the decision unreasonable.

VII. Conclusion

[44] The application for judicial review is allowed. No question of general importance has been identified and none arises.

**JUDGMENT IN IMM-8697-21**

**THIS COURT'S JUDGMENT is that:**

1. The application is granted.
2. The November 12, 2021 decision is set aside.
3. The matter is to be remitted to a different decision maker for redetermination.

“Patrick Gleeson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8697-21

**STYLE OF CAUSE:** RAMPAL SINGH v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

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**DATED:** OCTOBER 27, 2022

**APPEARANCES:**

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