Federal Court  Cour fédérale

Date: 20230523

Docket: IMM-4673-22

Citation: 2023 FC 711

Ottawa, Ontario, May 23, 2023

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MD GIASUDDIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated May 6, 2022 [Decision], of the Refugee Protection Division [RPD] finding the refugee protection that had been granted to MD Giasuddin [applicant] had ceased on the ground that he had voluntarily reavailed himself of the protection of his country of nationality, under section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant asserts that the RPD erred in assessing whether he had rebutted the presumption of reavailment created by obtaining and using a passport from his country of nationality, and travelling back on many occasions. He also asserts that the RPD erred in finding that he had demonstrated a change in circumstances such that he would no longer face a serious possibility of persecution.

[3] In my view, the applicant does not demonstrate a reviewable error and the application should be dismissed. While the applicant identifies some issues with the Decision, these are minor and his allegations largely amount to disagreements with how the RPD weighed the evidence. These are not circumstances for a role to be played by a reviewing court. The RPD's decision that the applicant had not established a change in circumstances in his country of nationality were reasonable and responsive to the evidence he adduced.

I. The Facts

[4] The applicant is a 65-year-old man from Bangladesh. He has lived in Canada for 20 years.

[5] The applicant had been actively involved with the Awami League [AL], a major political party in his home village in Bangladesh, since 1982. After the Bangladesh Nationalist Party [BNP] was elected in 2001, the applicant began to experience persecution from the BNP. In April 2002, the applicant was arrested by the police. He was held for 30 days without charge and harassed while in custody. The applicant then went into hiding. He fled Bangladesh after the police attempted to arrest him again in August 2002.

[6] The applicant claimed refugee protection in Canada fearing persecution from the BNP. On June 25, 2004, the RPD determined the applicant was a Convention Refugee. On May 3, 2006, the applicant became a permanent resident.

[7] In 2006, the BNP stepped down from power in Bangladesh and a caretaker government took interim control of the country. In 2008, AL was elected and has been in power since.

[8] After the BNP stepped down, the applicant returned to Bangladesh on five occasions:

1. in July-August 2007, for two and a half weeks, to attend his daughter's wedding;
2. in November 2010, for one month, to visit his elderly parents in Dhaka;
3. in July 2012, for one month, to see his parents in Dhaka and to marry his current wife in Chittagong;
4. in November 2015 to January 2016, for two months, to see his wife in Dhaka and Chittagong and to visit his parents' graves in his home village; and
5. in November 2017 to February 2018, for three months, to visit his wife in Dhaka and Chittagong as he had been unable to sponsor her to come to Canada.

[9] The applicant travelled using a Bangladeshi passport, which he had renewed on four occasions since arriving in Canada: in 2006, 2010, 2013, and 2018.

II. Legislative scheme

[10] Under paragraph 108(1)(a) of the IRPA, a claim for refugee protection shall be rejected if "the person has voluntarily reavailed themself of the protection of their country of nationality". Paragraph 108(1)(e) of the IRPA provides that a claim for refugee protection shall be rejected if "the reasons for which the person sought refugee protection have ceased to exist."

[11] The relevant portions of section 108 of IRPA are 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 person in need of protection, in any of the following circumstances:	108 (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
(a) the person has voluntarily reavailed 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	(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).

for any of the reasons described in subsection (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.

[12] Three observations may be offered at this stage. First, there is no constitutional challenge of the provisions being applied in this case. It is understood that the consequences that flow from section 108 are different, depending on the paragraph invoked by the Minister. The loss of refugee protection under paragraph 108(1)(e) does not result in a loss of permanent resident status, with attendant consequences. On the other hand, by operation of law, the permanent resident status is lost if a refugee reavails himself of the protection of his country of nationality. It is subsection 46(1)(c.1) that creates such an outcome:

Loss of Status	**Perte du statut**
Permanent resident	Résident permanent
46 (1) A person loses permanent resident status	46 (1) Emportent perte du statut de résident permanent les faits suivants :
…	[…]
(c.1) on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d);	c.1) la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile;
…	[…]

Although the applicant argues that it is paragraph 108(1)(e) of the IRPA that should result in the cessation of refugee protection, he conceded at the hearing of this case that the two provisions, paragraphs 108(1)(a) and (e), are not mutually exclusive.

[13] Second, there is a fundamental difference between paragraph 108(1)(e) and paragraphs 108(1)(a) to (d). The difference is put eloquently in *Ravindi v Canada (Citizenship and Immigration)*, 2020 FC 761, [2021] 3 FCR 177:

> [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.
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> [Emphasis in original]

[14] Third, as can be seen from subsection 108(2), it is the Minister who takes the initiative as he may ask the RPD to determine that the refugee protection has ceased. In this case, paragraph 108(1)(a) was alleged to be applicable as the Minister claimed that Mr. Giasuddin did something: he reavailed himself of the protection of his country of origin through his behaviour, particularly by renewing his Bangladeshi passport four times to go back to his country of nationality five times. It follows that the issue before the Court is whether the conditions for reavailment were met and the RPD provided adequate reasons in reaching the conclusion that the

Minister had met his burden under paragraph 108(1)(a). In the case at hand, Mr. Giasuddin also argues that paragraph 108(1)(e) should be preferred.

III. Issues and standard of review

[15] The applicant raises the following issues on this application:

1. Did the RPD reasonably assess whether the applicant had rebutted the presumption that he intended to reavail himself of the protection of Bangladesh?

2. Did the RPD reasonably assess the nature of the protection contemplated by paragraph 108(1)(a) of IRPA?

3. Did the RPD reasonably assess whether the reasons for the applicant's claim for refugee protection has ceased to exist?

[16] The parties assert, and I agree, that the standard of review for each issue is reasonableness. A standard of reasonableness is applied to issues concerning the interpretation and application of the law of cessation under section 108 of the IRPA to the facts of the matter (*Siddiqui v Canada (Citizenship and Immigration)*, 2016 FCA 134 at para 11).

[17] A reasonable decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900 at paras 2, 31). A decision will be reasonable if, when read as a whole and taking into

account the administrative setting, it bears the hallmarks of reasonableness that are justification, transparency, and intelligibility (*Vavilov* at paras 91-95, 99-100). Where the impact of a decision on an individual's rights and interests is severe, the reasons must reflect the stakes and the Board's duty to explain its decision increases (*Vavilov* at para 133).

[18] Thus, both the outcome and the decision-making process are reviewable on a reasonableness standard (*Vavilov* at paras 15 and 83). This Court's task is to develop an understanding of the RPD's reasoning in order to assess the reasonableness of the decision. Given that the reasons communicate the rationale of the decision, the reviewing court will consider not only the outcome, but also the decision-making process, that is whether the decision 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). However, the reviewing court does not seek to substitute itself for the administrative decision maker; it rather adopts a posture of respect and starts from the principle of judicial restraint (*Vavilov* at paras 13, 14, 85, 125).

IV. The RPD decision

[19] In August 2018, the Minister applied for the applicant's refugee protection to cease, alleging that he had voluntarily reavailed himself of the protection of Bangladesh under paragraph 108(1)(a) of the IRPA, by taking the positive step of having renewed his Bangladeshi passport and returning to Bangladesh.

[20] The applicant did not dispute that he had returned to Bangladesh on the five occasions; rather, he explained the circumstances of the visits, and claimed that he thought he needed the passport as an identity document and to manage his remaining affairs in Bangladesh. He also submitted that it would be more appropriate for the RPD to assess cessation under paragraph 108(1)(e) of the IRPA on the ground that the reasons he had claimed refugee protection had ceased to exist.

[21] On May 6, 2022, the RPD issued its Decision, determining that the applicant had voluntarily reavailed himself of the protection of Bangladesh.

[22] The RPD chose to consider also the application of paragraph 108(1)(e), instead of focusing solely on the alleged reavailment raised by the Minister under paragraph 108(1)(a) (*Canada (Citizenship and Immigration) v Al-Obeidi*, 2015 FC 1041; *Tung v Canada (Citizenship and Immigration)*, 2018 FC 1224). It is unclear to me why the RPD felt it had to consider both grounds. Subsection 108(2) speaks of an application by the Minister for the refugee protection to cease "for any of the reasons described in subsection (1)". Moreover, subsection 108(1) speaks in terms of "a claim for refugee protection shall be rejected … in any of the following circumstances". As is well known, the *Interpretation Act*, RSC 1985 , c I-21, is quite specific that the "expression "shall" is to be construed as imperative" (s 11). Once the Minister seeks the cessation of the refugee protection pursuant to paragraph 108(1)(a), that constitutes one of the circumstances referenced in the subsection.

[23] Nevertheless, the RPD examined the contention that paragraph 108(1)(e) was relevant and found that it was not applicable to the case at hand. The RPD stated that it has discretion in determining which paragraph of subsection 108(1) best applies to the facts of a particular case. Here, there was not a demonstration by Mr. Giasuddin that the circumstances are such that he would no longer face a serious possibility of persecution in his country of nationality based on his political views. Paragraph 108(1)(e) was not a proper fit to the circumstances as presented by the applicant.

[24] The change of circumstances alleged by the applicant was the election of the political party (the Awami League), a party he supported when he sought refugee status in Canada in 2004. The RPD found, however, that the applicant continued to be fearful of going back to his village and he could suffer violence from BNP (the other political party) goons elsewhere in the country. I reproduce paragraphs 14 and 15 from the decision:

> [14] Indeed, he testified at the hearing on the application for cessation that he remains fearful of returning to his village and that he could suffer violence at the hands of BNP goons elsewhere in the country. As such, the respondent still has subjective fear of persecution and, in that context, it becomes obvious there has been no change of circumstances that can be characterized as eliminating the possibility of persecution for the respondent. In his affidavit filed in the context of the application for cessation, the respondent attested that he preferred to avoid his parents' village because some BNP goons were still there. At the hearing, the respondent was asked if there were issues with these goons when he visited Bangladesh over the years. The respondent answered in the affirmative, saying that from 2002 until the day of the hearing there are still threats to his life and there is a BNP presence in his parents' village. He testified that he could not visit his parents' village when he traveled to Bangladesh apart from one time in 2010 when he wanted to visit his mother one last time. The respondent's own testimony points to his ongoing fear of persecution by the BNP in Bangladesh. Even before looking at country conditions, the evidence shows that the respondent still has

> a subjective fear of persecution and has had one since he left Bangladesh.
>
> [15] What is more, the objective evidence illustrates that the BNP, though no longer in power, is deeply entrenched in Bangladeshi society and is connected to auxiliary groups responsible for intra and inter-party violence. The BNP has had links to fundamentalists since they formed an alliance with Jamaat e Islami in 2001. This alliance allowed Islamic fundamentalists to assume a high profile. Since then, there are different violent Jihadist groups that operate freely in Bangladesh. The respondent even testified to this close link, saying that there are BNP and Jamaat e Islami members who live in his home village and do whatever they want.

Thus, the country conditions had not changed enough in view of the fact that the BNP is still the main opposition party and acts of violence may still be perpetrated. Indeed, the Bangladeshi police is one of the least reliable in the world, based on objective evidence. The police was one of the institutions feared by the applicant as he sought refugee status in Canada. If the RPD found that it had to consider the applicability of other grounds for cessation, it concluded that paragraph 108(1)(e) was not adequate.

[25] Before examining if paragraph 108(1)(a) applies, the RPD concludes:

> [18] As such, the respondent has not pointed to any objective evidence, apart from the change in government, to support his assertion that as early as 2007, the authorities in Bangladesh were no longer looking for him. Considering he testified that he remains fearful of the BNP and Islamic fundamentalists at the date of the hearing, the Board finds there has not been a change of circumstances such that the respondent's fear of persecution has disappeared. Section 108(1)(e) of the IRPA is therefore inapplicable to the case at hand.

[26] The RPD then considered fully paragraph 108(1)(a). The fundamental principle remains that "international protection should not be granted when it is no longer necessary or justified"

(UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*). Once reavailment has been found, the refugee does not need the protection of the country where he has been found to be a refugee. Three criteria are set out, and all three must be satisfied before reavailment can be found. They are:

> (a) voluntariness: the refugee must act voluntarily;
>
> (b) intention: the refugee must intend by his action to re-avail himself of the protection of the country of his nationality;
>
> (c) re-availment: the refugee must actually obtain such protection.

[27] The obtaining of a passport from the country of nationality creates a presumption of the intention to reavail oneself, such presumption being strengthened if the passport is used to travel to the country of nationality. Sufficient evidence must in turn be presented to rebut the presumption.

[28] The RPD referred to *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo*] at para 84, where a number of factors are listed as being of assistance in considering whether the presumption of reavailment is rebutted. The RPD proceeded then to examine the three criteria.

[29] The voluntariness criterion was easily met: the applicant renewed his passport four times without any constraint. The renewals were entirely free. He was not coerced into travelling five times to Bangladesh either. That conclusion remains unchallenged before this Court. The same can be said of the third criterion.

[30] The intention criterion was also met. The applicant's testimony that he applied for a Bangladeshi passport in order to have a valid identity document was not seen as convincing, as there are many options for a valid identity document, including a Canadian permanent residence card: that shows an intent to reavail of the diplomatic protection of Bangladesh. The RPD doubted the applicant's credibility when he testified that he did not intend to travel to Bangladesh when, in fact, he renewed his passport four times and travelled back five times for reasons that were neither pressing nor exceptional.

[31] The reason for the travel is a factor according to *Camayo* to consider in an assessment of evidence that must be sufficient to rebut the presumption. The decision maker found that the reasons given were not sufficient to rebut the presumption: "A desire to socialize with family does not constitute exceptional circumstances like in the case of an ill family member or other such imperative matters" (Decision at para 42). As the Federal Court highlighted in *Chowdhury v Canada (Citizenship and Immigration)*, 2021 FC 312, "… visiting a country of nationality for the purpose of vacationing does not constitution [*sic*] exceptional circumstances warranting the rebuttal of the presumption of intention to reavail" (Decision at para 42).

[32] Another factor to consider, according to *Camayo*, is being aware that returning to the country of nationality might impact the refugee status in Canada. Mr. Giasuddin testified that he was not aware returning to Bangladesh might put his refugee status in jeopardy. For the decision maker, the fact that the passport was renewed on numerous occasions and that he travelled back also on multiple occasions, when he claimed he was still at risk in Bangladesh, points in the

direction of an intent to reavail. The same can be said of the concern about the police authorities. The RPD's view appears to be summarized at paragraph 46 of its Decision:

> [46] The number of trips to Bangladesh, five in total, as well as the duration of each stay, around one month for the first three trips and then two and three months for the subsequent trips show that the respondent was not acting with caution or keeping his travels to Bangladesh to a minimum. He chose to get married in Bangladesh, and spend months there. His father passed away before he arrived in Bangladesh in November 2015 but he still remained in the country until January 27, 2016. He did not offer a compelling reason for extending his trip after his father's passing.

[33] The frequency of the passport renewals and the trips to Bangladesh, together with the increasing lengths of time in duration of the stays, were also decisive as to whether the applicant obtained the diplomatic protection of Bangladesh. The rationale is at paragraph 50:

> [50] In the present case, the Board finds that the respondent did obtain de facto national diplomatic protection, as he was issued a Bangladeshi passport on four occasions and was allowed to enter and exit the country by the authorities on five occasions. By traveling with his Bangladeshi passports, the respondent subjected himself to the protection of the State authorities.

[34] Thus, the third criterion was met in the view of the RPD.

V. Arguments and analysis

A. *Did the RPD reasonably assess whether the applicant has rebutted the presumption that he intended to reavail himself of the protection of his country of nationality?*

[35] An analysis under paragraph 108(1)(a) requires consideration of the three criteria of voluntariness, intention, and reavailment (*Camayo* at para 18). The acquisition of a passport from one's country of nationality, particularly to travel to that country, creates a strengthened

rebuttable presumption that the refugee intended to reavail himself of the protection of his country of nationality (*Camayo* at para 63). The focus of the inquiry ought to be on whether the refugee's conduct can reliably indicate that the refugee intended to waive the protection of the country of asylum to reavail himself of the protection of his country of nationality. This analysis requires the RPD to consider and balance a broad set of factors (*Camayo* at para 84; *Hamid v Canada (Citizenship and Immigration),* 2022 FC 1541 at paras 16-17; *Ahmad v Canada (Citizenship and Immigration),* 2023 FC 8 at para 35 [*Ahmad*]).

[36] The applicant argues that the RPD's reasons are internally contradictory, unintelligible, and lack justification as he seeks to compare the reasons given to find that paragraph 108(1)(e) is not applicable to the reasons for concluding that the applicant had reavailed himself of the protection of Bangladesh. The applicant asserts a number of errors, each of which will be considered below.

(1) Whether the RPD made contradictory findings regarding subjective fear

[37] One factor for consideration is "[w]hether 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" (*Camayo* at para 84). The applicant asserts that the RPD made contradictory findings regarding his subjective fear using both his fear and lack of fear as an indication of an intention to reavail.

[38] In assessing intention, the RPD noted that in travelling to Bangladesh five times, travelling by train in the country, and attending his daughter's and his own weddings—both

public events—the applicant's behaviour was incompatible with a subjective fear of persecution (Decision at paras 38-39, 44). In its analysis under paragraph 108(1)(e) of the IRPA, the RPD found that the applicant's testimony indicated he had an ongoing fear of persecution by the BNP and has since he left Bangladesh (Decision at para 14). The applicant asserts that these findings are contradictory.

[39] The respondent submits that the RPD did not contradict itself. The RPD observed that the applicant's paragraph 108(1)(e) claim was belied by both the National Documentation Package (NDP) evidence and his own testimony, and then went on to find that under paragraph 108(1)(a), the applicant's actions evidenced an intention to avail himself of the protection of Bangladesh. The respondent asserts that at no point did the RPD hold both that the applicant's actions demonstrated a lack of subjective fear and that he continued to fear persecution.

[40] I agree with the respondent. Paragraphs 108(1)(a) and (e) are completely distinct provisions and they operate independently of each other. It may well be that the reasons why the person sought refugee protection in the first place have not completely disappeared, yet someone still chooses to reavail herself of the protection of the country of nationality. Hence, the concern around paragraph 108(1)(e) was said by the applicant to be rather localised and with respect to a particular agent of persecution to be avoided.

[41] In paragraph 14 of the Decision, the RPD noted that the applicant provided evidence that: (1) he remains fearful of returning to his village and could suffer violence at the hands of the BNP elsewhere; (2) he preferred to avoid his home village due to a BNP presence that remains;

and (3) he could not visit his home village when he travelled to Bangladesh apart from one time. That was when the RPD was considering the applicant's contention that paragraph 108(1)(e) applied to the facts he was presenting. The RPD concluded that the reasons for which refugee protection had been sought did not completely cease to exist, given the very evidence of the applicant's, including his testimony at the hearing before the decision maker. To put it simply, the attempt made to claim that refugee protection had ceased to exist because the reasons to seek protection were gone failed in view of the evidence presented by the applicant. Accordingly, paragraph 108(1)(e) was not to be considered any further. Nevertheless, the applicant could choose to reavail himself.

[42] The RPD noted as part of its analysis concerning the applicant's reavailment that his claim that he was still at risk somehow did not deter the applicant from going back five times to his country of nationality; in fact this could be evidence of his intent to reavail. One reads at paragraph 44 of the Decision:

> … In this particular case, the fact that the respondent was unaware he should not obtain a Bangladeshi passport on four occasions nor should he travel to his country of nationality must be weighed against the fact he chose to travel to Bangladesh five times, despite being fearful of returning to his parents' village. Though he may have been unaware of the potential impact on his refugee status in Canada, he cannot claim to have been unaware that he was putting himself at risk by returning to Bangladesh. As such, the fact that he consciously and voluntarily chose to return to Bangladesh when he maintains he is still at risk there, points towards his intent of reavailing. Indeed, when he was first accepted as a refugee, he had to show he would face a serious possibility of persecution everywhere in Bangladesh, and not only in his hometown. Consequently, the fact that he he [*sic*] was unaware his refugee status could be impacted by returning to Bangladesh has to be assessed in conjunction with his behaviour in Bangladesh, where he testifies he was not in hiding and attending public weddings and traveled by train. The respondent returned on different occasions,

> he obtained from the State authorities not one passport, but four, and he did not try to hide his presence in the country.

[43] In paragraph 14 of the Decision, the RPD takes note of the applicant's own evidence that he had a subjective fear of persecution when assessing whether a case can be made that the reasons for seeking refugee protection have ceased to exist, pursuant to paragraph 108(1)(e). In paragraph 44, the RPD is scrutinizing the actions the applicant took "when he maintains he is still at risk there" as part of a broader analysis of intent to reavail of the protection of his country of nationality. In the former case, the attempt at using paragraph 108(1)(e) fails because the applicant testifies as to conditions that continue to prevail and the existence of objective evidence of inadequate police activities. In the latter case, still travelling for extended periods of time in spite of the professed risk is evidence of an intent to reavail in the circumstances of this case. When read in context, these are not contradictory findings.

[44] The applicant likens this case to *Aydemir v Canada (Citizenship and Immigration)*, 2022 FC 987 [*Aydemir*], in which the Court held that the RPD erred in finding that the applicant, an ethnic Kurd, had not rebutted the intent to reavail in obtaining a Turkish passport and travelling to Turkey on six occasions. The Court found that the RPD was inconsistent in finding that the applicant's repeated trips to Turkey demonstrated a lack of subjective fear while also rejecting his claim under paragraph 108(1)(e) in large part because of his own testimony that he feared Turkish Authorities (*Aydemir* at paras 69-71).

[45] With respect, *Aydemir* is of no assistance to the applicant. First, the *Camayo* court made it clear that "the outcome of each cessation proceeding will be largely fact dependent" (para 83).

The issue remains whether or not the refugee's conduct can reliably indicate that the refugee intended to reavail himself of the diplomatic protection of his country of nationality. That is a decision for the RPD based on the facts before it. In *Aydemir*, our Court noted:

> [45] Paragraph 108(1)(a) incorporates Article 1C(1) of the Convention, which the UNHCR Handbook explains refers to a refugee who remains outside their country of nationality but demonstrates by their actions that they are no longer "unable or unwilling to avail [themself] of the protection of [their] country of nationality" (para 118, referring to the definition of a Convention refugee). The UNHCR Cessation Guidelines note that this refers to diplomatic protection. Diplomatic protection is understood as the actions a state may take when the rights of one of its nationals have been violated by another state, but also includes consular assistance such as the renewal of passports (paras 6–7).
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> …
>
> [52] I do not agree that the passage in *Camayo* suggests that anything other than diplomatic protection is contemplated upon return to the country of nationality. The passage at para 63 refers to a stronger presumption of reavailment where the refugee returns to their country of nationality, but does not go so far as distinguishing diplomatic protection from state protection. I also note that in *Camayo*, at para 61, the Court of Appeal, in addressing whether the RPD reasonably relied on the refugee's lack of subjective knowledge, referred to "knowledge that use of a passport confers diplomatic protection"
>
> [Emphasis in original].

[46] The facts in *Aydemir* are different than in our case. The presumption of reavailment can be rebutted; it was found that the RPD in that case had not reasonably assessed whether it had been rebutted. The RPD was said to have failed to focus on Mr. Aydemir's submission and subjective intention. The *Aydemir* court notes at paragraph 67 that "the RPD's finding that his intention in obtaining the passport and travelling to Turkey "is immaterial" does not reflect the guidance in *Camayo* that all the evidence adduced regarding subjective intention be considered". That is not the situation in the case of Mr. Giasuddin.

[47] Paragraphs 108(1)(a) and (e) bring to the fore different considerations. The RPD in this case found that paragraph 108(1)(e) could not apply because the claim made by Mr. Giasuddin that the reasons for refugee protection had ceased to exist – and thus he should not have refugee status in Canada – was not sustainable in view of the objective documentary evidence and his own testimony. I see no reason why on this record finding that travelling to the country of nationality on five occasions, for extended periods of time, with four renewed passports from the country of nationality, while still fearful of returning to his village and the risk of violence at the hands of BNP goons, is not reasonable and does not rebut the presumption of reavailment of diplomatic protection conferred by the passport. In other words, it was open to the RPD to find that the reasons for which refugee protection was sought in the first place had not yet ceased to exist locally, did not preclude it from concluding that the applicant had reavailed himself of the diplomatic protection afforded by his Bangladeshi passport. In effect, the RPD reconciled a certain fear with the reavailment, the fear being further evidence of the intention to reavail: in spite of a certain fear, the applicant chose to renew his passport four times and travel back to Bangladesh five times. That, says the RPD, shows an intent to reavail. I do not see how that can be said to be unreasonable on the facts of this case.

[48] It must be remembered that it is the intention to reavail oneself that is to be measured under paragraph 108(1)(a). The presumption of reavailment exists once the passport issued by the country of nationality has been acquired. Here, the applicant sought and obtained four such passports. As explained by the Federal Court of Appeal in *Camayo* at paragraph 63, “[t]his is because passports entitle the holder to travel under the protection of the issuing country.” That presumption, that exists with the issuance of the passport, is even stronger when refugees return

to their country of nationality, as they are not only placing themselves under diplomatic protection while travelling, but they are also entrusting their safety to governmental authorities upon their arrival. It was open to the RPD to consider that returning to Bangladesh in spite of remaining fears added to the evidence of an intent to reavail.

(2) Whether the RPD made unintelligible findings regarding subjective fear and objective risk

[49] The applicant submits that the RPD made unintelligible findings regarding subjective fear and objective risk. This constitutes a variation on the same theme. Here, the applicant argues that his subjective fear of persecution does not co-exist with the objective risk. The explanation given by the RPD that the subjective fear expressed by the applicant was indicative of an intent to reavail is said to be unintelligible.

[50] It is worth quoting again from paragraphs 44 and 45 of the decision under review. The RPD stated at paragraph 44 that while the applicant had given evidence that he was unaware of the impact that his travels would have on his refugee status, “he cannot claim to have been unaware that he was putting himself at risk by returning to Bangladesh. As such, the fact that he consciously and voluntarily chose to return to Bangladesh when he maintains he is still at risk there, points towards his intent of reavailing.” The RPD went on to opine that “when he returned in 2007, he still was under threat by State authorities and chose to return voluntarily in any case. This points towards him having the requisite intent of reavailing himself of the protection of Bangladesh” (Decision at para 45). The applicant argues that these remarks do not explain how his fear and risk are indicative of his intention to reavail.

[51] The respondent submits that the applicant is overlooking that the portion of the Decision he is referring to deals with the rejection of his argument that he did not intend to reavail because he was unaware of the potential impact that his returns to Bangladesh would have on his refugee status in Canada. He asserts that the RPD's point was that the applicant returning to Bangladesh five times while at risk there points to an intent to reavail. The respondent also submits that the applicant's arguments ignore that the RPD is referring to diplomatic protection and not state protection.

[52] The role of a reviewing court is not to delve into the merits of an administrative decision, but rather to ascertain whether the decision is legal. As I have tried to explain, it has not been shown how these findings are unintelligible. The RPD explained how the remaining fear can support a finding of an intention to reavail. It was open to the RPD to consider that five returns to Bangladesh, following four passport renewals, and in spite of a professed remaining fear in limited circumstances, were an indication of an intention to reavail oneself of the diplomatic protection of the country of nationality. Although the applicant disagrees, the reasons given were intelligible and transparent. They can be readily understood. Given the facts in this case, there is justification. As put by the Supreme Court of Canada in *Vavilov*, "a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up"" (para 104). Although the applicant seems to believe there exists a contradiction between paragraphs 108(1)(a) and (e), that they cannot co-exist, such is not the case.

(3) Whether the RPD erred in its assessment of the applicant's knowledge of the risks to his status in Canada

[53] It bears repeating that the standard of review is reasonableness, not correctness. Furthermore, the factors under consideration are factors "which may assist in rebutting the presumption of reavailment" (*Camayo* at para 84). It is in that light that those factors ought to be examined. The fact that there are a number of factors that have to be assessed does not, in my view, change the premise that, because of the strong presumption in a case where someone went often to his country of nationality after having renewed his passport, it will take significant weight for these factors considered collectively to be sufficient to rebut the presumption. The individual factors are not on an equal footing with the presumption to be considered in determining whether the refugee has reavailed. Rather, "[n]o 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 reavailment" (Camayo at para 84). As a matter of fact, some of the factors may end up strengthening the presumption.

[54] The applicant submits that his subjective knowledge regarding the consequences of his actions is a key factor to be assessed and it was unreasonably assessed by the RPD. He asserts that the RPD accepted his testimony that he did not know he risked losing his status in Canada by obtaining a Bangladeshi passport. This is a strong indicator, he says, that he lacked intent to reavail and the RPD failed to engage with the factor. Because he claims he did not know the consequence of travelling to Bangladesh, a consequence which flows directly from the

legislation, it can be inferred he did not intend to reavail himself of the diplomatic protection conferred by the passport he chose to use.

[55] The respondent notes that the applicant's awareness of the immigration consequences of his actions are but one of many factors.

[56] That this constitutes a factor in determining whether the presumption of reavailment has been rebutted is without a doubt. But it is not determinative; it must be weighed with other factors against the strong presumption of reavailment in this case. I note that the factor is cast in *Camayo* in language that does not suggest that it is key or determinative. The Court says that "evidence that a person has returned to her country of origin with 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". *Camayo* stands for the proposition that the factor must be weighed in the mix with all other evidence (para 70). The applicant had to do more than simply disagreeing with the RPD about the weight that ought to be given to that factor. The requirement was for the applicant to show on a balance of probabilities that this made the decision as a whole unreasonable.

[57] The applicant's reliance on *Cerna v Canada (Citizenship and Immigration)*, 2015 FC 1074, is misplaced as in that case the decision maker "failed to take account of [the applicant]'s testimony that he travelled to [his country of nationality] only on the strength of his belief that he enjoyed the security of having permanent residence in Canada" (para 18). This is not the case before the Court. The applicant also cites *Mayell v Canada (Citizenship and Immigration)*, 2018

FC 139 [*Mayell*]; however, in that case the RPD erred by not considering that the applicant only travelled to their country of nationality after receiving advice from legal counsel that it would not put his status in Canada at risk (paras 17-19). It could hardly be said that this applicant simply ignored the law as there was an attempt to ascertain the state of the law. This is patently different from the present matter. The RPD did not fail to engage with the applicant's subjective understanding of the impact of obtaining a passport and travelling to Bangladesh. Indeed, in *Mayell*, the applicant did not ignore the legal consequences of travelling on his country of nationality passport. Rather, the fact of seeking legal advice to ascertain whether he was in legal jeopardy, as opposed to claiming ignorance of the law, would tend to show that there was no intent to reavail. The facts in *Mayell* carry much more weight. The assessment of the factor that the applicant ignored the legal consequence of reavailing has not been shown to render the decision under review as lacking justification, transparency or intelligibility. It is but one factor to be weighed.

(4) Whether the RPD failed to account for the evidence regarding the nature of any risk to the applicant's safety in Bangladesh and the precautions he took

[58] One factor in considering whether an applicant has rebutted the presumption of reavailment is the identity of the agents of persecution and whether the applicant took precautionary measures (*Camayo* at para 84). That factor obviously confirms that a certain continuing fear concerning the situation in the country of nationality does not stand as a bar to a finding of reavailment. As the Court of Appeal puts it in *Camayo,* when the evidence shows that the person seeking the passport fears non-state actors, "applying for a passport on entering the country will not necessarily expose the individual to their agent of persecution".

[59] The applicant argues that the RPD misapprehended the nature of any risk he faced in Bangladesh by failing to assess whether the applicant's agent of persecution was a state or non-state actor and failing to account for the localized nature of the applicant's fears. He asserts that the RPD engaged in speculation in finding he was still under threat by state authorities when he returned in 2007 as the BNP was no longer in power. He also contends that it was irrelevant that he was acting "in full evidence of the authorities" as he no longer feared the authorities. Further, he asserts that the RPD erred in finding that the applicant had not taken precautionary measures, as it failed to account for the fact that he avoided returning to his home village and that he testified that he felt he could stay in areas outside his home village temporarily.

[60] The respondent argues that the RPD's findings were reasonable and the Decision took into account his explanations and the precautions that the applicant took.

[61] The argument by the applicant amounts to a disagreement with how the issue was treated by the RPD and not whether it was unreasonable. The evidence was not ignored and reasonableness has its parameters.

[62] The bullet at paragraph 84 of the *Camayo* decision dealing with precautionary measures leaves open the inferences to be drawn from precautions taken or not taken. If, as seems to be the case, the applicant seeks to discuss precautionary measures taken or not taken while he visited Bangladesh, he seems to argue that, somehow, the lack of precautions taken by the applicant while travelling in Bangladesh was unreasonably assessed. I cannot agree. The point made by the RPD, and it is a rather minor one, is that the applicant travelled without taking precautions in

spite of testifying of some fear about the BNP and Islamic fundamentalists (Decision, para 18). Indeed the Board found that the BNP still wields power. The relative lack of precautions points in the direction of reavailing of the protection.

[63] The applicant has attempted to blend the considerations relevant to his argument that ss 108(1)(e) ought to be preferred with the reasons given for concluding that reavailment had taken place on the facts of this case. As pointed out before, paragraphs 108(1)(a) and (e) are not mutually exclusive contrary to what appears to be the premise of the applicant's argument.

[64] The Decision not only noted that the BNP is of concern and there are Islamic fundamentalists, but it also acknowledges that the applicant remained fearful of returning to his local village and had avoided visiting the village apart from one time (Decision at para 16). While this was in the context of evaluating the applicant's claim under paragraph 108(1)(e), read holistically together with the portion of the Decision which deals with paragraph 108(1)(a), it obviously confirms that the RPD was aware of precautions taken by the applicant in some circumstances. The RPD notes that the applicant "was not in hiding and attending public weddings and travelled by train" as well as renewing his passport four times and travelling to the country five times (Decision at para 44). This was despite finding that the agent of persecution had networks and connections throughout Bangladesh (Decision at para 15). That strengthened the case for reavailment. I cannot see how that could be said to be unreasonable.

[65] More importantly perhaps, it is very much unclear what is the importance to be given to the identity of the agent of persecution and precautions taken in this applicant's attempt to rebut

the presumption of reavailment in the case at bar. These factors speak to obtaining a passport and travelling to the country of nationality in spite of concerns whether they be about state or non-state actors, with precautions taken with respect to some circumstances. If that were to be the case, that might suggest reavailment because "[e]vidence 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" (Camayo at para 84). But if the agent of persecution is not part of the government, does that mean that there is no intent to reavail? Thus, if the agent of persecution is a government actor, that factor has relevance. If not, the factor has limited relevance on the issue of reavailment. Similarly, precautions taken concerning the fear of some non-state actors may carry some weight. But how much? The Vavilov Court pointed out at paragraph 100 that "the [reviewing] court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable". In the case at bar, I fail to see how factors like the identity of the agent of persecution and the precautionary measures tend to show that the presumption of reavailment has been rebutted. A factor that is neutral, like the identity of the persecutor in this case, would not affect the presumption in favour of an applicant. As for the precautionary measures, the applicant has in this case to show what is the effect on the rebuttal of the presumption a finding of precautionary measures, taken or not, could have had.

[66] One cannot lose sight of the nature of the factor and its use to rebut the presumption. The RPD considered the entirety of the evidence. It concluded that in spite of concerns, the applicant travelled not acting with caution, which would tend to signal the intent to reavail (Decision,

para 47). The applicant disagrees. That does not make the finding unreasonable. It was his burden to show that the finding was unreasonable. The applicant did not discharge his burden.

[67] Regarding the temporary nature of the applicant's stay in areas outside of his home village, this Court has found that the temporary nature of trips to one's country of origin is not a bar to the loss of refugee status (*Akar v Canada (Citizenship and Immigration)*, 2022 FC 1472 at paragraph 16). The RPD gave consideration to the frequency and duration of the applicant's trips (Decision at para 46).

(5) Whether the RPD's assessment of the reasons for the applicant's travel to Bangladesh were unreasonable

[68] The applicant asserts that the RPD's assessment minimized the reasons for his travel and failed to carry out an individualized assessment of the matter. He argues that the RPD dismissed his reasons for travel as non-exceptional, without engaging with his evidence that his visits were to see his elderly parents whom he feared he would not be able to see again, or to see his wife. He asserts that the RPD instead relied on blanket statements from case law in determining that his reasons for travel could not overcome the presumption to reavail.

[69] The *Camayo* factors include the purpose of the travel (where there would have been travel). Travel for a serious illness to a family member is contrasted with "a more frivolous reason such as a vacation or a visit with friends" (*Camayo* at para 84). In my view, the applicant's criticism is misplaced.

[70] The RPD recites the applicant's reasons for the trips in paragraphs 29-33 of the Decision. The RPD found his reasons for travel to be neither pressing nor exceptional. It noted that the applicant travelled to Bangladesh for his daughter's wedding out of a sense of responsibility but did not seek alternate arrangements, and stated that the wedding could have occurred without him (Decision at para 36). It further noted that attending a wedding is not a reason constituting exceptional circumstances (Decision at para 40), nor is a vacation to visit with a spouse or family (Decision at paras 41-42). These do not constitute compelling reasons (in French "raison impérieuse") which might qualify as exceptional circumstances. In *Canada (Immigration and Citizenship) v Safi*, 2022 FC 1125, our Court refrained from trying to define "exceptional circumstances" or its scope (para 51). That is an approach with which I agree. Suffice it to say that the "compelling reasons" to travel of *Camayo* are not dissonant with the term "exceptional circumstances" which appears to come from the UNHCR Handbook. The RPD states that visiting an ill family member may constitute exceptional circumstances (Decision at para 42), however it later notes that although the applicant travelled to Bangladesh in November 2015 to visit his ailing father, he stayed for three months despite his father unfortunately passing away before his arrival (Decision at para 46). Moreover, the RPD acknowledged that the applicant's trip in 2010 was to visit his elderly parents (para 30) and while they passed away in 2014 and 2015, the applicant has not pointed to any evidence on the record that they were in poor health or that the visit had a level of urgency comparable to visiting an ill family member.

[71] It must be remembered that refugee protection is meant to be temporary. When the circumstances change such as where there is reavailment, so may the access to refugee protection. One who goes back to the country he fled runs the risk of being found to have

reavailed himself of the country of his nationality. The risk grows when the refugee renews his passport numerous times and travels for extended periods of time to his country. The question then becomes how can he continue to claim he needs to be protected from his country of nationality. The reasons to travel take on an importance in view of the reasons, in the first place, to flee the country and seek international protection. There must be significant reasons to go back to the country of nationality repeatedly under the flag of that country if it is not simply because the refugee reavails himself. Travel to the country of nationality with the national passport must be the exception, not the rule. This was evidently not the case in the matter at hand, in the view of the RPD.

[72] Regarding the applicant's assertion that the RPD erred in making blanket statements that weddings or family visits could not rebut the presumptions of intention, it is not an error. First, the Court of Appeal in *Camayo* signals the kind of travel that will be for compelling reasons: the serious illness of a family member. Second, the RPD's remarks at paragraphs 40-42 of the Decision express that such events in and of themselves do not constitute the "imperative matters" necessary to rebut the presumption. There would have to be more. Further, the applicant's submissions at paragraphs 104-106 of his memorandum that "an individual's reason for travel, on its own, is not a sufficient indicator of an intention to re-avail" miss the mark. That is undoubtedly true that while the factor is not determinative, it remains a relevant factor. More importantly, the factor serves to rebut the presumption. It follows that an applicant would have to show the compelling reasons. The factors found at paragraph 84 of *Camayo* are set to assist in rebutting the presumption of reavailment. First and foremost, it is the acquiring of a passport and travelling to the country of nationality that establish a presumption that the applicant intended to

reavail himself of the diplomatic protection of Bangladesh. If the travel is neither pressing nor for a compelling reason such as the serious illness of a family member, not only will that not assist in rebutting the presumption, but it may favour a conclusion that the intention was to revail. That constitutes evidence relevant to the issue of reavailment. The weight the factor should carry is another matter. I agree with the decision in *Ahmad* at paragraph 35:

> [35] As to the factors to which a decision-maker should have regard in dealing with cessation cases, I must agree with Madam Justice Go in *Hamid* that the effect of the Federal Court of Appeal's decision in *Camayo* was to introduce a series of factors (at paragraph 84) to which the RPD should have regard – beyond simply determining whether the circumstances necessitating the travel were exceptional (see *Seid v Canada (Citizenship and Immigration)*, 2018 FC 1167, para 20; *Abadi* at para 18) – when considering and balancing the evidence in order to determine whether the presumption of reavailment has been rebutted. It follows that other elements of the evidence should then be assessed and weighed by the RPD so as to arrive at a final determination on which side of the reavailment analysis the scales fall, with the onus, here, being on Mr. Ahmad to convince the RPD, on the balance of probabilities, that he did not intend to reavail himself of the protection of Pakistan once his acquisition of his Pakistani passport and his travels back to Pakistan were put into evidence.

[73] The reasons for the travel can certainly not be invoked in this case in aid to the attempt to rebut the presumption. There was no reviewable error.

(6) Whether the RPD's assessment of the reasons for the applicant's renewal of his passport were unreasonable

[74] The applicant asserts that the RPD erred in assessing his evidence regarding the renewal of his passport. That is done in the context of the RPD commenting that the applicant had many other ways to obtain a valid travel document, other than a Bangladeshi passport. He contends that the RPD's conclusions are undermined when it failed to mention that the applicant:

1. believed a Bangladeshi passport was required to sell his family property in Bangladesh;

2. was required to submit a copy of his previous Bangladeshi passport to IRCC in the context of his permanent residence application, leading him to believe that possessing a valid passport was a requirement in Canada; and

3. submitted that when ordinary persons like the Applicant request passports from their embassies, it is done as a routine matter, and not as an act of requesting diplomatic protection.

[75] This in my view is much ado about nothing. These issues were discussed in the context that the applicant obtained a passport from his country of nationality voluntarily, under the title "The voluntariness criteria is met" in the RPD decision (paras 26-27). Contrary to the applicant's submissions, these were not used to demonstrate an intention to reavail. Obtaining four passports is certainly a voluntary action taken by the applicant. As for point 3, it is simply not relevant to the issue of reavailing of the protection of the country of nationality.

B. *Did the RPD reasonably assess the nature of the protection contemplated by paragraph 108(1)a) of the IRPA?*

[76] The applicant argues that the Decision is internally incoherent with respect to the nature of protection contemplated by paragraph 108(1)(a) of the IRPA. He asserts that the Decision is inconsistent as to whether that protection refers to diplomatic protection outside of Bangladesh or protection from Bangladeshi authorities within the country. He contends that the RPD assessed the voluntariness and intent criteria with consideration of both his actions in contacting the diplomatic authorities of Bangladesh in order to renew his passport and his actions in returning to Bangladesh. In contrast, its analysis of whether the applicant obtained protection, which is the third criterion (the first two being of course intention and voluntariness), was limited to diplomatic protection. In essence, the applicant claims that the RPD found that the criterion is

limited to diplomatic protection, but its examination of the other two criteria, voluntariness and intention, was focused primarily on the return to Bangladesh. In fact, the applicant seems to agree that the three criteria to reavail "of the protection of the country of nationality … are to be assessed in relation to diplomatic protection" (memorandum of fact and law at para 119).

[77] This argument does not have merit. A fair examination of the reasons concerning the applicability of paragraph 108(1)(a) given by the RPD, when read as a whole, does not support the contention. The RPD establishes that the presumption of reavailment states that the cessation clauses should be interpreted restrictively; the three criteria recognized by international instruments and Canadian case law must be satisfied. The presumption of reavailment is unequivocally said to be "to re-avail himself of the diplomatic protection of his country of nationality" (Decision at para 23).

[78] The RPD then reproduces the factors it should have regard to in considering the rebuttal of the presumption of reavailment (*Camayo* para 84). Some of these factors bring about elements which refer to an applicant's action inside his country of nationality: the identity of the agent of persecution; the use of the passport for travel purposes; the purpose of the travel; what the person did while in the country of nationality; what precautionary measures, if any, were taken; whether the behaviour of the person shows that there is no longer a subjective fear or persecution. I fail to see how an examination of those factors mandated by case law can become the confusion alleged by the applicant, that is whether the protection "refers to diplomatic protection outside Bangladesh, or whether it also refers to protection from the authorities within Bangladesh". The type of analysis which brings to some extent factors that may be seen as internal to Bangladesh is

mandated by our Court of Appeal in *Camayo*. I see nothing incoherent in considering, in the possible reavailment of the diplomatic protection of the country of nationality, whether the intention to reavail is enlightened by the behaviour of the refugee when he returned to his country of nationality. As the Court of Appeal stated in *Camayo*, the factors are to be "considered and balanced in order to determine whether the actions of the individual are such that they have rebutted the presumption of reavailment".

[79] In the end, the fundamental premise of refugee protection is that it is temporary in order to protect against persecution. It is consistent with the internal flight alternative, according to which flight to another region of the country of nationality must be considered before seeking international protection (*Rasaratnam v Canada (Minister of Employment and Immigration) (C.A.)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration) (C.A.)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589; *Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164). Refugee protection is limited in time and in place. Once someone reavails himself of the diplomatic protection of his country of nationality, the refugee protection ceases:

> [22] Cessation of refugee protection is a concept that has formed part of Canada's immigration law since it first ratified the *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, Can TS 1969, No. 6. Its current incarnation is expressed at section 108 of the IRPA and is based on the premise that refugee protection is a temporary remedy against persecution. It is no longer available when the circumstances enumerated in subsection 108(1) of the IRPA arise.
>
> (*Canada (Citizenship and Immigration) v Bermudez*, 2016 FCA 131 [*Bermudez*]).

[80] Indeed, the Supreme Court of Canada has made it clear that “the most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in Canada” (*Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 SCR 539 at para 46); see also *Canada (Minister of Employment and Immigration) v Chiarelli*, [1992] 1 SCR 711 at p 733).

[81] As in *Aydemir* at paragraph 52, this Court cannot find in *Camayo* any indication that the Court of Appeal treats reavailment as anything other than diplomatic protection, in contrast with state protection.

[82] It follows that the nature of the protection contemplated by paragraph 108(1)(a) was consistent with the legal constraints constituted by the case law of the Federal Court of Appeal. That case law is of course binding on this Court.

C. *Did the RPD reasonably assess whether the reasons for the applicant’s claim for refugee protection have ceased to exist?*

[83] As indicated earlier, the applicant argued before the RPD that his case on cessation of refugee protection should be considered pursuant to paragraph 108(1)(e) of the IRPA. That is because the consequences for the applicant are less severe if cessation is found pursuant to paragraph 108(1)(e), given that cessation would not result in a loss of permanent resident status.

[84] However, as conceded during the hearing of the judicial review application, paragraphs 108(1)(a) and (e) are not mutually exclusive.

[85] Our Court in *Aydemir* referred to the genesis of our paragraph 108(1)(a):

> [45] Paragraph 108(1)(a) incorporates Article 1C(1) of the Convention, which the UNHCR Handbook explains refers to a refugee who remains outside their country of nationality but demonstrates by their actions that they are no longer "unable or unwilling to avail [themself] of the protection of [their] country of nationality" (para 118, referring to the definition of a Convention refugee). The UNHCR Cessation Guidelines note that this refers to diplomatic protection. Diplomatic protection is understood as the actions a state may take when the rights of one of its nationals have been violated by another state, but also includes consular assistance such as the renewal of passports (paras 6–7).

[86] It is evidently of a completely different ilk than paragraph 108(1)(e), which speaks of the reasons for seeking refugee protection having ceased to exist. As pointed out earlier, the refugee protection ceases, pursuant to paragraph 108(1)(e), even though the refugee did not do anything to bring about that result. That is not the case with reavailment which requires a voluntary action with the intent to reavail.

[87] The fact that the RPD was satisfied that the applicant had reavailed himself of the diplomatic protection of his country of nationality satisfies the requirement of paragraph 108(1)(a). It is quite ironic that the applicant now claims that he ought to have ceased to have the benefit of refugee protection because the conditions which justified being granted the protection in the first place do not exist anymore. Indeed, if he is right, and the conditions justifying his initial fear do not exist anymore, acquiring on four occasions a Bangladeshi passport and travelling back to his country of nationality five times, without fear anymore while in Bangladesh, only confirms his reavailment. That suffices to dispose of this argument.

[88] Nevertheless, I add the following observations. It is the applicant who sought to argue that his refugee protection had ceased because the country conditions in Bangladesh did not exist anymore to benefit from the refugee status granted in Canada. He carried the burden before the RPD, who disagreed, and he carries the burden before this Court to show that the RPD made an unreasonable finding. At best, we have a disagreement that does not rise to the level of a lack of reasonableness.

[89] Fundamentally, the RPD expressed the view that the applicant himself suggested some fears of persecution and, if he is to be believed, the reasons for which the person sought refugee protection have not ceased to exist. The RPD states that the "Respondent's own testimony points to his ongoing fear of persecution by the BNP in Bangladesh" (Decision para 14). This is not the sole evidence that the RPD relied on. In paragraphs 15 and 16 of the Decision, the RPD still considers that the BNP is "deeply entrenched in Bangladesh society", is connected to auxiliary groups and Islamic fundamentalists, is the main opposition party, and remains responsible for perpetrating acts of violence. That, says the RPD, is based on objective evidence (National Documentation Package about Bangladesh of February 2022). The applicant even acknowledged the link with fundamentalist groups in his home village, which he avoided visiting, testifying that they "do what ever they want" (Decision at para 15). The RPD had evidence which allowed it to conclude as it did on the reasons for which refugee protection had not ceased to exist as per paragraph 108(1)(e) of the IRPA.

[90] Was that the only conclusion possible? Probably not. But such is not the requirement for reasonableness and, one thing for sure, it is not for a reviewing court to opine on the merits. The *Vavilov* Court stated at paragraph 125:

> It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.

At any rate, it was sufficient in my view that reavailment had been established in a reasonable way. If the applicant was right that the reasons for which he sought refugee protection had ceased to exist so that paragraph 108(1)(e) could find application, it could certainly not defeat the conclusion that he reavailed himself through the acquisition of passports on four occasions and travelled for less than compelling reasons to Bangladesh on five occasions for increasing lengths of time. If the reasons for which the applicant sought refugee protection are still present, then the RPD accounted for that possibility in its review of reavailment and the applicant has not shown that the decision is unreasonable. Paragraphs (a) and (e) are not mutually exclusive. Each case is assessed on the basis of its particular facts.

VI. Conclusion

[91] Each examination of cessation of refugee protection case is largely fact dependent (*Camayo* at para 83).

[92] Refugee protection is “based on the premise that refugee protection is a temporary remedy against persecution. It is no longer available when the circumstances enumerated in subsection 108(1) of the IRPA arise” (*Bermudez* at para 22).

[93] The circumstances where the protection against persecution are not needed, described in subsection 108(1), target different situations and are not mutually exclusive.

[94] In the case at bar, the Minister applied pursuant to paragraph 108(1)(a), which provides that if a “person has voluntarily reavailed themself of the protection of their country of nationality”, for a determination that refugee protection has ceased. If the reasons for which the person sought refugee protection in the first place have ceased to exist, pursuant to paragraph 108(1)(e), that may simply add to the reavailment analysis. On the other hand, if it can be said that the reasons continue to exist, the RPD must then consider whether the applicant has reavailed himself of the protection of his country of nationality.

[95] The jurisprudence states unambiguously that there are three implied criteria to be considered in deciding whether reavailment has occurred:

1. the refugee must act voluntarily;
2. the refugee must intend by his action to reavail himself of the protection of his country of nationality;
3. the refugee must actually obtain that protection;

The three criteria are cumulative and must be met. The focus of Mr. Giasuddin has been, however, on his intention to reavail himself. There is no doubt that he obtained a Bangladeshi passport voluntarily; he also travelled to Bangladesh for extended periods of time without any

compulsion. It was not disputed either that the applicant received the *de facto* national diplomatic protection.

[96] There exists severe consequences once it has been found that the refugee protection has ceased in application of paragraphs 108(1)(a) to 108(1)(d). First and foremost, the person loses the permanent resident status if reavailment is found, which brings about the inadmissibility in Canada and the institution of removal proceedings. Other consequences flow (*Camayo* at para 51; *Bermudez* at para 25). It follows that the reasons given by the decision maker must reflect the stakes (*Vavilov* at para 133; *Camayo* at para 40).

[97] A presumption that someone intends to reavail of the protection of the country of nationality if a passport from that country is acquired exists. Such "presumption is even stronger where refugees return to their country of nationality" (*Camayo* at para 63; *Aydemir* at para 52).

[98] Everyone agrees that the standard of review is that of reasonableness. That implies that the applicant bears the burden of satisfying the reviewing court, on a balance of probabilities, that the decision does not have the hallmarks of reasonableness – justification, transparency and intelligibility - or that the decision is supported by a coherent and rational reasoning. The applicant has not discharged his burden. Although the RPD decision is not a model of clarity, the outcome was reasonable and it was reached on the basis of a chain of analysis that was coherent and justified in view of the factual and legal constraints applicable in the circumstances.

[99] It follows that the judicial review application must be dismissed.

[100] Once canvassed, the parties agreed that there is no serious question of general importance that ought to be stated. The Court shares that view.

JUDGMENT in IMM-4673-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4673-22
STYLE OF CAUSE:	MD GIASUDDIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUÉBEC
DATE OF HEARING:	MARCH 15, 2023
JUDGMENT AND REASONS:	ROY J.
DATED:	MAY 23, 2023

APPEARANCES:

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