

Federal Court



Cour fédérale

**Date: 20230608**

**Docket: IMM-2167-22**

**Citation: 2023 FC 810**

**Ottawa, Ontario, June 8, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Applicant**

**and**

**MIN A YUN**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2009, the Applicant, Min A Yun (“Ms. Yun”), was found to be a refugee by the Refugee Protection Division [RPD] because of fear of persecution by her estranged father’s creditors in South Korea. After she obtained her permanent residence status in 2016, Ms. Yun made several trips to South Korea, renewed and obtained new South Korean passports, and obtained a South Korean driver’s licence.

[2] In June 2021, the Minister of Public Safety and Emergency Preparedness initiated a cessation application, arguing that Ms. Yun's refugee status should be ceased under subsection 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RPD heard the Minister's application on February 10, 2022, and dismissed it on February 21, 2022. The RPD found that, though Ms. Yun had voluntarily traveled back to South Korea and obtained South Korean passports, she did not have the requisite intention to reavail herself of South Korea's protection.

[3] On judicial review, the Minister takes issue with the manner in which the RPD justified its decision. The Minister argues that the reasons do not clearly set out the RPD's credibility findings nor the basis on which the RPD found that Ms. Yun did not intend to reavail. While I agree that the RPD could have certainly drafted its decision more clearly, I find, reading the reasons as a whole, the basis for dismissing the Minister's application was sufficiently justified. Accordingly, I dismiss the Minister's application for judicial review.

## II. Issue and Standard of Review

[4] The only issue on judicial review relates to the RPD's determination on Ms. Yun's intention to reavail. The parties submit and I agree that I should review the RPD's decision on a reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] described a reasonable decision as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (Vavilov at para 85). Administrative

decision-makers must ensure that their exercise of public power is “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

### III. Analysis

[5] The RPD outlined the three elements required to establish reavailment: voluntariness in that the refugee must act voluntarily; intention in that the refugee must intend by their actions to reavail themselves of the protection of the country of their nationality; and reavailment in that refugee must actually obtain such protection.

[6] The key issue before the RPD was Ms. Yun’s intention to reavail. At the time the RPD made its decision, the Federal Court of Appeal had not yet issued *Canada (Minister of Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Camayo* (FCA)]. The RPD relied on the reasoning in the Federal Court’s decision in *Camayo v Canada (Minister of Citizenship and Immigration)*, 2020 FC 213 affirmed in *Camayo* (FCA), noting this Court “cited the finding in *Cerna* that it was unreasonable for the RPD to have found intention to reavail where the protected person, as in this case, testified he did not know of the consequences of renewing and returning to his country of origin on his passport from that country.”

[7] The Minister argued that the panel failed to make clear credibility findings. At issue are statements Ms. Yun made about her trip at the port of entry when she returned from South Korea. The officer’s notes indicate that Ms. Yun stated she went to look for her father and stayed with family and friends. The RPD sets out in detail the questions the panel posed to the Applicant about this inconsistency. At the RPD hearing, Ms. Yun explained that she felt

pressured at the port of entry and gave inaccurate statements in order to get out of the interview, and further that she did not have access to an interpreter. Though the RPD does not state after this review that it accepts Ms. Yun's explanation for the inconsistency, there is no doubt that the RPD did just that. The RPD makes no negative findings about the Applicant's credibility and accepts that she did not stay with her family when she returned and that she remains estranged from her father. There is no ambiguity when the decision is read as a whole.

[8] The Minister argues that the RPD listed a series of facts and then stated a conclusion that Ms. Yun did not have the requisite intention to reavail, without a justification as to how it reached this conclusion. I do not agree. The RPD set out the testimony and evidence of Ms. Yun on the issue of intention to reavail. After considering the relevant jurisprudence, the RPD found that Ms. Yun did not have the requisite intention to reavail. The RPD reached this conclusion based on the following evidence listed in its decision:

- a) The agents of persecution remain in South Korea.
- b) The Respondent took measures to prevent any encounter by not contacting any family members, including attendance at her wedding.
- c) The Respondent was unaware that the use of a South Korean passport would jeopardize her permanent residence status in Canada.
- d) The Respondent traveled to South Korea to meet her future husband, to marry this man, and to meet her new in-laws.
- e) The Respondent remained in her in-law's home in a town at a substantial distance from her father's place of residence.
- f) The Respondent left her three children with her mother in Canada because she feared meeting family members.
- g) The Respondent brought her new husband to Canada where together with her three children, she now lives.

- h) The Respondent has built a successful life in Canada as reflected in her work ethic, her home ownership and her community activities.

[9] The RPD's reasons could have been written more clearly but overall, reading the reasons as a whole, I am not satisfied that there is a basis to set aside the decision (*Vavilov* at para 103). As explained by the Federal Court of Appeal in *Camayo* (FCA), determinations in cessation proceedings will be "largely fact-dependent" and the cessation test should not be applied mechanistically (*Camayo* (FCA) at paras 31, 83). The RPD focused its decision on the Applicant's intent, finding that she did not have the requisite intention to reavail and listing the evidence it relied on to reach this conclusion.

[10] The application for judicial review is dismissed. Neither party raised a question for certification and I agree none arises.

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

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

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

**DOCKET:** IMM-2167-22

**STYLE OF CAUSE:** MINISTER OF CITIZENSHIP AND IMMIGRATION v  
MIN A YUN

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 16, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** JUNE 8, 2023

**APPEARANCES:**

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