

Federal Court



Cour fédérale

**Date: 20230929**

**Docket: IMM-3912-22**

**Citation: 2023 FC 1317**

**Ottawa, Ontario, September 29, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**RAZIA BEGUM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Ms. Razia Begum, seeks judicial review of a decision made by the Refugee Protection Division (RPD) on April 11, 2022, allowing the Minister's application under subsection 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) for cessation of the Applicant's Convention refugee status. In making this determination, the RPD

found that the Applicant had voluntarily reavailed herself of the protection of her country of nationality as described in paragraph 108(1)(a) of the *IRPA*.

[2] For the reasons that follow, I am allowing this application.

## II. **Background**

[3] The Applicant is a citizen of Pakistan. She faced harassment and discrimination due to her Ahmadi faith. In 2011, the Applicant fled to Canada. She was found to be a Convention refugee in 2012, based on her religion, and became a permanent resident of Canada the following year. While some of her family members are Convention refugees in Canada, her husband and numerous other family members still reside in Pakistan.

[4] The Applicant applied for and received a Pakistani passport in January 2014 and again in November 2018. She concedes that she used these passports to make five trips to Pakistan between February 2014 and April 2019. The duration of these visits ranged from about one month to about three months. Additionally, the Applicant's passport contains entry and exit stamps for Pakistan dated January 22, 2020 to June 26, 2020, respectively. According to the Applicant, her last visit to Pakistan was in 2019, but she was not certain of the exact date and clearly recollected that her most recent trip occurred during the COVID-19 pandemic declared in March 2020.

[5] The Applicant explained that her visits to Pakistan were mainly due to her health and that of her husband. In 2012, the Applicant was diagnosed with end-stage liver disease caused by

Hepatitis C. As her health rapidly deteriorated, her relatives in Pakistan worried about the Applicant, but they had no means to visit her in Canada. Winter became physically unbearable for the Applicant and staying at home with the heating system on caused her mental stress. In consultation with her doctor, the Applicant visited Pakistan from February 2014 until May 2014. During this visit, she arranged for her daughter's wedding, as the Applicant's life expectancy at the time was poor.

[6] In 2016, the Applicant received a liver transplant. She made four more visits to Pakistan to aid her recovery and to visit her husband, who had also been diagnosed with Hepatitis C. According to the Applicant, she stayed at home most of the time while in Pakistan and always feared being attacked by local religious leaders.

[7] On April 26, 2021, the Minister applied to cease refugee protection for the Applicant.

### III. **Decision under Review**

[8] The RPD began by reviewing the evidence of the Minister and that of the Applicant. The RPD noted that the Applicant had submitted a written response to the cessation application and briefly summarized its contents. Moreover, the RPD observed that the Applicant had submitted three pieces of evidence: a letter from her physician indicating that the Applicant had a liver transplant and that cold weather slows recovery and causes various medical issues; medical records showing a positive Hepatitis C result for the Applicant's husband; and a marriage certificate for the Applicant's daughter. Lastly, the RPD referred to the Applicant's testimony,

mentioning that she had testified that she did not intend to obtain protection from Pakistan and did not understand the consequences of obtaining a Pakistani passport.

[9] The RPD determined that the Applicant not only travelled to Pakistan on the five occasions between February 2014 and April 2019, but also visited Pakistan from January 22, 2020 to June 26, 2020. It found that the main purpose of the Applicant's initial 2014 trip to Pakistan was to arrange for her daughter's wedding, the main purpose of her four subsequent trips was visiting family, and the main purpose of her final visit in 2020 was expressing condolences on her cousin's death.

[10] The RPD reviewed the three criteria for reavailment listed in the UNHCR Handbook. Namely, a refugee must: (1) act voluntarily; (2) intend by her action to seek to reavail herself of the protection of her country of nationality; and (3) actually obtain such protection. The RPD found that all three of these criteria were met in this case.

[11] First, the RPD determined that the Applicant had acted voluntarily, because she did not need to travel to Pakistan. She could have travelled elsewhere to seek out a warmer climate. Family members in Pakistan could have arranged for her daughter's wedding. Relatives and servants in Pakistan could have cared for the Applicant's husband. Lastly, it was not necessary for the Applicant to travel to Pakistan for her cousin's death.

[12] Second, the RPD found that the Applicant had failed to rebut the presumption that, by obtaining Pakistani passports and using them to travel to Pakistan, she intended to reavail.

Nobody had compelled the Applicant to apply for her passports. Her trips to Pakistan were planned, numerous, and lengthy. The RPD acknowledged the Applicant's testimony that she did not know the immigration consequences of applying for and travelling to Pakistan on her Pakistani passports. However, the RPD found that the Applicant should have known the consequences of her actions. The RPD explained that it was reasonable to expect the Applicant to consult her former counsel or her relatives who are Convention refugees in Canada.

[13] Third, the RPD found the Applicant had obtained protection from Pakistan. She had presented her passport, which identified her as Ahmadi, to the Pakistani authorities. She had also approached the authorities to obtain a police character certificate. The RPD further noted that ongoing risks in a refugee's country of nationality are not relevant in a cessation hearing.

#### IV. **Issues and Standard of Review**

[14] This application raises the issue of whether the RPD reasonably found the Applicant failed to rebut the presumption that, in applying for and travelling to Pakistan on her Pakistani passports, she intended to reavail herself of the protection of her country of nationality.

[15] The parties agree, as do I, that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [Vavilov]; *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 39 [Camayo].

[16] A court conducting reasonableness review must consider the outcome and the underlying rationale of the decision to ensure that the decision as a whole is transparent, intelligible and

justified: *Vavilov* at para 15. In the cessation context, the RPD has a heightened duty to justify its decision, given the serious consequences of losing refugee or protected person status and the absence of an appeal mechanism for cessation decisions: *Camayo* at para 51.

V. **Analysis**

[17] For the following reasons, I find that RPD unreasonably concluded that the Applicant failed to rebut the presumption that she intended to reavail.

[18] In *Camayo*, the Federal Court of Appeal listed several factors to which the RPD must have regard when assessing whether a refugee has rebutted this presumption. While no single factor is necessarily determinative of a refugee's intentions, it is incumbent on the RPD to consider all evidence relating to the enumerated factors: *Camayo* at para 84; *Hamid v Canada (Citizenship and Immigration)*, 2022 FC 1541 at para 18 [*Hamid*]. In this case, the RPD failed to do so.

A. *The RPD failed to address the evidence relating to the Applicant's subjective knowledge*

[19] The RPD dismissed the Applicant's testimony that she was unaware of the immigration consequences of travelling to Pakistan, not because she was not credible, but because the Applicant ought to have known the consequences of her actions. This line of reasoning constitutes a reviewable error: *Camayo* at paras 67-71. The Applicant's subjective knowledge of cessation law is a key factual consideration in assessing whether she intended to reavail: *Camayo* at para 70; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1481 at para 41. Without

this analysis, the RPD's finding on reavailment was not “a defensible outcome based on the constraining facts and law”: *Camayo* at para 71.

[20] This error is compounded by the RPD’s suggestion that the Applicant could have consulted her former counsel or her relatives who are Convention refugees in Canada. *Camayo* establishes that it is unreasonable to focus on whether a refugee could have sought out information on cessation law instead of what the refugee actually knew about cessation law: *Camayo* at paras 67-68. Moreover, there is no evidence that the Applicant still had access to her counsel at the time of her travels. As for consulting her relatives, the Applicant herself was a Convention refugee in Canada and she was unaware of the immigration consequences of her travels. Simply put, the RPD’s reasoning in this regard does not “add up”: *Vavilov* at para 104.

[21] The Respondent suggests that the RPD merely found that the Applicant’s testimony that she did not know the consequences of her actions was inconsistent with the objective evidence. I do not find this argument persuasive. The RPD did not weigh the Applicant’s testimony against other evidence. Rather, the RPD rejected her testimony because it found that the Applicant “should have known the consequences” of applying for or travelling on a Pakistani passport. This is precisely the error identified by the Federal Court of Appeal in *Camayo*: *Camayo* at paras 66-68; see also *Aydemir v Canada (Minister of Citizenship and Immigration)*, 2022 FC 987 at para 67.

[22] The Respondent further counters that the Applicant had no excuse for visiting Pakistan because the RPD found that she had no exceptional reasons for doing so. I disagree. In assessing

whether a refugee intended to reavail, the RPD must consider all evidence related to the factors listed in *Camayo*, rather than focusing narrowly on whether there was an exceptional reason for the refugee's travels: *Hamid* at para 17, citing *Camayo* at para 84; *Ahmad v Canada (Citizenship and Immigration)*, 2023 FC 8 at para 35.

B. *The RPD failed to consider the identity of the agents of persecution*

[23] In assessing whether the presumption of reavailment has been rebutted, the RPD must consider the identity of the agent of persecution: *Camayo* at para 84. Although this factor is not necessarily determinative, evidence that a refugee claiming to fear the government of her country of nationality 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.

[24] The Applicant's Personal Information Form (PIF) was before the RPD. The Applicant stated in her PIF that she feared being charged under Pakistani law due to her religious practices, but the bulk of her PIF focused on numerous instances where local religious leaders targeted the Applicant's family due to their Ahmadi faith. The Applicant expressed fear that these problems would continue. During the cessation hearing, she testified that she feared both the Pakistani government and local religious leaders.

[25] Despite this evidence, the RPD never identified the agents of persecution nor addressed whether the Applicant's use of her Pakistani passport would expose her to them. This gap in the



RPD's reasoning is significant given the Applicant's evidence that she took measures to hide from local religious leaders, as I explain below.

C. *The RPD failed to consider evidence of precautionary measures taken by the Applicant*

[26] In determining whether the presumption of reavailment is rebutted, the RPD must take into account evidence that a refugee took steps to conceal her return, such as remaining sequestered in a home during the visit: *Camayo* at para 84; *Canada (Minister of Citizenship and Immigration) v Safi*, 2022 FC 1125 at para 57.

[27] Here, the Applicant indicated in her written response that, while in Pakistan, she spent most of her time at home and always feared local religious leaders. In her testimony, the Applicant stated that she mostly stayed at home during her 2014 visit to Pakistan and a servant would bring necessities such as groceries. She did not attend any social gatherings and she remained afraid of local religious leaders. The Applicant further testified that during subsequent trips to Pakistan, she generally stayed inside her house. She testified that if something bad happened while she was in Pakistan, she would not be able to seek help from law enforcement due to anti-Ahmadi discrimination.

[28] The RPD referred to the Applicant's written response in its summary of the Applicant's evidence. In its reavailment analysis, however, the RPD never mentioned her written response nor any of her testimony about the precautionary measures that she took while in Pakistan.

[29] Although evidence of precautionary measures may not be dispositive of a refugee's intent and the RPD is not bound to accept such evidence, the RPD must at least consider it properly and, if the RPD does not find the evidence probative or persuasive, it must explain why: *Camayo* at para 78. The RPD's failure to do so in this case is an additional reason for concluding that the Decision was unreasonable.

D. *The RPD failed to address the Applicant's personal attributes*

[30] The RPD was required to consider evidence regarding the Applicant's personal attributes, such as her age, education, and level of sophistication: *Camayo* at para 84. The record before the RPD shows that the Applicant is a 68-year-old woman with no work experience and a grade five-level education. The Applicant's minimal education could very well have a bearing on her understanding of the consequences associated with her travels. The RPD's failure to assess the Applicant's profile and its implications for her intent to reavail amounts to another reviewable error: *Hamid* at para 34.

## VI. Conclusion

[31] While the role of this Court is not to reweigh the evidence that was before the RPD, a reasonable decision is one that is justified in light of the facts: *Vavilov* at para 126. In assessing whether the Applicant had rebutted the presumption of reavailment, the RPD was required to provide "a reasoned explanation concerning the relevant evidence and key issues": *Camayo* at para 82.

[32] The RPD failed to provide any analysis whatsoever of several pieces of evidence relating to the key factors listed in *Camayo*.

[33] Accordingly, I will allow this application for judicial review.

[34] The Decision is set aside to be returned to a different panel of the RPD for reconsideration.

**JUDGMENT IN IMM-3912-22**

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

1. The Decision is set aside to be returned to a different panel of the RPD for reconsideration.
2. There is no serious question of general importance for certification.

"E. Susan Elliott"

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Judge

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

**DOCKET:** IMM-3912-22

**STYLE OF CAUSE:** RAZIA BEGUM v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 23, 2023

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