Federal Court  Cour fédérale

Date: 20240130

Docket: IMM-9959-22

Citation: 2024 FC 151

Ottawa, Ontario, January 30, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

HECTOR IVAN SALAZAR VARGAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Hector Ivan Salazar Vargas (the "Applicant") seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the "RPD"). In its decision, the RPD granted the application brought by the Minister of Public Safety and Emergency Preparedness, pursuant to subsection 108(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") for cessation of the Applicant's status as a Convention refugee.

[2] The Applicant is a citizen of Colombia. He obtained refugee protection in Canada in 2006, on the basis of his fear of persecution by the United Self Defences of Columbia. He became a permanent resident of Canada in 2007.

[3] The Respondent applied for cessation on the grounds that the Applicant had travelled on eight occasions to Colombia, using a passport issued by that country.

[4] The Applicant submits that the destruction of his file, relating to his claim for protection, amounts to a breach of procedural fairness.

[5] The Applicant argues that the RPD erred in ceasing his refugee status pursuant to paragraph 108(1)(a) of the Act, rather than pursuant to paragraph 108(1)(e). He also submits that the RPD failed to give due consideration to the "compelling reasons" exception set out in subsection 108(4) of the Act.

[6] Finally, the Applicant argues that the RPD failed to make key factual findings before engaging in a state protection analysis.

[7] For his part, the Minister of Citizenship and Immigration (the "Respondent") submits that the RPD committed no reviewable error. He argues that the RPD properly allowed the cessation application pursuant to paragraph 108(1)(a), in light of the Applicant's evidence at the cessation hearing. The RPD, in weighing that evidence, concluded that the Applicant had not rebutted the

presumption that in returning to Colombia, he intended to reavail of the protection of that country.

[8] The Respondent further argues that the RPD reasonably considered the country condition evidence and reasonably found that the Applicant's agents of persecution remained active in Columbia. Therefore, the basis of the Applicant's claim for protection had not ceased.

[9] Lastly, the Respondent submits that subsection 108(4) does not apply because the RPD did not find that the basis of the Applicant's fear of persecution still exists.

[10] Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[11] The merits of the decision are reviewable on the standard of reasonableness, following the instructions in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[12] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov*, *supra*, at paragraph 99.

[13] I agree with the Respondent that the unavailability of the RPD file respecting his claim for protection does not give rise to a breach of procedural fairness. That file was the basis upon which refugee status was granted.

[14] When it recognized the Applicant as a Convention refugee, the RPD clearly accepted his evidence about a fear of persecution in his country of nationality. A different issue arose upon the cessation application. In my opinion, the evidence from the earlier hearing is not relevant to the cessation application.

[15] I am satisfied that the RPD understood the issues before it and reasonably considered both the evidence of the Applicant and the documentary evidence before it.

[16] The evidence shows that the Applicant re-entered Columbia several times, using his Columbian passport. These travels clearly put in play the question of reavailment and the RPD squarely addressed that issue.

[17] In my opinion, the RPD's decision meets the reasonableness standard.

[18] The Applicant has not shown a breach of procedural fairness nor any other reviewable error by the RPD, and this application for judicial review will be dismissed.

[19] The Applicant proposed the following questions for certification:

> 1. Is it an error in law for the RPD to lump together and conflate s. 108 (1) (e) cessation analysis, which arises in this case as a result

> of change in country conditions and s. 108(1) (a) ravailment [*sic*] legal test which was also considered by RPD in the case at bar?
>
> 2. Does it amount to abuse of process and breach of principles of fairness and natural justice when the Minister in a cessation of refugee status case commenced under IRPA s. 108 (1) (a) fails to preserve and produce the respondent's Convention refugee's RPD file and fails to adduce it in evidence when requested by the respondent in cessation case and where the issue raised is whether the respondent was granted refugee status under IRPA s. 96 or 97 is pertinent due to the respondent's defence and claim that his Convention refugee status ceased pursuant to change of country conditions under IRPA s. 108 (1) (e) and that his refugee claim was allowed under IRPA s 97 and not under IRPA s 96?
>
> 3. Does the fact that for permanent residents of Canada there is no available mechanism provided by IRPA in order to seek confirmation of change of country conditions in their country of origin has [*sic*] to be considered and taken into account by RPD in cessation cases?

[20] The Respondent opposes certification of any question.

[21] Subsection 74(d) of the Act sets out the test for certifying a question, that is a question that raises a serious question of general importance that is dispositive of the case, as discussed in *Zazai v. Canada (Minister of Citizenship and Immigration)* (2004), 318 N.R. 365 (F.C.A.).

[22] I agree with the position put forward by the Respondent. The adjudication of this application for judicial review turns on the facts presented and the application of the law. No question will be certified.

[23] I note that the Applicant incorrectly describes the Respondent as the “Minister for Citizenship and Immigration”. The style of cause will be amended with immediate effect to describe the Respondent as the “Minister of Citizenship and Immigration”.

JUDGMENT IN IMM-9959-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. There is no question for certification. The style of cause is amended to show the "Minister of Citizenship and Immigration" as the Respondent.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9959-22
STYLE OF CAUSE:	HECTOR IVAN SALAZAR VARGAS v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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