

Federal Court



Cour fédérale

Date: 20240327

Docket: IMM-2886-23

Citation: 2024 FC 481

Vancouver, British Columbia, March 27, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

IBRAHIM YURTGUL

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS AND JUDGMENT

[1] Mr. Ibrahim Yurtgul (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), allowing an application by the Minister of Public Safety and Emergency Preparedness (the “Respondent”) to cease refugee protection.

[2] The Applicant is a citizen of Turkey. He arrived in Canada in 2011 and was granted Convention refugee status on May 27, 2013, on the basis of his pro-Kurdish political activities in Turkey.

[3] On July 19, 2016, the Applicant obtained permanent resident status in Canada.

[4] On January 23, 2017, a Turkish passport was issued to the Applicant by the Turkish Consulate in Toronto.

[5] The Applicant travelled to Turkey, using his Turkish passport, on July 17, 2017. He stayed in the country for 39 days. Upon his return to Canada, he was warned by a Canada Border Services Agency (“CBSA”) officer not to travel to Turkey without proper authorization.

[6] The Applicant travelled to Turkey on July 16, 2019, again using his Turkish passport. He remained in Turkey for 35 days. Upon his return, he was told by a CBSA officer that his travel may show that he no longer needed protection.

[7] In August 2020, the Applicant travelled to the Dominican Republic for one week. He travelled upon his Turkish passport.

[8] On June 25, 2021, the Respondent presented a cessation application to the RPD.

[9] In its decision, the RPD acknowledged that a rebuttable presumption arises that a Convention refugee intends to avail of the protection of the country of nationality when obtaining a passport from that country. It concluded that the Applicant had failed to rebut that presumption.

[10] The RPD also acknowledged the guidance from the Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50 that it was required to consider the efforts of the Applicant to hide from his agents of persecution. It concluded that he had not hidden himself, while in Turkey.

[11] The RPD further acknowledged that it was required to consider the subjective knowledge of the Applicant about the potential consequences to him, of using his Turkish passport to travel. It concluded that following his interactions with the CBSA, the Applicant was aware of the potential consequences.

[12] The Applicant now argues that the RPD failed to conduct an individualized assessment to determine if he had rebutted the presumption of availment. He also submits that the RPD unreasonably assessed the evidence in finding that he lacked a subjective fear of persecution in Turkey.

[13] The Applicant further argues that the RPD unreasonably assessed his subjective knowledge of the potential consequences of his travel upon his status in Canada, in light of his limited knowledge of the English language and lack of sophistication.

[14] The Respondent submits that the RPD reasonably addressed the factors identified in *Camayo, supra* and reasonably assessed all the evidence in concluding that the Applicant had failed to rebut the presumption that he intended to and did reavail of the protection of Turkey.

[15] Following the guidance in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the decision of the RPD is reviewable on the standard of reasonableness.

[16] 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.

[17] I am not persuaded that the Applicant has shown that the decision fails to meet the applicable standard of review.

[18] In its decision, the RPD reviewed the evidence. It addressed the elements of reavailment, that is that the Applicant acted voluntarily, that he intended to reavail himself of the protection of Turkey and that he actually obtained such protection.

[19] The RPD, not the Court, exercises the mandate to weigh evidence. The decision shows that the RPD was aware of and applied the legal test for reavailment.

[20] In the result, the application for judicial review will be dismissed. There is no question for certification.

[21] The Applicant is encouraged to pursue other options for remaining in Canada, including that provided by subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

JUDGMENT IN IMM-2886-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2886-23

STYLE OF CAUSE: IBRAHIM YURTGUL v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

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REASONS AND JUDGMENT: HENEGHAN J.

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