Federal Court Cour fédérale

Date: 20240425

Docket: IMM-3309-23

Citation: 2024 FC 632

Ottawa, Ontario, April 25, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

QIN YI WANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision of the Refugee Protection Division ("RPD") dated February 21, 2023, granting the Minister's application for cessation of the Applicant's refugee status under section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] For the following reasons, I find that the RPD's decision is unreasonable. This application for judicial review is granted.

II. **Analysis**

A. *Background*

[3] On January 7, 2003, the Applicant was found to be a Convention refugee by the RPD. On September 29, 2009, he obtained a Chinese passport at the Chinese Consulate General in Toronto. He travelled to China five times between 2011 and 2017.

[4] On October 29, 2020, the Minister applied to the RPD to have the Applicant's refugee status ceased pursuant to section 108(1)(a) of the *IRPA*. In a decision dated February 21, 2023, the RPD allowed the Minister's cessation application and rejected the Applicant's refugee status.

[5] The RPD found that there had been no abuse of process owing to any delay in bringing the application, despite the Applicant's submission that the Minister initiated the application more than nine years after having become aware of the Applicant's travels back to China. The RPD also concluded that there had not been abuse of process in the Minister invoking section 108(1)(a) in the application.

[6] The RPD then considered the merits of the cessation application. Section 108(1)(e) of the *IRPA* provides that a claim shall be rejected if "the reasons for which the person sought refugee protection have ceased to exist." One difference with this provision than others under

section 108(1) is that a cessation finding under section 108(1)(e) does not lead to revocation of permanent residence status, unlike sections 108(1)(a) to (d) (*IRPA*, para 46(1)(c.1)).

[7] The RPD found that the change in circumstance must be durable, lasting, and substantial and have changed such that the Applicant would no longer be subject to persecution or a risk to life, cruel and unusual treatment or punishment, or torture, if returned to China.

[8] The RPD found that the section 108(e) did not apply to the Applicant, concluding that the Applicant returned to China at least three times while population control measures were in place, thus putting himself at risk. The RPD placed little evidentiary value on a letter from the Applicant's sister, finding that the letter did not support that Chinese authorities would stop pursuing the Applicant.

[9] The RPD considered section 108(1)(a) of the *IRPA* but found that overall, the parties disagreed only on whether sections 108(1)(a) or (e) ought to apply. To the RPD, the Applicant had "admitted to voluntarily return to China on a renewed Chinese passport, that he intended by his action to re-avail himself of the protection of the country of his nationality and that he actually obtained such protection." The RPD concluded that section 108(1)(a) applied and granted Minister's cessation application and rejected the Applicant's refugee status.

B. *Issue and Standard of Review*

[10] This application for judicial review raises the sole issue of whether the decision is reasonable.

[11] The parties submit that the applicable standard of review of the merits of the RPD's decision is reasonableness. I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 16-17).

[12] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[13] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

C. *The RPD's decision is unreasonable*

[14] The Applicant maintains that the RPD erred in concluding that there was no requirement to consider the consequences to the Applicant when making the cessation determination, failed to

consider other portions of the *IRPA* in its determination, misinterpreted the meaning of "reasons" within section 108(1)(e) of the *IRPA*, and contradicted the section 108(1)(e) finding in the section 108(1)(a) analysis.

[15] The Respondent submits that the RPD reasonably found that the reasons for which the Applicant sought out protection did not cease to exist, thus reasonably concluding that the Applicant's circumstances did not fall under section 108(1)(e). The Respondent further maintains that the RPD did not err in the section 108(1)(a) analysis.

[16] I agree with the Applicant. Specifically, I agree with the Applicant's contention that the "central question" before the RPD was not only whether the circumstances in China had changed, but whether the Applicant's circumstances had changed such that section 108(1)(e) applies.

[17] First, and in my colleague Justice Norris's words, there is a "'heightened responsibility' on the part of the RPD to ensure that its reasons demonstrate that it has considered the consequences of a decision" (*Taji v Canada (Citizenship and Immigration)*, 2023 FC 1587 ("*Taji*") at para 11, citing *Ravandi v Canada (Citizenship and Immigration)*, 2020 FC 761 at para 28 and *Vavilov* at para 135). This is especially true when the RPD's analysis is choosing between cessation under sections 108(1)(a)-(d) or 108(1)(e), the former leading to revocation of permanent resident status (*Taji* at para 12). Other consequences include "the inability to appeal the cessation finding to the Immigration Appeal Division or the Refugee Appeal Division, the inability to seek a Pre-Removal Risk Assessment or an application for permanent residence on

humanitarian and compassionate grounds for at least one year, and inadmissibility to Canada for an indeterminate period, with removal enforced ‘as soon as possible’ as per subsection 48(2) of *IRPA*” (*Li v Canada (Citizenship and Immigration)*, 2023 FC 792 at para 16). I would add that the examination of these consequences must be with regard to the specific party subject to cessation proceedings; a blanket statement suggesting that loss of permanent residence will be a consequence of cessation will not suffice (see *Vavilov* at paras 133-135).

[18] This Court has held that the change in circumstance criteria under section 108(1)(e) of the *IRPA* refers to “‘substantial,’ ‘effective’ and ‘durable’ change in country conditions or in the personal circumstances of the applicant” (*Karasu v Canada (Citizenship and Immigration)*, 2023 FC 654 (“*Karasu*”) at para 67 [emphasis added]).

[19] This view of section 108(1)(e) accords with a fundamental understanding of refugee claims as evaluating the circumstances of the individual and their personal fear of persecution. As per my colleague Justice McHaffie, “a claimant under section 96 has a burden to demonstrate that they, themselves, have a well-founded fear of persecution” (*Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 (“*Fodor*”) at para 38). “Generalized” evidence can form a crucial part of this evaluation, and should when the situation calls for it (*Fodor* at paras 37-38).

[20] But the person seeking refuge must always remain the focus in refugee determinations. Accepting an interpretation under section 108(1)(e) that allows for the changes in circumstances to be determined only with reference to objective country conditions belies this emphasis on an individual’s circumstances. It is also inconsistent with a precondition for change of circumstance

analyses under section 108(1)(e), namely, whether "the change in circumstances support a continuation of a risk on return today" (*Karasu* at para 67, citing *Winifred v Canada (Citizenship and Immigration)*, 2011 FC 827 at para 32 and *Mahdi v Canada (Citizenship and Immigration)*, 2022 FC 1576 at para 16 [emphasis added]). Moreover, this understanding of the change of circumstance analysis for section 108(1)(e) accords with the text of "the reasons for which the person sought refugee protection" under section 108(1)(e). Nothing in this text connotes that those "reasons" cannot include an individual's personal circumstances.

[21] With that in mind, I find that the RPD's section 108(1)(e) analysis is unreasonable. The decision demonstrates that the RPD focussed almost exclusively on the objective country conditions in China. The RPD found that while the conditions had changed, the Applicant had visited the country while the child planning laws were still in place, "thus putting him at risk." This analysis pays insufficient attention to his personal circumstances (*Karasu* at para 67).

[22] The RPD did acknowledge a letter from the Applicant's sister stating that he would not face persecution from Chinese authorities upon returning to China. But the RPD assigned little weight to this letter, finding it appeared to be a "copy or photograph" and that it was "vague and nonspecific." The former is not a compelling reason to disregard evidence, being akin to a veiled inauthenticity finding (*Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at para 27). The RPD also does not explain the rationale for finding the evidence to be a copy or photograph, nor why that matters. The analysis thus lacks transparency (*Vavilov* at para 15).

[23] This reasoning applies equally to the RPD's finding that the letter is vague and nonspecific: The RPD does not explain in any detail how or why the letter is vague or nonspecific. Having reviewed the letter, I can only hypothesize as to why the RPD deemed the letter as such. But I will not supplement the RPD's reasons, the task on judicial review being the review of the "decision the administrative decision maker actually made" (*Vavilov* at para 15; see also *Vavilov* at para 96), rather than what it might have been or ought to have been. For these reasons and the reasons above, the RPD's section 108(1)(e) analysis is not transparent, nor is it justified in relation to binding legal and factual constraints (*Vavilov* at paras 15, 99-101).

III. **Conclusion**

[24] This application for judicial review is granted. The RPD's decision lacks transparency, as well as justification in light of its legal and factual constraints (*Vavilov* at paras 15, 99-101). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-3309-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. The underlying decision is quashed and the matter remitted to a different panel for redetermination.

3. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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