

Federal Court



Cour fédérale

**Date: 20240612**

**Docket: IMM-4228-23**

**Citation: 2024 FC 895**

**Ottawa, Ontario, June 12, 2024**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**JUNBAO ZHOU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Zhou asks the Court to set aside a decision of the Refugee Protection Division [RPD] allowing an application by the Minister of Public Safety and Emergency Preparedness [the Minister] pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], for the cessation of the refugee protection granted to him on September 8, 2016. For the reasons that follow, his application will be dismissed.

I. Background

[2] The Applicant is a citizen of the People's Republic of China [PRC]. He entered Canada on December 16, 2015. After being granted refugee status in Canada, he became a permanent resident on June 7, 2018.

[3] On June 11, 2019, the Applicant obtained a PRC passport from the Chinese consulate in Toronto. This passport indicates that it was issued to replace passport G36810637, which expired on July 23, 2019. The record indicates that the Applicant travelled from Canada to Cuba and was there from January 16, 2016, to January 23, 2016, presumably on his former PRC passport.

[4] The Applicant subsequently used the new PRC passport to travel to Thailand, Hong Kong, and China. He returned on January 16, 2020, and was questioned by a Canada Border Services Agency [CBSA] officer. The Applicant told the CBSA officer that he was in China for just over two months because his grandmother was sick and that he had to stay to make funeral arrangements. He further indicated that China had not become safe and that he took a chance returning there.

[5] On November 3, 2022, the Minister applied to the RPD, pursuant to paragraph 108(1)(a) of the Act, for cessation of the Applicant's status as a Convention refugee.

II. The RPD Decision

[6] On March 8, 2023, the RPD allowed the Minister's application finding that the Applicant voluntarily, intentionally, and actually reavailed himself to the diplomatic protection of China pursuant to paragraph 108(1)(a) of the Act.

[7] The RPD found that the Applicant voluntarily reavailed himself of China's diplomatic protection in applying for and traveling on his PRC passport. It found that he was not forced or compelled to renew his old PRC passport at the Chinese consulate in Toronto, nor were there circumstances that required him to return to China. While it found credible the Applicant's statement that he visited and cared for his grandmother while in China, it was not persuaded that he was required to do so nor that he was her primary caregiver. The RPD found that there were many other family members in China caring for her both before and during the Applicant's trip. The RPD concluded that "[f]eeling compelled, due to personal circumstances or personal understanding of one's feelings for a parent, is different than coercion or fulfilling regulatory obligations such as proof of identity for government purposes or such as applications for permanent resident status."

[8] The RPD further found that the Applicant failed to rebut the presumption that he intended to reavail himself of China's diplomatic protection by travelling to China on his PRC passport. Its finding on this point turned on the Applicant's decision to not only acquire a PRC passport but to use it to visit countries outside of China, thereby availing himself of the diplomatic protection of that passport internationally.

[9] Finally, the RPD found that the Applicant actually reavailed himself of China's diplomatic protection in receiving his PRC passport and National Identity Card as this afforded him China's diplomatic protection in his travels outside of Canada.

### III. Issue and Standard of Review

[10] The sole issue for determination is whether the RPD's decision is reasonable.

[11] The parties agree, and I concur, that the standard of review is reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[12] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125. Reasons must "not be assessed against a standard of perfection;" reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis:" *Vavilov* at paras 91, 128.

[13] That being said, reasonableness review is not a mere "rubber-stamping" process: *Vavilov* at para 13. It is the reviewing court's task to assess whether the decision as a whole is reasonable; that is, it 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

#### IV. Legal Framework

[14] In assessing cessation, this Court has adopted the test set out in the *United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status* [the UNHCR Handbook]: *Nsende v Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 at paras 12–14. In particular, paragraph 119 of the UNHCR Handbook outlines the three conjunctive elements required to establish that an applicant has reavailed themselves of diplomatic protection under paragraph 108(1)(a) of the Act:

1. Voluntariness: The refugee must have acted voluntarily;
2. Intention: The refugee must have intended to reavail themselves of the protection of their country of nationality; and
3. Reavailment: The refugee must have actually obtained that protection.

[15] Paragraph 120 of the UNHCR Handbook provides that an applicant is deemed to have acted voluntarily where their actions are free from administrative or government compulsion:

If the refugee does not act voluntarily, he will not cease to be a refugee. If he is instructed by an authority, e.g. of his country of residence, to perform against his will an act that could be interpreted as a reavailment of the protection of the country of his nationality, such as applying to his Consulate for a national passport, he will not cease to be a refugee merely because he obeys such an instruction. He may also be constrained, by circumstances beyond his control, to have recourse to a measure of protection from his country of nationality. He may, for instance, need to apply for a divorce in his home country because no other divorce may have the necessary international recognition. Such an act cannot be considered to be a “voluntary reavailment of protection” and will not deprive a person of refugee status.

[16] In brief, a refugee does not act voluntarily if there is some sort of necessity that compels them to travel. The necessity for travel must be a legal necessity, rather than something the applicant may deem as necessary. The element of coercion is key in assessing voluntariness.

[17] Paragraph 121 of the UNHCR Handbook provides that there is a presumption that a refugee intended to reavail themselves when they apply for and obtain a passport from their country of nationality:

If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality. On the other hand, the acquisition of documents from the national authorities, for which non-nationals would likewise have to apply – such as a birth or marriage certificate – or similar services, cannot be regarded as a reavailing of protection.

[18] This Court has held that this presumption is “particularly strong” where an applicant uses their national passport to travel to their country of nationality: *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [Camayo FCA] at para 63. It is only in “exceptional circumstances” that an applicant’s travel to their country of nationality on a passport issued by that country will not result in termination of refugee status: *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 [Abadi] at para 18. Importantly, the question of intention to reavail “has nothing to do with whether the motive for travel was necessary or justified.” *Camayo FCA* at para 72.

[19] The focus on actual reavailing is whether the applicant received the diplomatic protection of their country of nationality, rather than state protection. This Court has held that

obtaining and travelling on a passport issued by the applicant's country of nationality is sufficient to constitute actual reavilment: *Lu v Canada (Citizenship and Immigration)*, 2019 FC 1060 at para 60.

[20] In cessation applications, the initial burden falls on the Minister to prove reavilment on a balance of probabilities: *Abadi* at para 17. However, once the Minister establishes that a presumption of reavilment exists, the burden of proof reverses and the refugee must then adduce sufficient evidence to rebut the presumption. In considering whether a refugee has rebutted the presumption, the RPD should have regard to the various factors outlined at paragraph 84 of *Camayo* FCA:

- The provisions of subsection 108(1) of *IRPA*, which operate as a constraint on the RPD in arriving at a reasonable decision: *Vavilov* SCC, above at paras. 115-124;
- The provisions of international conventions such as the *Refugee Convention* and guidelines such as the *Refugee Handbook*, as international law operates as an important constraint on administrative decision makers such as the RPD. Legislation is presumed to operate in conformity with Canada's international obligations, and the legislature is "presumed to comply with ... the values and principles of customary and conventional international law": *Vavilov* SCC, above at para. 114, citing *R. v. Hape*, 2007 SCC 26 at para. 53; *R. v. Appulonappa*, 2015 SCC 59 at para. 40; see also *IRPA*, paragraph 3(3)(f).
- The severity of the consequences that a decision to cease refugee protection will have for the affected individual. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes: *Vavilov* SCC, above at paras. 133-135;
- The submissions of the parties. The principles of justification and transparency require that an administrative decision maker's reasons meaningfully engage with the central issues and the concerns raised by the parties: *Vavilov* SCC, above at paras. 127-128;

- The state of the individual's knowledge with respect to the cessation provisions. Evidence that a person has returned to her country of origin in the full knowledge that it may put her refugee status in jeopardy may potentially have different significance than evidence that a person is unaware of the potential consequences of her actions;
- The personal attributes of the individual such as her age, education and level of sophistication;
- The identity of the agent of persecution. That is, does the individual fear the government of her country of nationality or does she claim to fear a non-state actor? Evidence that a person who claims to fear the government of her country of nationality nevertheless 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. In this latter situation, applying for a passport or entering the country will not necessarily expose the individual to their agent of persecution. This may be especially so when all the individual has done is apply for a passport: applying for a passport may have little bearing on the risk faced by a victim of domestic violence, for example, or her level of subjective fear;
- Whether the obtaining of a passport from the country of origin is done voluntarily;
- Whether the individual actually used the passport for travel purposes. If so, was there travel to the individual's country of nationality or to third countries? Travel to the individual's country of nationality may, in some cases, be found to have a different significance than travel to a third country;
- What was the purpose of the travel? The RPD may consider travel to the country of nationality for a compelling reason such as the serious illness of a family member to have a different significance than travel to that same country for a more frivolous reason such as a vacation or a visit with friends;
- The frequency and duration of the travel;
- What the individual did while in the country in question;
- Whether the individual took any precautionary measures while she was in her country of nationality. Evidence that an individual took steps to conceal her return, such as remaining sequestered in a home or hotel throughout the visit or engaging



private security while in the country of origin, may be viewed differently than evidence that the individual moved about freely and openly while in her country of nationality;

- Whether the actions of the individual demonstrate that she no longer has a subjective fear of persecution in the country of nationality such that surrogate protection may no longer be required; and
- Any other factors relevant to the question of whether the particular individual has rebutted the presumption of reavilment in a given case.

[21] Importantly, the Federal Court of Appeal cautions that “[n]o individual factor will necessarily be dispositive, and all of the evidence relating to these factors should be considered and balanced in order to determine whether the actions of the individual are such that they have rebutted the presumption of reavilment.” *Camayo* at para 84.

## V. Analysis

[22] The Applicant contests each element of the cessation test. I will deal with each in turn.

### A. *Voluntariness*

[23] I find that the RPD did not err in concluding that the Applicant voluntarily reavailed himself to China. An applicant is deemed to have acted voluntarily where their actions are free from compulsion.

[24] The Applicant argues that he was compelled to visit China to help his ailing grandmother. While I have sympathy for the Applicant’s situation, I agree with the RPD that “feeling compelled” is different from actual coercion. It was reasonable for the RPD to consider whether

the Applicant was his grandmother's primary caregiver, as being so could indicate the necessity of his travel: *Biyikli v Canada (Citizenship and Immigration)*, 2023 FC 1658 at para 31. The Applicant does not dispute the RPD's finding that he was not his grandmother's primary caregiver, and that there were others who were already caring for her at the time of his visit. The RPD reasonably found that while sympathetic, the Applicant's visit was not involuntary.

B. *Intention*

[25] In oral submissions, the Applicant stressed that he did not intend to reavail himself to the protection of China. He argues again that his reason for travel was to visit and care for his sick grandmother, and for no other reason beyond that.

[26] He submits that the RPD speculatively found that he relied on his PRC passport to visit his friends, family, and grandmother, and also speculatively found that there were other available options to care for his grandmother. The Applicant also disputes the RPD's assessment of his understanding of the immigration consequences of obtaining a PRC passport, submitting that it unreasonably relied on irrelevant factors such as his operation of a business, college education, and his reliance on a Canadian lawyer in making his refugee claim.

[27] I find that the RPD reasonably assessed the Applicant's intent to reavail himself to China's diplomatic protection.

[28] Again, while I can understand and sympathize with the Applicant's desire to visit his ailing grandmother, this does not rise to an "exceptional circumstance" rebutting the presumption

of reavailment created by him acquiring and travelling on his PRC passport. The Applicant's reference to paragraph 125 of the UNHCR Handbook fails to recognize that the exceptional circumstance of visiting an old or sick parent applies where an individual travels on a travel document issued by his country of refugee, and not on a passport issued by his country of nationality: *Abadi* at paras 16–18. Though the Applicant submits that he had no choice but to travel using a PRC passport, this is not true given the existence of the Canadian Travel Refugee Document that permits travel to any country other than the country of origin. In any event, the record and his own evidence indicates that the Applicant's trips to China and the other countries were non-essential and so he cannot now argue that he had "no choice" in travelling.

[29] I also do not find that the RPD engaged in speculation. The record demonstrates that the Applicant has many family members in China, including his mother, i.e., his grandmother's daughter. It was reasonable for the RPD to find that these other family members could care for, and were already taking care of, his grandmother before he arrived in China.

[30] As discussed above, the record also demonstrates that the Applicant used his PRC passport to travel outside of China, to Hong Kong and Thailand. The Applicant made no submissions explaining the necessity of these trips, and the evidence before the RPD similarly provides no explanation. It was therefore reasonable for the RPD to find that this on its own demonstrates that he intended to avail himself of China's diplomatic protection afforded by that passport, to travel to areas where he had no extenuating or arguably compelling circumstances.

[31] Finally, the Applicant argues that the RPD failed to consider the factors outlined in *Camayo* FCA in determining whether he rebutted the presumption that he intended to reavail

himself. He notes that there is no explicit reference in the reasons to *Camayo* FCA, although the RPD does cite to the Federal Court decision found at 2020 FC 213. Having been decided well before the decision under review, it is indeed surprising that the RPD makes no reference to *Camayo* FCA. However, I find that this is not a reviewable error.

[32] I largely agree with the Respondent that the factors described in *Camayo* FCA are an amalgamation of factors referenced in the previous case law. Moreover, the Federal Court of Appeal, in listing these factors at paragraph 84, states:

[I]n dealing with cessation cases, the RPD should have regard to the following factors, at a minimum, which may assist in rebutting the presumption of reavilment. No individual factor will necessarily be dispositive, and all of the evidence relating to these factors should be considered and balanced in order to determine whether the actions of the individual are such that they have rebutted the presumption of reavilment. [emphasis added]

[33] It is clear that consideration of all these factors is not mandatory. In any event, I am satisfied in reading the decision as a whole that most, if not all, of the listed factors were considered in the decision under review. This includes the factor that the Applicant takes particular issue with: his knowledge of the immigration consequences of his travel. In *Camayo* FCA, the Federal Court of Appeal indicated that the RPD may consider personal attributes of the individual in their assessment, including that individual's education and level of sophistication. The fact that the RPD considered the Applicant's skills, education, and prior experience working with a Canadian immigration lawyer in determining his knowledge of the immigration consequences is therefore not a reviewable error.

C. *Actual Reavailment*

[34] Lastly, the Applicant submits that the RPD unreasonably found that he had actually reavailed himself to China's diplomatic protection. He submits that the RPD did not grant sufficient weight and consideration to his testimony that he took precautions and remained undetected throughout his visit in China. He further submits that the Minister did not prove that he actually acquired China's diplomatic protection as it is applied in international law.

[35] It is not for this Court to reweigh the evidence on judicial review. The RPD did consider the Applicant's testimony on the alleged precautions he took while in China, such as moving around to avoid detection, but gave greater weight to the fact that he identified himself to the Chinese authorities in renewing his PRC passport. This is a factual finding that the Court cannot disturb. As the RPD emphasized, the focus in determining whether an applicant actually reavailed is if they received the *diplomatic* protection of their country of nationality. The mere act of obtaining and travelling on a passport issued by the applicant's country of nationality is sufficient to constitute actual reavailment.

VI. Conclusion

[36] The RPD's decision is reasonable. Therefore, I will dismiss this application for judicial review.

[37] The parties raised no question for certification and I agree that none arise.

**JUDGMENT in IMM-4228-23**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

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