Federal Court  Cour fédérale

Date: 20241220

Docket: IMM-10435-23

Citation: 2024 FC 2088

Toronto, Ontario, December 20, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

THERESA RADHA DEOCHAN
aka THERESA RADHA LALTOO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant challenges a Refugee Protection Division (RPD) decision that her refugee protection had ceased. After receiving Convention refugee status, the Applicant travelled to her country of feared persecution on approximately 14 occasions, in addition to using her country's passport at least three times and obtaining a driver's licence and national identity card.

[2] For the reasons below, the RPD's decision is reasonable and the application for judicial review is dismissed.

II. Background

[3] The Applicant is a citizen of Trinidad and Tobago who was determined to be a Convention refugee in Canada in 2008 and became a permanent resident in 2009. Her claim was based on her fears of abuse from her ex-husband.

[4] Between 2009 and 2018, the Applicant travelled to Trinidad approximately 14 times using three different Trinidadian passports. She stated that she also obtained a fourth passport in 2018. During these visits, the Applicant also obtained a driver's licence and a national identity card.

[5] The Applicant testified that she checked with her immigration consultant prior to these trips and was assured that there would be no adverse consequences related to her Canadian status. She stated that she did not fear her husband on these trips because she took precautions such as staying with her mother and aunt and avoiding travel on the island.

[6] The Applicant argued that her circumstances did not justify cessation because she did not re-avail herself of Trinidad's protection. In the alternative, she requested that the RPD find that the reasons for which she sought refugee protection had ceased to exist. The latter finding would avoid her loss of permanent resident status based on the combined effect of paragraph 108(1)(e), subsection 40.1(2), and paragraph 46(1)(c.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[7] The RPD found that the Applicant's refugee protection status had ceased pursuant to paragraph 108(1)(a) because she re-availed herself of Trinidad's protection. The RPD also found paragraph 108(1)(e) to be inapplicable because there was "no valid argument" for a change of circumstances.

[8] The Applicant challenges the RPD's decision on the basis that its decision to find reavailment under paragraph 108(1)(a), rather than changed circumstances under paragraph 108(1)(e), was neither intelligible nor justified. The Applicant also challenges the RPD's reavailment determination on the basis that the RPD made an unreasonable assessment of the Applicant's understanding of the consequences of her returns to Trinidad.

III. Issue

[9] The sole issue is whether the RPD's decision is reasonable as that standard is described in the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], followed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*].

IV. Analysis

[10] The RPD's preference of reavailment under paragraph 108(1)(a) over changed circumstances under paragraph 108(1)(e) was justified and reasonable, and the RPD's reavailment findings are reasonable given the factual matrix before the RPD.

A. *Finding of reavailment rather than changed circumstances was reasonable*

[11] In order to avoid the loss of permanent resident status resulting from a finding of reavailment under paragraph 108(1)(a), the Applicant advanced the alternative argument that her refugee protection should be ceased based on a change of circumstances under paragraph 108(1)(e). Under the latter paragraph, a person's refugee protection ceases when "the reasons for which the person sought refugee protection have ceased to exist."

[12] In support of this alternative basis for cessation, the Applicant depicted her former husband as no longer constituting a threat and provided a letter from her son describing the fact that his father was diabetic and was losing his eyesight and mobility. The Applicant also highlighted other factors which demonstrated lack of risk, such as the availability of her children and relatives to protect her, and her limited travel within Trinidad.

[13] The Applicant emphasizes the RPD's numerous findings that she no longer has a subjective fear of persecution and argues that these findings are inconsistent with its determination that there was no valid argument to support changed circumstances.

[14] The RPD's findings regarding the Applicant's lack of subjective fear are not as conclusive as the Applicant suggests. The RPD raised credibility concerns based on sworn evidence from the Applicant in November 2015 stating "[e]verytime I return to Trinidad and Tobago I am afraid of being once again victimized by my abuser." She had been to Trinidad 10 times at that point. In light of her testimony, the RPD concluded that the Applicant's credibility was undermined because of her inclination "to give a response in order to achieve the desired objective for her immigration status."

[15] Based on the test under paragraph 108(1)(e) and the credibility concerns, the RPD was not required to reconcile ambivalent evidence on subjective fear with evidence of alleged changed circumstances in order to support its conclusion. It was entitled to focus upon evidence that spoke to the continued risk or lack of risk posed by the agent of persecution based on his ill health and limited mobility, and to reasonably determine that this evidence materialized only after the Applicant's 14 return trips to Trinidad. I agree with counsel for the Respondent that none of the

other evidence constituted changed circumstances relevant to her many returns, and as such the RPD was not obliged to specifically analyze it.

[16] Relying upon *Ravandi v Canada (Citizenship and Immigration)*, 2020 FC 761 [*Ravandi*], the Applicant alleges that the RPD's decision lacked justification because it did not specifically mention the rationale for choosing paragraph 108(1)(a) over paragraph 108(1)(e) in light of the consequences. As Justice John Norris stated in *Ravandi*: "where the RPD has a choice to make between, on the one hand, finding that refugee protection has ceased under any of paragraphs 108(1)(a) through (d) or, on the other hand, under paragraph 108(1)(e), and it opts for the former rather than the latter, it is required to explain the choice with reasons that demonstrate that it has considered the consequences of that decision and that those consequences are justified in light of the facts and law" (at para 33).

[17] It is true that the RPD does not refer to the consequences of its selection of paragraph 108(1)(a) over paragraph 108(1)(e) in that specific portion of its decision. However, the decision contained numerous other references to the consequences of cessation for the Applicant that demonstrate that the RPD was alive to and aware of the serious implications of its decision. I agree with counsel for the Respondent that it would be unrealistic to expect the RPD to organize its findings precisely in a decision of over 30 pages. As stated by the Supreme Court, "[a] reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection" and shortcomings must be "sufficiently serious" to render the decision unreasonable (*Vavilov* at paras 91, 100).

B. *No error in assessment of the Applicant's knowledge of consequences of return*

[18] The Applicant argues that the RPD minimized the significance of the Applicant's unawareness of the immigration consequences of her returns to Trinidad. The Federal Court of Appeal has stated that an individual's knowledge of the cessation provisions is a relevant factor in assessing whether the presumption of reavailment has been rebutted (*Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [*Galindo Camayo*] at para 84).

[19] The RPD's findings related to this factor are unintelligible. The RPD found that "any reasonable person" would have known that there would be problems with the Applicant's return trips to Trinidad when a residency requirement investigation was triggered in 2014 and that this investigation "should have raised a red flag" about the Applicant's use of her passports to return to Trinidad.

[20] The "reasonable person" standard was rejected by the Federal Court of Appeal as a tool in the assessment of this factor: The inquiry should examine not what the refugee should have known, but what the refugee subjectively intended (*Galindo Camayo* at para 68).

[21] Despite this error, the RPD rehabilitated its reasoning by acknowledging that the Applicant appeared to lack subjective knowledge of the immigration consequences of these returns. It then relied upon the Federal Court of Appeal's determination that a refugee's subjective understanding of the consequences of reavailment is not determinative, stating:

> The panel agrees with the Minister that while key, this factor is not determinative in and of itself. The panel has carefully assessed the very number of return trips and the combined substantial duration of the respondent's return travels to Trinidad. The panel also agrees with the Minister that such a repeated pattern of re-availment for lengthy durations to the country of alleged persecution as is seen in

> this respondent's case "… Strongly indicates that the surrogate protection afforded to the respondent is no longer needed."

[22] The RPD's erroneous rationale at one point in the consideration of one factor among many others does not undermine the overall reasonableness of its decision.

V. Conclusion

[23] As the RPD emphasized, the factual matrix before it revealed numerous lengthy return trips to the Applicant's feared country of persecution, which began almost immediately after she became a Canadian permanent resident and was able to travel. The evidence also included the renewal, acquisition, and use of numerous national identity documents. The RPD's findings supporting its conclusion that the Applicant's refugee protection status had ceased were reasonable. The application for judicial review is dismissed.

JUDGMENT in IMM-10435-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Michael Battista"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Richard Wazana	FOR THE APPLICANT
Hillary Adams	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Wazanalaw Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT