

Federal Court



Cour fédérale

Date: 20250521

Docket: IMM-6477-24

Citation: 2025 FC 924

Ottawa, Ontario, May 21, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

GHULAM SAEED JALALLI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ghulam Saeed Jalalli, seeks judicial review of a decision of the Refugee Protection Division (RPD) to cease his refugee protection under paragraph 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], on the basis that he had re-availed to Afghanistan on multiple occasions.

[2] As a preliminary matter, at the opening of the hearing of this judicial review application, I granted the Applicant's extension of time request made under paragraph 72(2)(c) of the *IRPA*, pursuant to Rule 6 of the *Federal Court Immigration and Refugee Protection Rules*, SOR/93-22.

[3] For the following reasons, this judicial review is dismissed. The RPD's conclusion that the Applicant re-availed himself to Afghanistan is reasonable.

I. Background

[4] In 2004, the Applicant was granted refugee status in Canada. He later obtained Afghan passports in 2010, 2012, and 2020, and travelled to Afghanistan and other countries for extended periods on his Afghan passport.

[5] On May 10, 2023, the Minister of Public Safety and Emergency Preparedness (Minister) applied to the RPD to cease the Applicant's refugee protection. The Minister argued that the Applicant voluntarily re-availed himself of Afghanistan's protection by renewing his passport three times and traveling with it on numerous occasions. Before the RPD, the Applicant explained his travel to Afghanistan was for the purpose of caring for his ill mother.

[6] In a decision dated March 6, 2024, the RPD found that the Applicant fell within the definition of paragraph 108(1)(a) of *IRPA* and ceased his refugee protection.

II. Issue and standard of review

[7] The sole issue is whether the RPD’s cessation decision “...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” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

III. Analysis

[8] The Applicant argues that the RPD misapplied the legal criteria outlined in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at para 18 [*Camayo*]. *Camayo* requires consideration of three criteria: (1) whether the applicant acted voluntarily (voluntariness), (2) whether he intended to re-avail himself of his country (intention), and (3) if he actually obtained that protection (re-availment).

A. *Voluntarily actions*

[9] On the issue of voluntariness, the Applicant submits that he lacked the intent to re-avail himself of Afghan protection, relying on this Court’s decision in *El Kaissi v Canada (Citizenship and Immigration)*, 2011 FC 1234. He argues that his return to Afghanistan on multiple occasions was solely to care for his ailing mother, and not for the purpose of re-availing himself of state protection.

[10] In my view, the RPD reasonably found that the Applicant's return to Afghanistan was voluntary. The RPD concluded that he was not compelled to return to Afghanistan and that his stated reason—caring for his mother—did not constitute exceptional circumstances, as the evidence demonstrated that his mother received assistance from her neighbours and the Applicant's nephews. The RPD also found that if the Applicant feared the Taliban, it would be reasonable for him to find other ways to support his mother without endangering his own life. It found that the Applicant had the means and resources to meet his mother in an alternative safe country, as he had done several times in the past by traveling to India, avoiding return to Afghanistan.

[11] The Applicant points to jurisprudence where returning to a country of origin to care for a sick parent was not considered voluntary. However, the circumstances here differ significantly. The evidence demonstrates that, since 2005, the Applicant renewed his Afghan passport at least three times. He has used that passport to travel to India, to Iran to get married and for dental work.

[12] Considering this pattern of conduct, the RPD's finding that the Applicant voluntarily re-availed himself of Afghan protection is reasonable.

B. *Intention*

[13] The RPD considered whether the Applicant rebutted the presumption of intention to re-avail that arises from the renewal of a passport. In doing so, the RPD addressed the Applicant's

explanation for his travel and applied the factors outlined in *Camayo* at paragraph 84. The RPD reasonably concluded that the Applicant's circumstances did not amount to exceptional or compelling reasons requiring his return to his country of origin.

[14] The RPD considered the three Afghan passports he obtained and his travel back to Afghanistan on numerous occasions. The RPD also considered the length of his visits, his activities while using his Afghan passport for international travel and travel to Afghanistan, and his evidence on the precautions he took to avoid the agents of harm. The RPD found that this conduct collectively demonstrated a lack of subjective fear.

[15] The RPD also noted that the Applicant is well-educated and was aware of the potential immigration consequences of returning to Afghanistan. The RPD conducted an individualized analysis of the Applicant's intent, applying the correct test in accordance with *Camayo*.

[16] Voluntary re-availment negates the refugee's previous claim that they are "unable or unwilling" to avail themselves of the protection of their country of nationality (*Balouch v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 765 (CanLII) at para 20).

[17] I find no reviewable error in the RPD's analysis of the "intention" factor of the re-availment assessment.

C. *Actual re-availing*

[18] In assessing whether the Applicant obtained protection of Afghanistan, the RPD considered the distinction between actual and incidental re-availing. The RPD also considered whether the Applicant encountered any difficulty entering or leaving the country.

[19] The RPD concluded as follows on this issue:

[42] Here the Respondent not only renewed his Afghan passport repeatedly, but he used it for travel, not only to Afghanistan but also to India on many occasions and to Iran twice. When he traveled on his passport, and also when he entered and exited India and Iran, he did so on the strength of his Afghan passport, entrusting himself to the protection of that country. He had no difficulty entering or exiting Afghanistan on his passport. While in the country, he largely stayed at home, but did not take any exceptional security measures - and he remained in Afghanistan for extended periods of time.

[20] I find no reviewable error in the RPD individualized analysis above.

IV. Conclusion

[21] Overall, the RPD's conclusion that the Applicant voluntarily re-availed himself to Afghanistan within the meaning of paragraph 108(1)(a) of the *IRPA* is reasonable.

[22] This judicial review is dismissed.

JUDGMENT IN IMM-6477-24

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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