

Federal Court



Cour fédérale

Date: 20250611

Docket: IMM-8657-24

Citation: 2025 FC 1037

Toronto, Ontario, June 11, 2025

PRESENT: The Honourable Justice Battista

BETWEEN:

GJON VUKAJ

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application concerns the decision of the Refugee Protection Division (RPD) to vacate the Applicant's refugee protection status. At the time of his claim, the Applicant did not reveal that he had used a previous name, and the RPD panel that granted him refugee protection status was not aware of the fact that he had been convicted of a serious offence in Albania under that name. Despite this, proceedings to vacate his status were not commenced until approximately 16 years after his status was conferred.

[2] For the reasons that follow, the RPD's vacation determination is reasonable. However, the application is granted and the RPD decision is quashed because the delay in the proceedings amounted to an abuse of process.

II. Background

[3] The Applicant was determined to be a person in need of protection in Canada on January 20, 2005. On June 18, 2021, the Minister applied to vacate his status under section 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[4] Vacation of refugee protection status requires the RPD to be satisfied that there was a direct or indirect misrepresentation or withholding of material facts relating to a relevant matter in the initial decision (IRPA, s 109(1)). The Minister alleged, and the Applicant admitted, that he had used a previous name which had not been revealed in the application forms filed in support of his refugee claim. The Minister also presented evidence that in 2002, prior to his refugee claim, the Applicant was convicted *in absentia* of "aggravated exploitation of prostitution" in Albania, although that conviction was quashed in 2013 based on the absence of a fair trial.

[5] In opposing the vacation application, the Applicant testified that his failure to reveal his previous name was unintentional, and that he was unaware of his criminal conviction until he was detained and extradited to Albania from the Netherlands in 2011. The Applicant also argued that it was an abuse of process for the vacation application to be commenced many years after the Minister discovered his failure to disclose his previous name and his conviction.

[6] The RPD allowed the vacation application, finding that there was a misrepresentation material to a relevant matter, specifically, whether the Applicant failed to disclose his identity at birth and his conviction in Albania.

[7] The RPD further determined, based on his conviction in Albania, that the Applicant would have been excluded from refugee protection pursuant to Article 1F(b) of the *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 (Convention) at the time of the original determination of his refugee status.

[8] Finally, the RPD did not agree that an abuse of process occurred. It found that the fairness of the process had not been compromised from the lack of records from the original RPD hearing, and that no significant prejudice materialized from the delay.

III. Issues

[9] The first issue is the reasonableness of the RPD's vacation decision, which is evaluated pursuant to the reasonableness standard set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (Vavilov), affirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[10] The second issue concerns abuse of process. In administrative proceedings, the issue of abuse of process is a question of procedural fairness (*Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 (Abrametz) at para 38). In general, questions of procedural fairness do not attract a standard of review. They are answered by asking whether the process was fair in all the

circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (CPR) at para 54).

[11] In *Abrametz*, the Supreme Court of Canada (SCC) applied the correctness standard of review to the issue of abuse of process. A divergence of opinions currently exists in this Court regarding the applicable method of assessing abuse of process (see *Naimi v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1294 at paras 8-12).

[12] In my view, the SCC in *Abrametz* was clear that abuse of process attracted the correctness standard because that case involved a statutory appeal (*Abrametz* at paras 3, 26-29, 180). This is supported by the dissenting opinion of Justice Côté, which was based, among other grounds, on the view that questions of procedural fairness attract correctness review generally, even in the absence of a statutory appeal (*Abrametz* at paras 160-164). The majority did not adopt this position.

[13] I understand that assessing procedural fairness in a manner “akin to” correctness is meant to refer to the view that it is not appropriate for judges to defer to determinations of procedural fairness made by administrative decision makers. That lack of deference is appropriate because the hallmarks of reasonableness review – transparency, intelligibility, and justification – do not include fairness. Applying deference to a tribunal’s procedural fairness determination could lead to decisions which are reasonable, but unfair. This would undermine the purpose of procedural fairness requirements, and the rule of law.

[14] However, in my view, the application of “standard of review” or “correctness” terminology risks confusion in the approach to questions of procedural fairness. The use of such terminology

creates the impression that procedural fairness issues fall among the exceptions to reasonableness review described in *Vavilov*. And yet, procedural fairness is found nowhere in the exceptions to reasonableness review discussed in *Vavilov*. The omission of procedural fairness issues from the *Vavilov* analysis supports the view procedural determinations and reasonableness review serve two different functions: the former concerns the Court's role in ensuring a party was treated fairly, while the latter serves to examine the reasons and outcome of a decision made under the "reasons first" approach described in *Mason* (see *CPR* at para 55; *Mason* at paras 8, 58, 60-61).

[15] The present case does not involve a statutory appeal. The appropriate approach to be applied to the issue of abuse of process in this case is therefore the approach applied in most cases raising procedural fairness: a determination of whether the process was fair in all the circumstances. Fundamentally, this calls for examining the circumstances and determining whether a party knew the case to meet and had a full and fair chance to respond (*CPR* at para 56).

[16] In assessing the Applicant's allegations of abuse of process, the Court is therefore not "reviewing" anything. The Court is not reviewing the RPD's findings about the test for abuse of process, nor is the Court reviewing the RPD's findings of fact to support the RPD's conclusion. The Court is looking at the process and making its own determination of whether a breach of fairness occurred; in other words, the Court is determining whether there has been an abuse of process.

IV. Analysis

[17] The RPD decision reasonably found that the Applicant misrepresented his identity, and that this misrepresentation was material because it was relevant to his receipt of refugee protection. However, the delay in initiating the vacation proceedings resulted in an abuse of process.

(1) The RPD's misrepresentation findings were reasonable

[18] As mentioned, a decision to vacate refugee protection requires the RPD to find a direct or indirect misrepresentation in the proceeding which led to the conferral of protected status.

[19] In the Applicant's case, the RPD found that two misrepresentations occurred: first, the Applicant misrepresented the fact that he previously used a different name; and second, the Applicant's conviction of a serious non-political offence was not revealed at the time of his initial refugee claim. The RPD relied upon jurisprudence from this Court indicating that misrepresentations do not need to be intentional for the purpose of section 109 of the IRPA (*Canada (Minister of Citizenship and Immigration) v Pearce*, 2006 FC 492 at para 36; *Abdulrahim v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 463 at para 21).

[20] The Applicant attacks the reasonableness of both misrepresentation findings. Regarding the criminal conviction, the Applicant relies upon the RPD's acceptance of his testimony that he was convicted *in absentia*, and that he had no knowledge of the conviction at the time of his refugee claim.

[21] Arguing that he could not misrepresent what he did not know, the Applicant supports his position with jurisprudence from this Court holding that a claimant's lack of knowledge of a conviction is relevant in determining whether they misrepresented (*Ede v Canada (Citizenship and Immigration)*, 2021 FC 804 at paras 28-31, 66-67; *Doresi v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 1300 at para 51). The Applicant also argues that his conviction cannot be relied upon because it was subsequently overturned in Albania based on a lack of due process.

[22] Based on this alleged absence of a misrepresentation of his conviction, the Applicant argues that the RPD unreasonably failed to explain the materiality of the identity misrepresentation.

[23] I agree with the Respondent that the RPD viewed the two misrepresentations to be connected, rather than discrete.

[24] The RPD could certainly have more clearly explained the connection between the Applicant's identity misrepresentation and the concealment of the conviction. However, this connection is not opaque and the RPD acknowledged the Minister's position that the Applicant "changed his name so as to conceal the criminal conviction from the RPD." In addition, the RPD concluded: "I find these misrepresentations to be material since they relate to his identity and criminality which are both relevant to any refugee determination." Perfection is not a prerequisite of reasonableness (*Vavilov* at para 91). The RPD's misrepresentation analysis is imperfect, but reasonable.

(2) The RPD's application of Article 1(F)(b) is reasonable

[25] Having established misrepresentation, the RPD determined that the misrepresentation was material to the Applicant's exclusion from refugee protection under Article 1F(b) of the Convention. Article 1F(b) excludes claimants if there are serious reasons to consider that they have committed serious, non-political crimes.

[26] The RPD found that the relevant time for assessing the engagement of Article 1F(b) was at the time of the Applicant's refugee claim, rather than at the time of the vacation proceedings. This meant that the 2002 Albanian court decision convicting the Applicant, rather than the 2013 Albanian Supreme Court decision vacating the conviction, was relevant. The RPD found that the existence of the conviction at the time of the Applicant's claim, the serious non-political nature of the crime together and the low "serious reasons for considering" standard of proof would have engaged Article 1F(b), leading to the Applicant's exclusion from refugee protection.

[27] The Applicant argues that the RPD's application of Article 1F(b) was unreasonable for relying on distinguishable jurisprudence and because it relied upon a conviction for a crime despite accepting the Applicant's testimony that he was not involved in the crime. The Applicant supports the latter position with jurisprudence from this Court requiring the RPD in vacation applications to consider the lack of due process leading to convictions (*Biro v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1428 at para 18).

[28] I agree with the Respondent that it was reasonable for the RPD to conclude that it could not retroactively apply the quashing of the Applicant's conviction to the process of his refugee

determination, and even if it could, the absence of a conviction does not foreclose the application of Article 1F(b) given that the standard is “serious reasons for considering” that he committed the offences. The RPD comprehensively reviewed the elements of Article 1F(b) and reasonably determined that they would have been engaged if the Applicant’s conviction was revealed at the time of his claim.

(3) The vacation proceeding constituted an abuse of process

[29] As stated above, abuse of process is a question of procedural fairness in which this Court determines whether the vacation proceedings were fair in all the circumstances.

[30] Abuse of process because of delay in administrative proceedings may be established by demonstrating that the fairness of the process was compromised by the delay, or, in the absence of compromised fairness, that significant prejudice has arisen as a result of the delay (*Abrametz* at paras 41-42).

[31] In the present case, both of these thresholds have been achieved: the fairness of the vacation proceedings was compromised, and significant prejudice arose as a result of the delay.

(a) *Fairness was compromised in the vacation proceedings*

[32] Vacation proceedings under section 109 of the IRPA demand a high level of procedural fairness, which includes “a full opportunity for refugees to challenge the evidence supporting the request to vacate status” (*Ali v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1085 at para 27). My observation about vacation proceedings in *Ali* was that “it is difficult to find

a process under IRPA with a greater imbalance between severe consequences and limited recourse” (at para 23).

[33] The fairness of a hearing may be compromised by delay when the loss of evidence impairs a party’s ability to respond to the case against them (*Abrametz* at para 41). In this case, the Applicant argues that the delay resulted in the destruction of evidence from his refugee hearing which may have been useful to him in the vacation proceedings. He suggests that his use of a previous name may have been canvassed in testimony at his hearing, removing the factual basis behind the misrepresentation allegation. The Applicant indicates that records from his refugee hearing were destroyed in approximately mid-2015.

[34] The Respondent states that the Applicant conceded misrepresentation of his identity, and it is contradictory for him to claim to be hampered in defending an issue he has conceded.

[35] However, it appears from the record that the Applicant’s concession was limited to the admission that he failed to disclose his previously used name on his application forms. He has consistently maintained that his previous name could possibly have been canvassed at his hearing.

[36] Given the high procedural standards in refugee vacation proceedings, I agree with the Applicant that fairness was compromised by the delay in these proceedings. The delay had the effect of denying him access to evidence which could have been relevant to the accusation of misrepresentation.

[37] An additional basis of unfairness relates to the destruction of documentary evidence establishing risk from the initial RPD hearing. Without access to that full record, there was no ability for the vacation panel to carry out its statutory duty to be “satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection” (IRPA, s 109(2)).

[38] The Applicant faces the risk of severe consequences and limited recourse inherent in the vacation process, including the loss of protected status in Canada which he has enjoyed for two decades. In order to satisfy the requisite high threshold of procedural fairness, he is entitled at a minimum to an assurance that the delay in initiating proceedings has not hampered his ability to fully meet the case against him.

[39] A party’s full and fair ability to respond to the case against them is at the very heart of procedural fairness (*CPR* at para 56). A high threshold of procedural fairness should therefore entail a correspondingly strong opportunity to make one’s case.

(b) *Significant prejudice arose from the delay*

[40] The unfairness caused by the delay in the vacation proceedings is sufficient to establish abuse of process. However, I also find that significant prejudice to the Applicant has arisen because of the delay.

[41] A finding of significant prejudice requires the following three criteria, which are satisfied in this case:

- (i) The delay must be inordinate;
- (ii) The delay must have directly caused significant prejudice; and
- (iii) If the first two requirements are met, the delay must amount to an abuse of process because it is manifestly unfair or brings the administration of justice into disrepute.

- (i) The delay in the vacation proceedings was inordinate

[42] The following three factors should be considered to determine whether the delay in a particular case was inordinate: (1) the nature and purpose of the proceedings; (2) the length and causes of the delay; and (3) the complexity of the facts and issues in the case (*Abrametz* at para 51).

[43] *Nature and purpose of vacation proceedings*: vacation proceedings have serious impacts, including the revocation of protected status, the revocation of permanent residence, and, as in this case, the potential revocation of citizenship. Vacation decisions are not subject to appeal, and result in inadmissibility to Canada for misrepresentation for five years (*Ali* at para 23). The proceedings are adversarial in nature and represent a pure conflict between an individual and the state; there are no other parties to the proceeding. It is the Minister's onus to prove vacation (*Begum v. Canada (Minister of Public Safety and Emergency Preparedness)* 2005 FC 1182 at para 8) and the Minister is responsible for correcting improperly obtained protected status.

[44] Vacation proceedings have the purpose of protecting the integrity of the refugee protection system. Punishment and the assignment of blame are irrelevant to this purpose (*Mella v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1587 (*Mella*) at paras 29-30).

[45] Within the immigration and refugee context, delay in proceedings that aim to remove status have the logical consequence of deepening and broadening the subject's roots in Canada. Delay also has the impact of increasing the subject's reasonable expectations that those roots will not be disrupted. When those expectations are destroyed, and those roots are threatened, it can result in the type of trauma experienced by the Applicant described below.

[46] *Length of delay*: the starting point in calculating delay is when the decision maker's obligations, as well as the interests of the public and parties in a timely process, are engaged (*Abrametz* at para 58). When the delay relates to the initiation of proceedings, as opposed to the pace of proceedings once they have started, in my view the focus is on the public interest and parties.

[47] In vacation proceedings, the interests of the public and parties begin when information is available to the Minister to support an application to vacate. The end point is when a decision in the proceeding is rendered.

[48] The Applicant changed his name on July 10, 2003, and the Minister's obligation to uncover the name change and take appropriate action began before the Applicant was granted protected status in 2005: "The duty to be fair is relevant at all stages of administrative proceedings, including the investigative stage" (*Abrametz* at para 58). The Canadian government was advised of the

Applicant's criminal conviction on September 3, 2010. These are the dates in which the public interest and the Minister's responsibility in addressing the Applicant's misrepresentations began.

[49] The RPD rendered a decision in the vacation proceedings on May 6, 2024. Therefore, the delay is approximately 14 years (starting with the date that the Respondent knew of the Applicant's criminal conviction) to approximately 20 years (starting with the date that the Respondent's obligation arose to uncover the Applicant's previous name).

[50] The parties did not identify any responsibility on the part of the Applicant for this delay. However, the Minister explained the delay by identifying the Applicant's incarceration in Albania and the need to take undescribed "additional steps" because the Applicant is a Canadian citizen. The Minister provided no explanation why vacation proceedings could not be initiated while the Applicant was outside Canada. These explanations do not justify the delay.

[51] *Complexity of the facts and issues:* The vacation proceedings raised no complex facts or issues. The Applicant admitted that he did not disclose his previous name in the documents initiating his refugee claim and that he was convicted *in absentia* in Albania prior to receiving refugee status. The sole legal issue was whether a misrepresentation was made that was relevant to a relevant matter.

[52] Considering these factors, I find that an inordinate delay has been established.

(ii) The delay caused significant prejudice

[53] Evidence establishing significant prejudice may relate not only to the hearing process but to factors such as significant psychological harm, disruption to family life, and loss of work or business opportunities. Such factors can be directly caused by the delay or exacerbated by it (*Abrametz* at paras 68-69).

[54] The Applicant tendered psychological evidence diagnosing him as severely depressed with multiple symptoms including suicidal ideation with a moderate-high risk of suicide, and clear deficits in occupational and general adaptive function. The psychological report notes that he is at a high suicide risk if left to process his options for resettlement. His symptoms have worsened throughout the proceedings to the point of jeopardizing his business in Canada. This evidence establishes significant prejudice (*Abrametz* at para 69).

(iii) The abuse of process is manifestly unfair and has brought the administration of justice into disrepute

[55] As stated above, the delay deprived the Applicant of full access to the records from his refugee protection hearing. Given the high procedural protections required in vacation proceedings, this is manifestly unfair.

[56] Further, the combination of the following facts has brought the administrative of justice into disrepute:

- The Minister, charged with the public duty of pursuing misrepresentation which led to the conferral of protected status, delayed between one and two decades without any valid reason;
- The Applicant's significant psychological harm is caused or at least exacerbated by the delay; and
- The obstacle to the Applicant's refugee status—his conviction in Albania—has been eliminated but the vacation proceedings have continued. The Respondent argues that the Applicant's criminality is a live issue because the Albanian court quashed the conviction but remanded the matter for a retrial. However, the Applicant was allowed to leave Albania for Canada, and there has been no evidence of interest in the Applicant since his return. His criminality in Albania is no longer a live issue.

[57] These facts collectively create the reasonable impression that these vacation proceedings have a punitive motivation. However, we have seen that punishment is not the legislative purpose of vacation proceedings (*Mella* at para 30). The purpose of vacation proceedings is the protection of the integrity of the refugee protection system by removing refugee status that was obtained by falsehood.

[58] In my view, a reasonable perception that administrative proceedings are animated by a purpose other than the legislative purpose brings the administration of justice into disrepute.

[59] In addition, the purpose of the proceedings combined with the inordinate nature of the delay call the administration of justice into disrepute. The RPD reasonably found that the Applicant had obtained protected status by misrepresentation. As stated by Justice John Norris: “To continue to confer refugee protection on someone when it has been determined that that protection was obtained on the basis of material falsehoods or by withholding material facts would undermine the integrity of the Canadian refugee protection system and bring it into disrepute” (*Mella* at para 29).

[60] A delay of 14 to 20 years in removing protected status based on misrepresentation is bureaucratic inefficiency to the point of inertia. When such a delay is unjustified and significantly prejudicial, it undermines public confidence in the refugee determination system and brings that system into disrepute.

V. Conclusion and Remedy

[61] While the RPD’s vacation determination is reasonable, the delay in this matter has resulted in an abuse of process which justifies the quashing of the RPD decision.

[62] The RPD is bound by my determination on abuse of process, and remitting the matter would therefore serve no useful purpose (*Vavilov* at para 142).

[63] Further, I am satisfied that the public interest in achieving finality in these proceedings, which are tainted by abuse, outweighs the public interest in rectifying any possible benefit that was achieved by the original misrepresentations. Permitting the Minister to reattempt vacation proceedings when it has brought the administration of justice into disrepute in its past attempt does

not maintain the integrity of the refugee determination system—it offends it (*Ganeswaran v Canada (Citizenship and Immigration)*, 2022 FC 1797 at paras 63-64).

[64] I realize that this remedy is tantamount to a stay of proceedings, which requires more than mere delay (*Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 101).

For the reasons outlined above, the requisite threshold has been met.

JUDGMENT in IMM-8657-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted, and the decision of the Refugee Protection Division is quashed.
2. The matter is not remitted to the Refugee Protection Division for redetermination.
3. There is no question for certification and no order regarding costs.

“Michael Battista”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8657-24

STYLE OF CAUSE: GJON VUKAJ v. MINISTER OF CITIZENSHIP
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