

CANADA / JUDGMENT

Uc v. Canada (Citizenship and Immigration)

2025 FC 1945

COURT

Federal Court

DECIDED

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Date: 20251209

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Citation: 2025 FC 1945

Ottawa, Ontario, December 9, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

ISKENDER UC

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Minister of Public Safety and Emergency Preparedness [Minister] applied for the cessation of the Applicant's refugee status under paragraph 108(1)(a) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. The Refugee Protection Division [RPD] allowed the Minister's application, determining that the Applicant, a citizen of Türkiye, had voluntarily reavailed himself of Türkiye's protection in returning on two occasions. As a result, the refugee protection previously granted to the Applicant ceased and his refugee claim was deemed rejected.

[2] The Applicant seeks judicial review of the RPD's decision, asserting that it made numerous errors. In my view, the RPD made reviewable errors at each step of the three-part test for reavailment, as set out in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [Galindo Camayo]. I am therefore allowing the application for judicial review and remitting the matter for redetermination to another RPD panel.

II. Background [3] The Applicant, a Kurdish citizen of Türkiye, received asylum in June 2014 and permanent residence in September 2015. In his November 2018 Canadian citizenship application, the Applicant disclosed travelling to Türkiye for 91 days between November 1, 2017, and February 1, 2018, on his Turkish passport that was issued before receiving asylum. The Applicant returned to Türkiye on the same passport for 33 days between February 25, 2021, and March 30, 2021.

[4] In November 2023, the Minister applied for cessation of the Applicant's refugee status, arguing that the Applicant had reavailed himself of the protection of Türkiye by returning on these two occasions.

[5] At his cessation hearing before the RPD, the Applicant testified that he returned to Türkiye in 2017 to care for his elderly father. His father, who suffers from Alzheimer's, had a heart attack and was partially paralyzed as a result: Transcript of the Refugee Protection Division hearing [RPD Transcript], Applicant's Record [AR] at 143. Though his father had been ill since 2015, the Applicant's family believed that he was going to die and pressured the Applicant to return. The only other support available was the Applicant's elderly mother and his 20-year-old brother, whom the Applicant testified were overwhelmed and could not attend to his father: RPD Transcript, AR at 141. While there, the Applicant stayed at his parents' house, leaving a handful of times to accompany his father to the nearby hospital. When the Applicant left, his family bribed someone so he could pass through customs.

[6] The Applicant's second trip to Türkiye was for his own medical care. In February 2021, a doctor in Canada recommended he have a bone scan due to recurring knee and leg pain. According to the Applicant, the doctor had mentioned the potential for bone cancer. This was very concerning to the Applicant because his sister had died of cancer in 2009: RPD

Transcript, AR at 133–134. He testified that he was afraid he was going to die and did not want to wait three months to have a bone scan in Canada: RPD Transcript, AR at 137, 144. His brother-in-law was able to arrange a bone scan at a private clinic in Türkiye. During this trip, the Applicant stayed with his sister, only leaving her home for medical visits. As with his first trip, the Applicant's family drove him to and from the airport in Istanbul and bribed a custom official to assist his exit.

- [7] The RPD granted the Minister's cessation application, finding that the three elements of the legal test for cessation in *Galindo Camayo* had been established. The RPD concluded that the Applicant had returned to Türkiye voluntarily on these two occasions, that he intended to reavail himself of the protection of Türkiye, and that he actually obtained such protection: Reasons and Decision of the Refugee Protection Division dated June 29, 2024 at para 35 [RPD Decision], Certified Tribunal Record [CTR] at 11.

III. Standard of Review [8] There is no dispute that the presumptive standard of reasonableness applies to the judicial review of the RPD's decision on a cessation application: *Lu v Canada* (Citizenship and Immigration), 2024 FC 94 at para 11 [Lu]; *Abbas v Canada* (Citizenship and Immigration), 2023 FC 871 at para 20; *Aydemir v Canada* (Citizenship and Immigration), 2022 FC 987 at para 20.

- [9] A reasonable decision 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”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]; *Mason v Canada* (Citizenship and Immigration), 2023 SCC 21 at para 8 [Mason]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59–61.

IV. Analysis A. General principles [10] A cessation application under paragraph 108(1)(a) of the IRPA turns on whether the person has voluntarily reavailed themselves of the protection of their country of nationality. The legal test for reavailment consists of three conjunctive elements: (i) the refugee must have acted voluntarily; (ii) the refugee must have intended to reavail themselves of the protection of the country of nationality; and (iii) the refugee must have actually obtained that protection: *Galindo Camayo* at para 79.

- [11] The onus is on the Minister to establish these three elements on a balance of probabilities: *Baquero Alvarez v Canada* (Citizenship and Immigration), 2024 FC 770 at para 16; *Lu* at para 22; *Canada (Citizenship and Immigration) v Safi*, 2022 FC 1125 at para 33 [Safi].
- [12] Where a refugee acquires and travels on a passport issued by their country of nationality, however, there is a presumption that they have intended to avail themselves of the protection of that country: *Galindo Camayo* at para 63. This presumption is rebuttable: *Galindo Camayo* at para 65.

- [13] The refugee must adduce sufficient evidence to rebut the presumption when it arises: *Ahmad v Canada (Citizenship and Immigration)*, 2023 FC 8 at para 44 [Ahmad]; *Shah v Canada (Citizenship and Immigration)*, 2023 FC 1332 at para 10 [Shah]; *Safi* at paras 33, 35. In *Galindo Camayo*, the Federal Court of Appeal outlined relevant factors the RPD should consider in assessing whether an individual has rebutted the presumption: *Galindo Camayo* at para 84; *Shah* at paras 9–10; *Ahmad* at paras 27, 35.
- [14] A finding of reavilment under paragraph 108(1)(a) of the IRPA has significant consequences for the affected individual. Not only can it lead to the loss of their refugee status but, also, to the loss of their permanent resident status and their potential removal from Canada: *Kaban v Canada (Citizenship and Immigration)*, 2025 FC 1626 at para 35; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1481 at para 28 [Singh]. Given these consequences, there is a heightened duty on the RPD to provide justified, transparent, and intelligible reasons explaining its decision: *Vavilov* at para 133; *Galindo Camayo* at paras 49–51.
- B. The RPD’s reavilment analysis is unreasonable [15] As explained below, I find that the RPD erred at each step of its reavilment analysis. Given that the reavilment test is conjunctive, any of these errors on their own are sufficient to overturn the RPD’s decision.
- (1) Voluntariness (a) The RPD failed to engage with the Applicant’s evidence [16] The RPD determined that the Applicant voluntarily reavailed himself of Türkiye’s protection when he returned in 2017, and again in 2021. While the RPD acknowledged that compelling reasons or exceptional circumstances may render a refugee’s return to their country of nationality involuntary, it found the Applicant’s visits were voluntary: RPD Decision at para 14, CTR at 7.
- [17] I find that the RPD’s analysis of voluntariness is unreasonable because it failed to engage with the Applicant’s evidence and consider how compelling the reasons for the visits were from his perspective: *Shah* at para 14; *Ahmad* at para 44. In doing so, the RPD “adopted an unreasonably narrow view of the circumstances that could support the applicant’s argument that his actions were not voluntary”: *Shah* at para 14.
- [18] The RPD found that the Applicant’s first visit was voluntary because his father received care before and after the Applicant’s visit, and the Applicant’s younger brother was there to assist his father: RPD Decision at para 16, CTR at 7. The RPD never engaged with the Applicant’s evidence that he felt compelled to return to Türkiye as his mother (who was unwell herself) and his younger brother felt overwhelmed and were unable to provide the necessary care.
- [19] The Applicant testified as follows: “But, I just had to go, actually. Like I was feel [sic] bad and my brother was just he was little. He was 20 and he didn’t know what to do. And they called me and I helped him. That’s why” [emphasis added]: RPD Transcript, AR at 141. Furthermore, the evidence was that the Applicant’s father’s health was deteriorating, and the family thought he was going to die: RPD Transcript, AR at 130–133, 142, 144.

- [20] The RPD also found that the Applicant's second visit in February 2021 was voluntary, concluding that "though there was no medical evidence or serious concern that it was life-threatening, the [Applicant] was convinced that he had bone cancer": RPD Decision at para 17, CTR at 7. However, when questioned about this visit, the Applicant repeatedly stated that the doctor had told him it could be cancer: RPD Transcript, AR at 133–137, 144–145. The RPD did not question the credibility of this evidence.
- [21] As the Applicant explained at his cessation hearing, his sister had died of blood cancer in 2009, and he was "very scared" that he was going to die too. When the doctor told him that waiting for a bone scan could take up to three months in Canada, the Applicant decided to go to Türkiye where he could have the scan done sooner, and where he would also have the support of his family. Notably, the Applicant further testified that "I was thinking that if I die, I should die at [sic] back home with my family": RPD Transcript, AR at 145.
- [22] The RPD did not engage with this evidence but simply stated that it did "not wish to minimize the anxiety caused by the [Applicant]'s fear of cancer": RPD Decision at para 17, CTR at 7. With all due respect, in failing to squarely address and assess the Applicant's evidence about his family history of cancer and the doctor's mention about the possibility of cancer, the RPD unreasonably dismissed the Applicant's concerns, chalking them up to "anxiety".
- [23] The RPD's failure to engage with the Applicant's relevant and significant evidence addressing the voluntariness of his two visits to Türkiye renders the decision unreasonable.
- (2) Intention to reavail (a) The RPD erred in failing to assess the applicability of the Galindo Camayo factors [24] The Applicant did not renew nor obtain a Turkish passport after becoming a refugee, but rather, traveled to Türkiye on the passport he held prior to coming to Canada. On that basis, the RPD determined that the Applicant "is not presumed to have intended to reavail" and that, as such, "the onus remains on the Minister to prove this intention" [emphasis added]: RPD Decision at para 21, CTR at 9.
- [25] The RPD recognized that the Galindo Camayo factors are relevant in determining "whether the presumption of intent to reavail has been rebutted": RPD Decision at para 19, CTR at 8. Yet, despite the lack of such a presumption in this case, when the RPD assessed whether the Minister had established that the Applicant intended to reavail himself of the protection of Türkiye, it considered and applied these factors. This included whether any security precautions were taken by the Applicant, his level of sophistication, his knowledge about the immigration consequences of reavilment, and the duration of his visits: RPD decision at para 25, CTR at 9.

- [26] The Applicant argues that the RPD's failure to explain the application of the Galindo Camayo factors, given its finding that the presumption of intention was not applicable, is unreasonable: Applicant's Further Memorandum at paras 64–67. On the other hand, the Respondent asserts that there is “no merit to the suggestion that the [Galindo] Camayo factors do not [apply] to the case at bar”: Respondent's Further Memorandum of Argument at para 38.
- [27] I do not understand the Applicant's argument to be that the Galindo Camayo factors do not apply, but rather, that it was incumbent on the RPD to consider their relevance and application in this case, and not just simply apply them. Indeed, the Applicant states that “the RPD at the very least had to acknowledge how the lack of a presumption affected its subsequent analysis”: Applicant's Further Memorandum at para 67. I agree with the Applicant. The RPD's lack of justification, intelligibility, and transparency in this regard vitiates the decision.
- [28] There is no discussion in Galindo Camayo, nor could the Respondent point to any jurisprudence of this Court, addressing how, or if, the factors bearing on intention vary when there is no presumption for the refugee to rebut but the onus remains on the Minister. This was a key issue that the RPD should have addressed: if the presumption of the intention to reavail is not triggered, what is the relevant analysis? Legally, this is significant because without the presumption, the onus remains on the Minister. The RPD erred in simply applying the Galindo Camayo factors without any explanation or discussion.
- [29] After considering the issue, the RPD may ultimately conclude that the very same factors should apply. It is not for this Court, sitting on review, to consider and opine on this issue. This is a matter for the RPD, as the first-instance decision-maker, to address on redetermination. As the Federal Court of Appeal stated, the Court would be departing from its role of a reviewing court, if it “developed its own view of section 108 [of the IRPA] and how it should operate”: Galindo Camayo at para 32.
- (b) The RPD erred in assessing the Applicant's subjective knowledge of the immigration consequences of cessation [30] Even if the Galindo Camayo factors are equally applicable when the onus falls on the Minister to prove intention, there remains another significant error in the RPD's intention analysis. The evidence does not reasonably support the RPD's conclusion that the Applicant understood the immigration consequences of returning to Türkiye.
- [31] The Federal Court of Appeal determined that “[t]he state of the individual's knowledge with respect to the cessation provisions” is a relevant consideration, but not determinative: Galindo Camayo at para 84. In that vein, Justice Zinn explains that it is “imperative” that the Court examines “exactly what evidence was before the RPD regarding the knowledge of the affected person”: Veerasingam v Canada (Citizenship and Immigration), 2024 FC 639 at para 35 [Veerasingam].

- [32] Where the Minister bears the onus of establishing intention, and they bring an applicant's subjective knowledge of the immigration consequences into play, the Minister must clearly elicit relevant evidence that the individual understood those consequences. Such clarity of evidence is lacking in this case.
- [33] As set out below, based on the Applicant's testimony, the RPD unreasonably concluded that "he knew he should not return to Türkiye, but he chose to go anyway": RPD Decision at para 22, CTR at 9.
- [34] The following is the exchange between the Minister's counsel and the Applicant about whether he was aware that he should not be travelling to Türkiye as a refugee:

Minister

So were you aware that you were not supposed to be traveling to Turkey as Protected person?

Respondent

But I cannot. I cannot. I cannot... didn't even plan to go to Turkey. I just my plan was only to go to The Moldova and come back.

Minister

Right. But prior to obtaining this document, were you aware that you were not supposed to travel back to Turkey when you went on the previous two occasions?

Respondent

Yes, like this is, this is only it shows on the end of the travel document. They say it cannot allow it to (inaudible)

RPD Transcript, AR at 139.

- [35] The RPD member subsequently followed up on this line of questioning and asked the Applicant whether he understood what might happen to his refugee status if he returned to Türkiye:

Panel

So you testified that you knew you shouldn't go back to Turkey, or at least that your refugee travel document said it couldn't be used for Turkey. Did you understand what might happen to your immigration status if you went back to Turkey?

Respondent

I knew that about like, just I didn't I just wanted the last thing for my dad. I didn't... I knew that I hadn't go. But, I just had to go, actually. Like I was feel bad and my brother was just he was little. He was 20 and he didn't know what to do. And they called me and I helped him. That's why.

RPD Transcript, AR at 141.

- [36] Reading these passages, it is not clear that the Applicant understood the immigration consequences of returning to Türkiye; namely, that he was putting his refugee status in jeopardy. Rather, the Applicant's responses are confusing and neither the Minister's counsel, nor the RPD member sought to clarify his evidence and pursue this line of questioning.
- [37] Significantly, when the Minister's counsel asked whether the Applicant was aware, before he obtained his refugee travel document, that he was not supposed to travel back to Türkiye, the Applicant simply referred to what the warning at the end of that travel document states (see paragraph 34 above). This testimony only demonstrates that the Applicant was aware that he was not allowed to return to Türkiye after he had obtained his refugee travel document, which was after his two trips to Türkiye had already occurred.
- [38] The relevant period for assessing the Applicant's subjective knowledge is when he travelled to Türkiye, not after-the-fact. As Justice Norris aptly put it, the relevant inquiry is "whether the individual returned to their country of nationality knowing that this could put their refugee status in jeopardy" [emphasis added]: Shah at para 10. There was no evidence before the RPD that the Applicant understood, when he returned to Türkiye, that there could be immigration consequences.
- [39] There is thus no evidence reasonably supporting the RPD's unequivocal conclusion that the Applicant "knew he should not return to Türkiye": RPD Decision at paras 22, 25, CTR at 9. An individual cannot intend to waive refugee protection if they do not understand the specific consequences of their actions. While I recognize that an applicant's subjective knowledge is not determinative of intention, in and of itself, the RPD's analysis is flawed. Its failure to properly consider and assess the Applicant's subjective knowledge of the immigration consequences of returning to Türkiye cannot stand.
- (c) The Respondent asserts a new presumption: the presumption of reavailment [40] In arguing that the RPD reasonably applied the Galindo Camayo factors, the Respondent asserts that these factors apply to "the presumption of reavailing" more generally: Respondent's Further Memorandum of Argument at para 38. Respondent's counsel further elaborated on this argument in oral submissions, stating that there was an "overarching" presumption of reavailment that applies to all three elements of the legal test.
- [41] In support of this overarching presumption, the Respondent relies on paragraph 84 of Galindo Camayo, wherein the Federal Court of Appeal refers to the relevant factors "in dealing with cessation cases". The Respondent argues that this language demonstrates that the Galindo Camayo factors are not confined to the intention analysis but have broader application across all elements of the reavailment test.
- [42] Read in context, however, in Galindo Camayo, the Federal Court of Appeal is speaking about the factors relevant to the presumption of the intention to reavail. This was the focus of the Federal Court of Appeal's analysis. The two certified questions addressed by the Federal

Court of Appeal concerned this second element of the reavilment test. More particularly, the Court of Appeal examined what evidence a refugee could rely on to rebut the presumption that in acquiring, or renewing, a passport issued by their country of origin and traveling on it, they intended to reavail themselves of that state's protection: *Galindo Camayo* at para 85.

- [43] Other than referring to paragraph 84 of *Galindo Camayo*, the Respondent could not point to any jurisprudential support for this notion of an “overarching” presumption of reavilment. I am not persuaded by the Respondent’s argument that there is an “overarching” or “general” presumption of reavilment that justifies the RPD’s decision in this case.
- (3) Actual reavilment (a) The RPD erred in imposing a new presumption of actual reavilment [44] I agree with the Applicant that the RPD further erred in assessing whether the Applicant actually obtained the protection of Türkiye by imposing “a new and novel presumption” on the Applicant: Applicant’s Further Memorandum at para 69. The RPD determined that, although the Applicant had not renewed his Turkish passport but had used his existing passport to return to Türkiye, “there is a presumption that the [Applicant] obtained the actual protection of Türkiye by using that country’s passport to travel” [emphasis added]: RPD Decision at para 31, CTR at 10.
- [45] This Court has cautioned against the introduction of an additional presumption in cessation cases: *Zou v Canada (Citizenship and Immigration)*, 2024 FC 1337 at para 16 [Zou]; *Canada (Public Safety and Emergency Preparedness) v Bashir*, 2015 FC 51 at para 68 [Bashir]. In *Zou*, Justice Norris found there was no “legal basis” for the new presumption, namely the presumption of voluntariness, that the RPD required the applicant to rebut in that case: *Zou* at para 16. Similarly, in this case, I find that there is no legal basis for imposing a new presumption, the presumption of actual protection, at the last step of the reavilment test.
- [46] The Respondent argues that the RPD reasonably found that the Applicant’s use of his existing Turkish passport “created a presumption that he obtained the actual protection of Türkiye”: Respondent’s Further Memorandum of Argument at para 47. In support, the Respondent relies on *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 [Abadi]: Respondent’s Further Memorandum of Argument at para 45. In my view, this reliance is misplaced.
- [47] Unlike this case, the applicant in *Abadi*, after having been granted asylum in Canada, acquired an Iranian passport and travelled back to Iran, his country of nationality, using that passport. Consequently, the Court concluded that the applicant “had failed to rebut the presumption that he intended to re-avail himself of Iran’s protection by acquiring an Iranian passport and travelling to that country”: *Abadi* at para 16. Contrary to the Respondent’s assertion, *Abadi* does not support the RPD’s imposition of a new presumption, that of actual protection. Rather, the Court was applying the recognized presumption of the intention to reavail.

- [48] Further, this Court’s interpretation of reavailment in paragraph 108(1)(a) of the IRPA “has been guided by paragraphs 118 to 125” of the United Nations High Commissioner for Refugees’ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UN Doc HCR/1P/4/ENG/REV.4 (Geneva, reissued February 2019) [UNHCR Handbook]: Singh at para 14, citing *Nsende v Canada (Citizenship and Immigration)*, 2008 FC 531 at para 12.
- [49] The presumption of an intention to reavail derives from paragraph 121 of the UNHCR Handbook: *Veerasingam* at para 14; *Seid v Canada (Citizenship and Immigration)*, 2018 FC 1167 at para 14; *Bashir* at paras 16, 68. Paragraph 121 of the UNHCR Handbook “creates a refutable presumption of intention of reavailment when a person applies for and obtains a passport from his country of nationality”: *Bashir* at para 16. There is no reference in the UNHCR Handbook to a presumption of actual protection when a refugee travels on an existing passport.
- [50] This is not to say that a refugee’s use of an existing passport is irrelevant in determining whether they actually obtained the protection of their country of nationality. I cannot agree, however, with the Respondent that travel on an existing passport “is enough for the RPD to make a finding of actual protection to meet the test for reavailment” [emphasis added]: Respondent’s Further Memorandum of Argument at para 45. Rather, a finding of actual protection must be based on a consideration of all relevant factors.
- [51] For these reasons, the RPD’s analysis provides no reasonable basis for imposing this additional presumption.

V. Conclusion [52] The RPD made several reviewable errors in granting the Minister’s application to cease the Applicant’s refugee protection. The application for judicial review is allowed and the matter is remitted to the RPD for redetermination by another member.

[53] The parties did not propose any questions for certification, and I agree that none arise.

[54] I wish to commend counsel for their excellent written and oral submissions.

JUDGMENT in IMM-13295-24

THIS COURT’S JUDGMENT is that:

The application for judicial review is allowed.

The Refugee Protection Division’s decision dated June 29, 2024, is set aside and the matter is remitted for determination by a differently constituted panel.

No question is certified for appeal.

“Anne M. Turley”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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