

CANADA / JUDGMENT

Yilmaz v. Canada (Citizenship and Immigration)

2026 FC 625

COURT

Federal Court

DECIDED

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Decision Content

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Ottawa, Ontario, May 14, 2026

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MUHARREM YILMAZ

NEZAKET YILMAZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] The Refugee Protection Division [RPD] of the Immigration and Refugee Board declared that the applicants' refugee protection has ceased because they returned three times to their home country. The applicants are now seeking judicial review of this decision. I am dismissing the application. The RPD reasonably analysed the evidence and the applicants' submissions but found that they voluntarily returned to their country, intended to reavail themselves of its protection and actually obtained that protection. The applicants' challenge to the RPD's decision amounts to an invitation to reweigh the evidence and to substitute different inferences for the RPD's as well as a call for the RPD to provide more fulsome reasons. None of these arguments render the decision unreasonable.

I. Background [2] The applicants, Mr. and Ms. Yilmaz, are Turkish citizens. They left Türkiye in 2015 with their daughter Zeynep and their son Mehmet. They came to Canada and claimed refugee protection based on their Kurdish ethnicity, their Alevi religion and their political opinions or those of family members. The RPD accepted their claim. They were granted permanent residence in March 2018.

- [3] Sometime in 2018, Mr. Yilmaz attended the Turkish consulate in Toronto for business-related purposes. He was told that there was an outstanding arrest warrant against him and that he would be arrested if he returned. His Turkish passport was confiscated, and he was given a one-way travel document instead.
- [4] In December 2018, the applicants returned in Türkiye for the first time. They say that the main purpose of the trip was to convince their son Ferhat, whom they were unable to bring with them in 2015, to come to Canada to claim refugee protection. Ms. Yilmaz travelled on her Turkish passport and Mr. Yilmaz used his one-way Turkish travel document. They say that they hired smugglers to facilitate their entry and to ensure that Mr. Yilmaz would not remain in detention for an extended period.
- [5] As expected, Mr. Yilmaz was arrested upon arrival and brought before a judge who substituted a 16-month probation period for his jail sentence. He had to report weekly, was required to remain in his home region and was prohibited from leaving the country. At the end of his probation, Mr. Yilmaz's passport was returned to him. The applicants then returned to Canada without having been able to persuade Ferhat to follow them. They say that the precise date of their return trip was determined by the smugglers.

- [6] The applicants returned for a second time to Türkiye in December 2021, again using their Turkish passports. They stayed there for a month. They say that the purpose of the trip was to persuade Ferhat to leave the country and to attempt to bring Mr. Yilmaz's ailing mother to Canada.
- [7] Ferhat came to Canada sometime after the applicants' second trip and was eventually granted refugee protection in 2023.
- [8] In December 2022, Mr. Yilmaz travelled to Türkiye again to attempt to bring his mother to Canada. Unfortunately, his mother died the day after he arrived. He stayed for approximately three weeks to organize the funeral. While in Türkiye, he renewed his Turkish passport.
- [9] The Minister applied to the RPD for the cessation of the applicants' refugee status. The RPD granted the application. It found that the applicants' trips to Türkiye were voluntary, that they had the intention of reavailing themselves of Türkiye's protection and that they in fact obtained that protection. They now seek judicial review of the RPD's decision.
- [10] On their first and second trips to Türkiye, the applicants were accompanied by their daughter Zeynep, who was then a minor. The RPD found that Zeynep's return was not voluntary and thus did not result in the cessation of her refugee status. Zeynep is not a party to the present application for judicial review.

II. Analysis [11] I am dismissing the application for judicial review because the applicants fail to show that the RPD's decision is unreasonable. To understand why, it is useful to begin by reviewing the basic principles governing judicial review, in particular with respect to factual issues. I will then turn to each of the three factors that the RPD had to consider in making its decision, namely, whether the applicants' trips to Türkiye were voluntary, whether the applicants had the intention to reavail themselves of Türkiye's protection, and whether they in fact obtained that protection.

A. The Framework for Judicial Review [12] On judicial review, the Court does not redo the work of the administrative decision maker. Rather, its role is to verify that the decision is based on logical reasoning and complies with the legal and factual constraints bearing on it: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 99–101, [2019] 4 SCR 653 [Vavilov].

- (1) Legal Constraints [13] The legal constraints include the governing legislation and the interpretation that courts gave to it: *Vavilov* at paragraphs 108–124; *Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at paragraphs 66–67.

- [14] In the present case, the main legal constraint flows from paragraph 108(1)(a) of the Immigration and Refugee Protection Act, SC 2001, c 27 [the Act], which states that a person is no longer a refugee when they have “voluntarily reavailed themselves of the protection of their country of nationality.” This provision mirrors paragraph 1 of Article 1C of the Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137 [the Convention].
- [15] A further constraint flows from 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 [the Handbook], which provides guidelines for the interpretation of paragraph 1 of Article 1C at paragraphs 118–125. Most importantly, at paragraph 119, the Handbook states that there are three requirements for the application of the clause:
- (a) voluntariness: the refugee must act voluntarily;
 - (b) intention: the refugee must intend by his action to re-avail himself of the protection of the country of his nationality;
 - (c) re-availment: the refugee must actually obtain such protection.
- [16] Moreover, the Handbook notes that, in the absence of proof to the contrary, refugees who apply for and obtain the renewal of their passport are presumed to intend to reavail themselves of their country’s protection.
- [17] In *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50, [2022] 4 FCR 220 [Galindo Camayo], the Federal Court of Appeal highlighted the relevance of the Handbook as a tool for the interpretation and application of section 108 of the Act. Moreover, it emphasized that a person’s subjective lack of knowledge of the consequences of returning to their country of citizenship is a relevant factor. Likewise, the analysis should consider the precautions that the person took while in their country to avoid the agent of persecution. Galindo Camayo’s framework is an additional constraint bearing on the RPD.
- (2) Factual Constraints [18] At paragraphs 125–126 of *Vavilov*, the Supreme Court emphasized that reviewing courts should be loathe to intervene in the factual determinations of administrative decision makers, such as the RPD. Nevertheless, the decision must be defensible in light of the evidence, and “[t]he reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it.”
- [19] The Supreme Court did not provide detailed guidance as to what may constitute a “fundamental misapprehension” or a “failure to account for the evidence.” Unreasonable findings of fact occur in a wide variety of ways that resist classification. Examples range from findings that are squarely contradicted by the evidence (*Heitner v Dowling*, 2025 BCCA 339 at paragraphs 33–35) to credibility findings based on trivial matters (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1611; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paragraph 43).

- [20] For the purposes of the present case, it is useful to delve further into the treatment on judicial review of findings of fact that are based on the balancing of several factors.
- [21] Such findings include inferences, that is, the process of relying on facts in evidence to infer a fact not in evidence: see, for example, *Fromfroid SA v 1048547 Ontario Inc*, 2023 FC 925 at paragraphs 18–21, *aff'd* 2025 FCA 151. Drawing an inference is not a purely mechanical process. It involves a judgment as to whether the unknown fact flows logically from the facts in evidence: *R v Villaroman*, 2016 SCC 33 at paragraph 38, [2016] 1 SCR 1000. This inferential process is properly based on human experience and common sense, and there is no need for further evidence to buttress the inference: *R v Kruk*, 2024 SCC 7 at paragraphs 71–79. Different decision makers may reasonably draw different inferences from the same facts.
- [22] Hence, on judicial review, it is not enough to express disagreement with an inference drawn by the decision maker or to assert that a different inference might have been drawn from the same facts: *British Columbia (Workers' Compensation Appeal Tribunal) v Fraser Health Authority*, 2016 SCC 25 at paragraphs 30, 38, [2016] 1 SCR 587; *Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at paragraph 43. An inferential finding of fact will only be unreasonable if it is clearly not based on the evidence or if it is illogical: *R v Munoz* (2006) 205 CCC (3d) 70 at paragraphs 23–31 (Ont SC). See, for example, *Canada (Citizenship and Immigration) v Egemba*, 2021 FC 1184; *Welday v Canada (Citizenship and Immigration)*, 2024 FC 795 at paragraph 22. A valid inference is often contrasted to mere speculation or conjecture: *Caswell v Powell Duffryn Associated Collieries Ltd*, [1940] AC 152 at 169–170 (HL); *Gupta v Canada (Citizenship and Immigration)*, 2025 FC 1960 at paragraphs 52–56.
- [23] The same applies to similar processes that weigh multiple pieces of evidence or factors to determine the existence of a fact, such as whether the applicants' return to Türkiye was voluntary. It is often said, in this regard, that the reviewing court should not reweigh the evidence—where the decision maker gives more weight to the evidence favouring one conclusion than to the evidence favouring the opposite conclusion, this assessment will usually be respected by the reviewing court. The Court will intervene only where the evidence is overwhelmingly against the decision maker's finding: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraph 92.
- [24] Administrative decision makers must give reasons for their findings of fact. This requirement is heightened where the decision has a severe impact on the person concerned, such as a cessation finding: *Vavilov* at paragraph 133; *Galindo Camayo* at paragraph 51. Nevertheless, “[a] decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion”: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708; see also *Antrim Truck Centre Ltd v Ontario (Transportation)*, 2013 SCC 13 at paragraph 54, [2013] 1 SCR 594. Moreover, credibility assessments and factual findings based on the weighing of a body of evidence do not easily lend themselves to precise articulation: *R v Gagnon*, 2006 SCC 17 at paragraph 20, [2006] 1 SCR 621.

[25] It is often asserted, on the authority of *Cepeda-Gutierrez v Canada* (Minister of Citizenship and Immigration), 1998 CanLII 8667 [*Cepeda-Gutierrez*], that a decision maker must explicitly address all evidence contrary to its findings. This, however, reads too much in Justice Evans’s decision in that case. What he actually said is that decision makers are not “required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it . . . That would be far too onerous a burden” (at paragraph 16). Indeed, decision makers are generally presumed to have considered all evidence before them, even if they do not refer to every piece in their reasons: *Simpson v Canada* (Attorney General), 2012 FCA 82 at paragraph 10; *Musani v Canada* (Attorney General), 2026 FCA 94 at paragraph 31. In a later decision, Justice Evans explained:

. . . it cannot be inferred from the fact that the reasons do not discuss a factor on which the Tribunal heard evidence that it must therefore have failed to consider it. A tribunal that is subject to a duty to give reasons . . . must, of course, provide adequate reasons, but this does not mean that it must deal with every issue raised before it. Rather, it must explain its conclusion on those issues that are of central importance to the decision.

(*Stelco Inc v British Steel Canada Inc*, [2000] 3 FC 282 (CA) at paragraph 24)

[Emphasis in original]

[26] It is against this backdrop that paragraph 17 of *Cepeda-Gutierrez* must be read. Justice Evans wrote:

. . . the agency’s burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency’s finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[27] This does not mean that decision makers are required to address every piece of evidence that supports a different finding. Rather, if I may use this image, the duty to address specific pieces of evidence applies only to the “elephant in the room,” that is, evidence that so overwhelmingly contradicts the decision maker’s findings that it calls for an explanation.

[28] With these principles in mind, I can now turn to an assessment of the reasonableness of the RPD’s decision.

B. Voluntariness of Trips to Türkiye [29] The applicants challenge the RPD’s finding that their trips to Türkiye were voluntary. They argue that the RPD misapprehended the nuances of the situation and failed to appreciate the facts from the applicants’ perspective.

- [30] These submissions do not show that the decision is unreasonable. They amount to a complaint that the RPD's reasons do not address every detail of the evidence. As explained above, this does not render a decision unreasonable. In any event, paragraphs 17 and 19 of the RPD's decision summarize the applicants' key factual submissions with respect to voluntariness. The RPD was clearly alive to the issues but found that the trips were voluntary.
- [31] The applicants' contention that the RPD failed to assess the facts from their perspective is an invitation to draw different inferences from the facts. However, the mere possibility of drawing different inferences does not render the decision unreasonable. It is true that Mr. Yilmaz testified that he felt he had no choice to return to Türkiye. However, it is the RPD's task to assess voluntariness and it is not bound to accept the applicants' assertions in this regard. In other words, the applicants' perspective is not determinative of the issue.
- [32] Here, the RPD understood the applicants' submission that they felt compelled to return to Türkiye to convince Ferhat to leave the country and to bring Mr. Yilmaz's mother to Canada but found that this was not enough to make their trips involuntary. While there was evidence pointing to the opposite conclusion, the RPD's finding was reasonably based on the totality of the evidence. There was no need to provide more fulsome reasons or to address specific pieces of evidence.
- [33] Beyond this, the applicants target two specific aspects of the RPD's reasoning with respect to voluntariness. First, they argue that the RPD made an unreasonable credibility finding with respect to the assertion that the Turkish authorities prevented Ferhat from leaving with them in 2015, because this was not mentioned in their Basis of Claim [BOC] form. They submit that the statements in the BOC form, to the effect that Ferhat was still in school and "could not come to Canada," are not inconsistent with the fact that he was prevented from leaving Türkiye. In my view, it was reasonable for the RPD to find that this was an inconsistency, in the sense that being stopped at the airport was an important fact that would have been disclosed in the BOC form. In any event, this finding does not play a critical role in the RPD's reasoning. The fact remains that, three or six years later, Ferhat "was not facing any urgent threat," as the RPD noted. The RPD's finding that the desire to persuade Ferhat to come to Canada to claim asylum was not a compelling reason for the applicants to return to Türkiye does not depend on whether Ferhat was stopped at the airport in 2015.
- [34] The applicants also take issue with the RPD's treatment of Ms. Yilmaz's mental health challenges. It is not in dispute that she suffers from anxiety and depression. The applicants relied on this diagnosis to assert that Ms. Yilmaz could not remain alone in Canada. The RPD, however, found that "returning to a country of feared persecution, where her husband had an outstanding arrest warrant, could reasonably be expected to create further anxiety and mental health challenges."

- [35] The applicants argue that there is no basis in the evidence for this statement. This, however, misses the mark. The RPD drew an inference from Ms. Yilmaz's diagnosis. As explained above, the inferential process may be based on human experience and common sense. As long as the inference is based on a proven fact—here, the diagnosis—there is no need to bring further evidence to buttress the inferential process, or, in other words, to justify what inferences may be drawn from the evidence, as this is a matter of human experience.
- [36] Moreover, the applicants themselves invited the RPD to draw an inference unsupported by the evidence but based on human experience, namely, that Ms. Yilmaz's condition would have deteriorated if she had stayed in Canada while her husband travelled to Türkiye alone. There is no such conclusion in the psychologist's report. In those circumstances, it is for the administrative decision maker, not the Court, to determine, based on human experience, which inferences should be drawn from facts reflected in the record.

C. Intention to Reavail [37] The second part of the framework for the application of section 108 of the Act is the person's intention to reavail themselves of the protection of their country. As noted above, the fact that the applicants renewed their Turkish passports—or obtained a Turkish travel document—and used them to travel to Türkiye gives rise to a presumption that they had such an intention. The applicants do not take issue with the existence of the presumption but assert that the RPD unreasonably found that it had not been rebutted and failed to consider all the factors enumerated in *Galindo Camayo* at paragraph 84. In particular, they argue that the decision is unreasonable, because the RPD failed to consider (1) the circumstances of engagement with the Turkish authorities, namely, the extent of the assistance they obtained from smugglers; (2) the purpose of the trips; (3) Ferhat's actual persecution; (4) their explanations for the duration of the trips.

- [38] In my view, this aspect of the decision is reasonable. The RPD began this section of its reasons by giving a list of relevant factors that is broadly consistent with *Galindo Camayo*. It thus respected the legal constraint flowing from that decision. It then engaged in a detailed review of these factors, separating those favourable to the applicants from the unfavourable ones. In particular, it explicitly mentioned the fact that Ferhat was granted refugee protection in Canada and that Mr. Yilmaz hired smugglers. Ultimately, it came down to the conclusion that the applicants had the intention to reavail, because "[t]heir conduct is not consistent with a subjective fear of persecution." As explained above, the RPD is presumed to have considered all the evidence before it, including evidence that favoured the applicants and that it did not explicitly address. There was no "elephant in the room"—no piece of evidence that overwhelmingly supported the applicants' position—that the RPD needed to address pursuant to the principle stated in paragraph 17 of *Cepeda-Gutierrez*. The applicants' submissions on judicial review therefore amount to a call to reweigh the evidence, which is not this Court's role.

- [39] An unusual aspect of this case is that Mr. Yilmaz chose to return to Türkiye even though he knew he was the subject of an outstanding arrest warrant and would likely be detained upon arrival and then put on probation. The RPD counted this as a factor tending to show an intention to reavail. The applicants argue that the RPD failed to explain why this was relevant, as this does not appear related to the factors enumerated in Galindo Camayo.
- [40] Again, this is a matter of choosing between different inferences that can be drawn from the facts. One must keep in mind that an intention to reavail will typically be found when one no longer has a subjective fear of persecution in one's home country: Galindo Camayo at paragraph 64. Given that Mr. Yilmaz travelled to Türkiye in full knowledge of the penal consequences, it was reasonable for the RPD to infer that he no longer feared persecution by the Turkish state.
- [41] I also note that the applicants have not clearly stated what other inference could be drawn from Mr. Yilmaz's actions. Implicit in the applicants' submissions is the idea that Mr. Yilmaz's detention and probation is an act of persecution. The evidence, however, did not bear this out. During his testimony before the RPD, Mr. Yilmaz stated that he was never told, and did not ask, why he was being jailed. He simply assumed that it had something to do with his political involvement. Yet, he filed several court documents in relation to his probation. These documents do not describe the underlying offence but suggest that the conviction took place in 2011. Given the presumption of reavailment, Mr. Yilmaz bore the burden of explaining the reasons for his conviction and how they could support the inference that he did not intend to reavail. Absent such an explanation, it was open to the RPD to find that Mr. Yilmaz actually sought Türkiye's protection, despite being detained upon arrival. Quite simply, he entrusted his person to the very authorities he claimed were persecuting him.

D. Actually Obtaining Türkiye's Protection [42] The RPD found that the applicants actually obtained Türkiye's protection. It emphasized that what is at stake is diplomatic, not state protection. Moreover, it relied on the presumption flowing from the applicants' renewal of their passports and their use to travel to Türkiye and on Mr. Yilmaz's frequent interaction with Turkish authorities.

- [43] The applicants argue that in reality the RPD confused diplomatic protection and state protection and focused on the wrong factors in its analysis.
- [44] For the purposes of this case, it is not necessary to disentangle the relationship between diplomatic protection and the lack of subjective fear of persecution that lies at the heart of section 108 of the Act and paragraph 1 of Article 1C of the Convention. This is because the applicants did not merely obtain a Turkish passport; rather, they travelled to Türkiye. Thus, they obtained both diplomatic and state protection.
- [45] The applicants' main submission in this regard is that they did not obtain Türkiye's protection because Mr. Yilmaz was detained upon arrival. But the application of lawful penal sanctions does not mean that a state is not protecting one of its nationals. As noted above,

Mr. Yilmaz has not shown that his detention was unlawful or amounted to an act of persecution. Given the evidence, the RPD could reasonably conclude that the presumption was not rebutted. Mr. Yilmaz's situation cannot be compared to that in *Farahani v Canada* (Citizenship and Immigration), 2024 FC 423, where it was established that the seizure of the applicant's passport was linked to political persecution.

[46] In any event, the RPD underscored the fact that Mr. Yilmaz returned to Türkiye twice after being jailed and put on probation. There is no serious issue that he obtained Türkiye's protection on those two trips.

III. Disposition [47] The applicants failed to show that the RPD's decision is unreasonable. Hence, their application for judicial review will be dismissed.

JUDGMENT in IMM-3221-25

THIS COURT'S JUDGMENT is that

The application for judicial review is dismissed. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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