

Federal Court



Cour fédérale

Date: 20161014

Docket: IMM-1102-16

Citation: 2016 FC 1146

Ottawa, Ontario, October 14, 2016

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

**JAHANGIR MAQBOOL
SHAH PARA JAHANGIR
MUHAMMAD ADIL RESHI
RUMAISA JAHANGIR
MASHAIM JAHANGIR RESHI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

I. Nature of the Matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision rendered by the Refugee

Protection Division of the Immigration and Refugee Board [RPD], where it concluded that the principal applicant's refugee protection had ceased.

II. Facts

[1] The principal applicant is a citizen of Pakistan. He came to Canada on July 2, 2008 and claimed refugee status on the grounds that he was being persecuted in his home country for advocating for an independent Kashmir. His wife and three children remained in Pakistan.

[2] On February 11, 2011, the RPD granted the applicant refugee status.

[3] On November 14, 2011, he became a permanent resident of Canada. His wife and children were also included in his application, but he was advised that the processing of their applications would take a further twenty-four months.

[4] On November 25, 2011, he was issued a Pakistani passport valid for one year. Upon his request, the passport's validity was extended through to November 24, 2016.

[5] After obtaining his passport, the applicant traveled to Pakistan three times: from February 5, 2012 to June 8, 2012; from December 5, 2012 to February 7, 2013; and from November 6, 2013 to November 27, 2013.

[6] On November 27, 2013, he was interviewed by a Canada Border Services Agency, [CBSA] agent at the Port of Entry regarding his travels to Pakistan. He later received a letter requiring him to attend an interview with a second CBSA agent.

[7] On November 28, 2013, he was notified that his family's applications for permanent residence had been approved and were ready for visa.

[8] After his second interview with CBSA, the processing of the applicant's family's applications was suspended.

[9] On May 6, 2014, the Minister applied for a cessation of the applicant's refugee status.

[10] On March 8, 2016, the RPD granted the Minister's application and ceased the applicant's refugee protection.

III. Decision

[11] The RPD began by addressing the issue of whether the application of cessation constituted an abuse of process on the part of the Minister. It found that the applicant had been questioned beyond the scope allowed by the legislation at the Port of Entry. It also found that he should have been advised at the second interview that he did not have an obligation to answer the agent's questions and that he had a right to counsel. There was also no legislative justification for the suspension of the applicant's family's applications. However, the RPD concluded that it had

no jurisdiction to provide the applicant the remedy he sought with regard to the suspension of the applications.

[12] The RPD also determined that while the interviews were problematic, they did not constitute an abuse of process. It remedied the issues raised by the applicant regarding the interviews by excluding them from the evidence.

[13] Nevertheless, the RPD found that the Minister had made a *prima facie* case for cessation because the CBSA agent at the Port of Entry had properly examined the applicant's passport, identified his travels to Pakistan and accessed CBSA's notes on the applicant, which indicated that he had been a refugee. It also concluded that the Minister had successfully established the three elements for cessation, namely voluntariness, intention and reavailment. The evidence demonstrated that the applicant had approached the Pakistani consulate three times to obtain a passport after he became a permanent resident of Canada, had traveled to Pakistan for extended periods of time, had sought medical treatment in Pakistan and met with non-family members and had presented himself as a Pakistani citizen to foreign authorities. By traveling with his Pakistani passport, the applicant had reavailed himself of Pakistan's diplomatic protection.

[14] The RPD therefore concluded that the applicant had shown an absence of subjective fear of persecution and allowed the Minister's application to cease refugee protection.

IV. Issues

[15] This matter raises the following issues:

1. What is the applicable standard of review?
2. Did the RPD err in concluding that the applicant's refugee protection had ceased?

V. Relevant Provisions

[16] The relevant provisions are paragraph 46(1)(c.1) and subsection 108(1) of the Act, which can be found in Appendix A to these Reasons.

VI. Submissions of the Parties

A. *The Applicant*

[17] The applicant submits that subsection 108(1) of the Act should not have been applied against him because he was a permanent resident of Canada. Such an application is contrary to section 98 of the Act, which incorporates Article 1E of the 1951 *Convention Relating to the Status of Refugees* [the Convention] and excludes from refugee protection those who already benefit from a surrogate form of protection, such as permanent residence. Therefore, pursuant to Article 1E of the Convention, there is *prima facie* no ability to cease refugee protection for a person whom the Convention shall not apply to.

[18] The applicant argues that in keeping with the ordinary meaning of the legislation for refugees that are also permanent residents, cessation must be established to have taken place before the acquisition of permanent residence or, if after permanent residence, the facts indicate that refugee protection was not deserved in the first place. This would link the permanent residence with the need for protection. However, to look at cessation as applying to the period of

time after the acquisition of permanent residence ignores the fact that the applicant had a durable solution. It is not an abuse of the refugee system to behave in a manner consistent with having a durable solution because it has replaced the need for refugee protection.

B. *The Respondent*

[19] The respondent submits that cessation applies to permanent residents. Pursuant to section 40.1 and paragraph 46(1)(c.1) of the Act, inadmissibility and loss of permanent resident status are consequences of a determination that a person has ceased to be a protected person following a determination by the RPD. The Federal Court of Appeal has confirmed that the provisions of the Act on this issue are clear and if section 108 of the Act did not apply to permanent residents, paragraph 46(1)(c.1) of the Act would be rendered meaningless.

[20] The argument that the applicant lost his refugee protection when he became a permanent resident is inconsistent with paragraph 95(1)(a) of the Act, which states that refugee protection is conferred ‘when’ a person becomes a permanent resident in the case of overseas refugee claimants. There is also no support in the Act that refugee protection conferred on a person under section 95 can cease under the exclusion provision in section 98. This provision is meant to preclude the conferral of refugee status on a person who already benefits from surrogate protection; it does not operate in the manner proposed by the applicant.

VII. Analysis

A. *What is the applicable standard of review?*

[21] The applicant submits that correctness is the applicable standard of review because the RPD failed to address a true question of law, namely whether section 108 of the Act applied to permanent residents. I disagree. The RPD's interpretation of the relevant provisions in the Act and its assessment of whether grounds for cessation had been established are reviewable under the standard of reasonableness (*Siddiqui v Canada (Citizenship and Immigration)*, 2016 FCA 134, para 11 [*Siddiqui*]). It is well-established that the RPD possesses a particular expertise in interpreting its home statute and is thus entitled to deference, as are its conclusions on questions of mixed facts and law (*Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 14).

[22] The Court will only intervene if the decision is not transparent, intelligible or justified, or if it does not fall within the range of acceptable, possible outcomes in light of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9, para 47).

B. *Did the RPD err in concluding that the applicant's refugee protection had ceased?*

[23] Counsel for the applicant is again bringing before the Court the argument that he advanced in *Siddiqui*, namely that the Convention does not conceive cessation to be applicable against a person who has a durable form of protection, such as permanent residence. In light of this, I find it important to review the relevant provisions and how they were meant to interact with one another.

[24] As a signatory of the 1951 *Convention Relating to the Status of Refugees* [the Convention], Canada incorporated several provisions into its domestic legislation. Amongst others, Article 1C, the Convention's provision on cessation, is incorporated in s 108 of the Act:

<p>108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:</p>	<p>108 (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :</p>
<p>(a) the person has voluntarily reavailed themselves of the protection of their country of nationality;</p>	<p>a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;</p>
<p>(b) the person has voluntarily reacquired their nationality;</p>	<p>b) il recouvre volontairement sa nationalité;</p>
<p>(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;</p>	<p>c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;</p>
<p>(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada;</p>	<p>d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;</p>
<p>(e) the reasons for which the person sought refugee protection have ceased to exist.</p>	<p>e) les raisons qui lui ont fait demander l'asile n'existent plus.</p>

[25] In December 2012, the *Protecting Canada's Immigration System Act*, 2012, c. 17 [PCISA], came into force. PCISA amended section 46 of the Act so that permanent resident status could be lost "on a final determination under subsection 108(2) that their refugee

protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d)”. Some people argued as does the applicant in this case, that the cessation could not be sought against refugees who had become permanent residents of Canada. The applicant relies on section 98 of the Act which incorporates Article 1E of the Convention.

[26] Article 1E of the Convention excludes from the Convention “a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country”. A permanent resident of Canada arguably meets this definition. The applicant therefore submits that because his status as a permanent resident excludes him from the Convention as per section 98 of the Act, the Convention’s provision on cessation cannot logically be applied against him by way of section 108 of the Act.

[27] This argument was expressly rejected by the Federal Court of Appeal [FCA] in *Siddiqui* at para 21-24. The FCA found that it was inconsistent with the clear and unambiguous legislative scheme in place. By amending section 46, Parliament deliberately chose to apply legal consequences to cessation proceedings against permanent residents to allow for the loss of that status when protection is no longer deemed necessary. This is the legislative framework against which cessation applications must be decided in Canada, *Canada (Citizenship and Immigration) v. Bermudez*, 2016 FCA 131 at para 22-25).

[28] I also note that under the Convention, cessation and exclusion are not meant to operate at the same time in the refugee process. Article 1E has been interpreted as a means to prevent

asylum-shopping (*Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118 at para 1). It thus applies *prior* to the filing of a refugee claim. By contrast, Article 1C applies *after* the refugee claim has been processed, or while it is processing. Becoming a permanent resident is not one of the reasons listed in Article 1C for cessation. Therefore, the Convention does not automatically cease to apply upon obtaining this status, as it would in the case of the acquisition of a new nationality.

[29] The applicant attempts to narrow the application of *Siddiqui* to overseas refugees. Under the resettlement program, persons who are recognized as refugees abroad can be resettled in Canada, thus arriving as permanent residents. A person claiming refugee status inland, by contrast, will have to first have his claim approved by the RPD and then apply to become a permanent resident of Canada as a protected person. According to the applicant, it is this ‘in-between’ period that distinguishes inland refugees from overseas refugees, because it gives the government a period in which to examine whether cessation is an issue in a particular case prior to the person becoming a permanent resident. However, since there is no such ‘in-between’ period for overseas refugees, if circumstances corresponding to those listed in subsection 108(1) arise following their arrival in Canada, cessation proceedings will have to apply against permanent residents by necessity.

[30] This argument ignores the fact that the FCA in *Siddiqui* also specially rejected this approach:

[18] I see no reason why the principle of reavilment and its associated criteria should vary according to the route by which status as a protected person is originally obtained. [...]

[31] I therefore conclude that the RPD's interpretation of the provisions relating to cessation in the Act was reasonable and in line with both Canadian jurisprudence on the same issue and international law.

[32] Its finding that the principal applicant's refugee protection had ceased because of reavilment was also reasonable in light of the facts. Three criteria must be met for a finding of reavilment. The person concerned must have: (a) acted voluntarily; (b) intended by his action to reavail himself of the protection of his country of nationality; and (c) actually obtained such protection (*Yuan v. Canada (Citizenship and Immigration)*, 2015 FC 923, at para 27).

[33] The facts of this case are not contested. The applicant voluntarily applied for a Pakistani passport after obtaining his status as a permanent resident of Canada and applied for an extension of its validity immediately after its issuance, in spite of the fact that other international travel documents were available to him, such as the Refugee Travel Document, which would have enabled him to leave Canada for all destinations, except Pakistan, the rationale being that a refugee is at risk in the country against which he claimed protection and should not return except in exceptional circumstances.

[34] The applicant necessarily intended to reavail himself of Pakistan's protection by obtaining a passport issued by the Pakistani authorities, since a Canadian travel document would not have allowed him to return to his country of origin. He presented himself to border authorities in Pakistan and in at least four other countries as a Pakistani citizen, thus actually obtaining Pakistan's diplomatic protection throughout his travels to and from Pakistan.

[35] I note that there is no particular evidence in the record of any extenuating circumstances. The applicant did not take any special precautions in entering or leaving Pakistan. He stayed at his family home, where he and his family had been persecuted, visited friends and attended medical appointments. This behaviour is not consistent with a subjective fear of persecution.

VIII. Application for *Mandamus*

[36] The applicant seeks a writ of *mandamus*, ordering Citizenship and Immigration Canada to continue to process his family's applications for permanent residence, the processing of which was halted for the duration of the cessation proceedings. The respondent correctly notes that while the applicant applied for leave on both the issues of cessation and that of *mandamus*, Justice Strickland did not consider the latter in her Order granting leave on the cessation matter.

[37] Following *Deng Estate v Canada (MPSEP)*, 2009 FCA 59 at para 15-16, it cannot be inferred that Justice Strickland intended to grant leave for this Court to review the visa office's decision to suspend the processing of the applicant's family's permanent residence applications since her Order is silent on the matter. A decision must therefore be made on whether leave should be granted on the matter. Given the outcome of the present judicial review, I am denying leave because the matter is now moot. Because the applicant is no longer a protected person, he is no longer eligible to become a permanent resident. It follows that his family members, who were included in his original application for permanent residence, are also no longer eligible for that status.

IX. Certified Question

[38] The applicant is proposing the following question for certification:

Must the RPD in a cessation proceeding pursuant to s 108 of IRPA consider the relevance of permanent resident status in deciding whether to exercise its discretion under s 108(2) to render a decision? If so, what is the relevance?

[39] In my view, this question does not constitute a serious question of general importance because the provisions of the Act are clear on the applicability of section 108 to permanent residents of Canada. Furthermore, the FCA in *Siddiqui* has already answered this question.

X. Conclusion

[40] This application for judicial review is denied. The RPD reasonably interpreted the provisions governing cessation applications under the Act and reasonably concluded in light of the evidence that the criteria for the cessation of the principal applicant's refugee status had been established.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is denied.

There is no certified question.

"Danièle Tremblay-Lamer"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1102-16

STYLE OF CAUSE: JAHANGIR MAQBOOL, SHAH PARA JAHANGIR,
MUHAMMAD ADIL RESHI, RUMAISA JAHANGIR,
MASHAIM JAHANGIR RESHI v MINISTER OF
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DATED: OCTOBER 14, 2016

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APPENDIX A

Immigration and Refugee Protection Act, SC 2001, c 27

<p>46 (1) A person loses permanent resident status</p> <p>(a) when they become a Canadian citizen;</p> <p>(b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;</p> <p>(c) when a removal order made against them comes into force;</p> <p>(c.1) on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d);</p> <p>(d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination to vacate a decision to allow their application for protection; or</p> <p>(e) on approval by an officer of their application to renounce their permanent resident status.</p> <p>108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:</p> <p>(a) the person has voluntarily reavailed themselves of the protection of their country of nationality;</p> <p>(b) the person has voluntarily reacquired their nationality;</p> <p>(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;</p>	<p>46 (1) Emportent perte du statut de résident permanent les faits suivants :</p> <p>a) l'obtention de la citoyenneté canadienne;</p> <p>b) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;</p> <p>c) la prise d'effet de la mesure de renvoi;</p> <p>c.1) la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile;</p> <p>d) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou celle d'accorder la demande de protection;</p> <p>e) l'acceptation par un agent de la demande de renonciation au statut de résident permanent.</p> <p>108 (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :</p> <p>a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;</p> <p>b) il recouvre volontairement sa nationalité;</p> <p>c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;</p>
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(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or

(e) the reasons for which the person sought refugee protection have ceased to exist.

d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;

e) les raisons qui lui ont fait demander l'asile n'existent plus.