Federal Court  Cour fédérale

Date: 20191010

Docket: IMM-363-19

Citation: 2019 FC 1287

Ottawa, Ontario, October 10, 2019

PRESENT: Madam Justice Strickland

BETWEEN:

AMENDE VIOLET OKOJIE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada allowing, pursuant to s 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IPRA"), the Minister's application for cessation of the Applicant's refugee status. The RPD found that the Applicant had, pursuant to s 108(1)(a) of the IRPA, voluntarily reavailed herself of the protection of Nigeria.

Background

[2] The Applicant, Amende Violet Okojie, arrived in Canada in 2001 and claimed refugee protection based on her fear of a forced marriage and female genital mutilation ("FGM") which the man she was to marry, Obaro Umukoro ("Umukoro"), required her to be subjected to before their wedding. In July 2003, the Applicant was determined to be a Convention refugee, and she became a permanent resident of Canada in 2004.

[3] Since 2004, the Applicant has travelled back to Nigeria, her country of nationality, on 10 to 12 occasions. During three of these visits, in 2004, 2009 and again in 2014, she applied for and was issued Nigerian passports. She travelled on those passports in 2004 to visit her then-boyfriend, who is now her husband; in 2005 to marry him; in 2006 when she was pregnant, felt depressed and wished to see her husband; in 2007, 2009, and 2013 to try to become pregnant for a second time and to obtain the comfort of her husband in the face of miscarriages; in 2010 and 2015 to see her parents who were then respectively gravely ill; and, in 2013 due to trouble in her marriage. Her husband became a permanent resident in 2007 but found the adjustment of living in Canada to be difficult and returned to his legal practice in Nigeria.

[4] Umukoro, who was the Applicant's agent of persecution, died in 2004. However, the Applicant testified before the RPD that she only became aware of his death in 2014.

[5] In March 2015, the Minister made an application, pursuant to s 108(2) of the IRPA, for cessation of the Applicant's status as a Convention refugee which the RPD allowed by a decision dated December 19, 2018. That decision is the subject of this application for judicial review.

Decision Under Review

[6] The RPD noted that the Applicant and her husband had both testified at the hearing. It stated that in reaching its decision it had considered the Minister's evidence, the evidence and testimony of the Applicant, the written submissions of both parties, the relevant provisions of the IRPA and of the United Nations High Commissioner for Refugees' ("UNHCR") Handbook, as well as jurisprudence. Before the RPD, the Respondent argued that applying for and acquiring a Nigerian passport and travelling to Nigeria meant, on a balance of probabilities, the Applicant voluntarily, intentionally, and actually reavailed herself of the protection of Nigeria and therefore, a *prima facie* case had been made for reavailment pursuant to s 108(1)(a) of the IRPA. Accordingly, the onus was on the Applicant to rebut that presumption.

[7] The RPD noted that while obtaining a passport from a refugee's country of origin would normally demonstrate reavailment of the protection of that country, it was open to the Applicant to provide evidence to the contrary. It then set out and considered her explanations for her travels to Nigeria and the obtaining of her three Nigerian passports.

[8] The RPD noted the Applicant's explanation of why she chose to apply for and obtain her Nigerian passports in Nigeria, rather than by way of the Nigerian Embassy in Canada. However, it found that what was significant was the fact that the Applicant had applied for and obtained Nigerian passports on three occasions, and travelled on those passports to Nigeria on ten separate occasions. The RPD also noted that the Applicant had chosen to travel to Nigeria at least five times before she learned of the death of her agent of persecution.

[9] The RPD rejected the Applicant's submission that s 108(4) applied to her circumstances. The RPD considered the Applicant's alternate position that, if any ground for cessation were to

be applied, it should be s 108(1)(e); however, the RPD found that the Applicant had willingly begun returning to Nigeria ten years before she learned of the death of her agent of persecution in 2014 and that, therefore, s 108(1)(e) had no application. The RPD also found that all of the Applicant's travel was voluntary, intentional, and unnecessary. Even her trips to visit her parents when they were ill were not by necessity because other family members were taking responsibility for the care of her parents.

[10] The RPD concluded that there was insufficient evidence to rebut the presumption that the Applicant voluntarily and intentionally reavailed herself of Nigerian protection by applying for, obtaining, and actually using her new Nigerian passports for travel to that country. Her visits to Nigeria with a valid Nigerian passport, using her own identity, alerted officials to her presence and, through her reavailment, the Applicant "was acknowledging her confidence in the Nigeria [*sic*] government to protect her although she was granted refugee protection on the basis of her fear of remaining in Nigeria".

Legislative Framework

IRPA

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:	**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 :
(a) the person has voluntarily reavailed themself of the protection of their country of nationality;	**a)** il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
(b) the person has voluntarily reacquired their	**b)** il recouvre volontairement

nationality;	sa nationalité;
(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	**c)** il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
(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	**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) the reasons for which the person sought refugee protection have ceased to exist.	**e)** les raisons qui lui ont fait demander l'asile n'existent plus.
(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).	**(2)** L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).
(3) If the application is allowed, the claim of the person is deemed to be rejected.	**(3)** Le constat est assimilé au rejet de la demande d'asile.
(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or	**(4)** L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

punishment.

[11] In its decision, in addition to s 108(1) of the IRPA, the RPD also set out and referenced provisions of the United Nations High Commission for Refugees' *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* ("UNHCR Handbook"). By way of background, I note that Canada is a signatory of the *Convention Relating to the Status of Refugees* ("Refugee Convention"). Article 1A of the Refugee Convention defines Convention refugees, and the definition has been incorporated into the law of Canada by way of s 96 of the IRPA. The conditions under which a refugee ceases to be a refugee are set out in Articles 1C(1)-(6) of the Refugee Convention, frequently referred to as the "cessation clauses" (UNHCR Handbook, s 111), and are reflected in s 108 of the IRPA.

[12] Article 1(C), referenced by the RPD in its decision, states that "This Convention shall cease to apply to any person falling under the terms of section A if: (1) He has voluntarily reavailed himself of the protection of the country of his nationality". This corresponds with s 108(1)(a) of the IRPA.

[13] The UNHCR Handbook is not binding, but it is a persuasive supplementary text which this Court has held can be used for guidance in the interpretation of Refugee Convention cessation clauses (*Canada (Public Safety and Emergency Preparedness) v Bashir*, 2015 FC 51 at para 43 ("*Bashir*"); *Din v Canada (Citizenship and Immigration)*, 2019 FC 425 at para 31)).

[14] The relevant provisions of the UNHCR Handbook are as follows:

113. Article 1 C of the 1951 Convention provides that:

"This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under Section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence."

114. Of the six cessation clauses, the first four reflect a change in the situation of the refugee that has been brought about by himself, namely:

(1) voluntary re-availment of national protection;

(2) voluntary re-acquisition of nationality;

(3) acquisition of a new nationality;

(4) voluntary re-establishment in the country where persecution was feared.

115. The last two cessation clauses, (5) and (6), are based on the consideration that international protection is no longer justified on account of changes in the country where persecution was feared, because the reasons for a person becoming a refugee have ceased to exist.

…

B. Interpretation of terms

(1) Voluntary re-availment of national protection

Article 1 C (1) of the 1951 Convention:

"He has voluntarily re-availed himself of the protection of the country of his nationality;"

118. This cessation refers to a refugee possessing a nationality who remains outside of the country of his nationality… A refugee who has voluntarily re-availed himself of national protection is no longer in need of international protection. He has demonstrated that he is no longer "unable or unwilling to avail himself of the protection of the country of his nationality."

119. This cessation clause implies three requirements:

> (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.

120. If the refugee does not act voluntarily, he will not cease to be a refugee. If he is instructed by an authority, e.g. of his country of residence, to perform against his will an act that could be interpreted as a re-availment of the protection of the country of his nationality, such as applying to his Consulate for a national passport, he will not cease to be a refugee merely because he obeys such an instruction. He may also be constrained, by circumstances beyond his control, to have recourse to a measure of protection from his country of nationality. He may, for instance, need to apply for a divorce in his home country because no other divorce may have the necessary international recognition. Such an act cannot be

considered to be a "voluntary re-availment of protection" and will not deprive a person of refugee status.

121. In determining whether refugee status is lost in these circumstances, a distinction should be drawn between actual re-availment of protection and occasional and incidental contacts with the national authorities. *If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, be presumed that he intends to avail himself of the protection of the country of his nationality.* On the other hand, the acquisition of documents from the national authorities, for which non-nationals would likewise have to apply – such as a birth or marriage certificate – or similar services, cannot be regarded as a re-availment of protection.

122. A refugee requesting protection from the authorities of the country of his nationality has only "re-availed" himself of that protection when his request has actually been granted. The most frequent case of "re-availment of protection" will be where the refugee wishes to return to his country of nationality. He will not cease to be a refugee merely by applying for repatriation. *On the other hand, obtaining an entry permit or a national passport for the purposes of returning will, in the absence of proof to the contrary, be considered as terminating refugee status.* This does not, however, preclude assistance being given to the repatriant – also by UNHCR – in order to facilitate his return.

123. A refugee may have voluntarily obtained a national passport, intending either to avail himself of protection of his country of nationality while staying outside that country, or to return to that country. As stated above, with receipt of such a document he normally ceases to be a refugee. If he subsequently renounces either intention, his refugee status will need to be determined afresh. He will need to explain why he changed his mind, and to show that there has been no basic change in the conditions that originally made him a refugee.

124. Obtaining a national passport or an extension of its validity may, under certain exceptional conditions, not involve termination of refugee status (see paragraph 120 above). This could for example be the case where the holder of a national passport is not permitted to return to the country of his nationality without specific permission.

(Emphasis in italic added.)

Issues and Standard of Review

[15] In my view, this matter raises only one issue, being whether the decision was reasonable. The parties submit, and I agree, that the standard of review is one of reasonableness. This is because the issues raised involve questions of mixed fact and law concerning the interpretation and application of s 108 of the IRPA (*Bashir* at para 23; *Maqbool v Canada (Citizenship and Immigration)*, 2016 FC 1146 at para 22; *Siddiqui v Canada (Citizenship and Immigration)*, 2016 FCA 134 at para 11; *Mun v Canada (Citizenship and Immigration)*, 2019 FC 246 at para 10; *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 14 ("*Abadi*")).

Analysis

Application of Section 108(1)(e)

[16] The Applicant submits that the RPD erred by interpreting s 108(1)(e) of the IRPA as requiring subjective awareness of a change in circumstance, which negates the need for refugee protection, in order for that section to have application. According to the Applicant, a refugee's perception of the conditions in his or her country of origin is not relevant to the RPD's determination of whether there was, objectively, a change in circumstances. The Applicant submits that this is demonstrated by a plain reading of s 108(1)(e) which contains no requirement for subjective knowledge of the change of circumstances. She submits that the RPD erred in finding that her subjective knowledge of the death of her agent of persecution was relevant to a s 108(1)(e) analysis and, therefore, it unreasonably concluded that s 108(1)(e) had no application to her circumstances, giving rise to a reviewable error.

[17] The Respondent submits that the Applicant's argument cannot raise a reviewable error because the RPD did not ground its cessation finding on s 108(1)(e). Rather, it stated that the

application was allowed under s 108(1)(a) and grounded its finding on voluntariness, intention, and actual reavailment. Accordingly, any errors by the RPD concerning s 108(1)(e) had no effect on the outcome and should not result in quashing the decision. Further, the RPD found the Applicant's knowledge of the changed circumstances to be relevant to s 108(1)(a) and her willingness to return to Nigeria despite an ongoing threat. Nor was the RPD obligated to follow the Applicant's suggestion and ground its cessation on section 108(1)(e) as the RPD has the discretion to select which paragraph in s 108(1) to apply in its analysis (*Lu v Canada (Citizenship and Immigration)*, 2019 FC 1060 at paras 34-35 ("*Lu*")).

[18] As a starting point, I note that s 46(1)(c.1) of the IRPA states that "A person loses their permanent resident status… 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)". Thus, if refugee status is cessated under 108(1)(e), rather than 108(1)(a)-(d), the person does not lose permanent residency. While this is not mentioned in the Applicant's submissions, this explains why reliance on s 108(1)(e) is of significance to her.

[19] I would also note that this Court has previously held that the RPD has the discretion to base its cessation finding on any of the provisions of s 108(1) and is not constricted to the application of the provisions proposed by either the Minister or an applicant.

[20] For example, in *Tung v Canada (Citizenship and Immigration)*, 2018 FC 1224 ("*Tung*") the RPD found that the applicant therein had reavailed herself of China's protection after acquiring a Chinese passport and travelling to China 12 times for personal reasons, including caring for her ill parents and visiting her incarcerated husband. In that case, the Minister and the applicant had submitted to the RPD that the Applicant's refugee status should only cease because

of a conceded change in circumstances under s 108(1)(e). However, the RPD made its determination based on both s 108(1)(e) and 108(1)(a). On judicial review, Justice McDonald found that the RPD had broad discretion to consider other applicable grounds, referencing Justice O'Reilly's decision in *Canada (Citizenship and Immigration) v Al-Obeidi*, 2015 FC 1041 ("*Al-Obeidi*"), where he stated:

> [15] The statutory language setting out the Board's jurisdiction is clear. IRPA states that on any cessation application by the Minister, the Board "may determine that refugee protection…has ceased for any of the reasons described in [s 108(1)]." Those reasons include reavailment (s 108(1)(a)) and a change in country conditions (s 108(1)(e)), as well as other grounds, including re-establishment and voluntary reacquisition of nationality.
>
> [16] Had Parliament wished to impose a duty on the Board to consider the specific ground raised in the Minister's application, it clearly could have done so. For example, it could have directed the Board to consider alternate grounds for cessation only where the Minister had failed to make out a case on the ground identified in the application. It did not do so.
>
> [17] …On a plain reading of IRPA, it is clear that Parliament gave the Board the discretion to consider grounds for cessation other than those raised in the Minister's application, including a change of circumstances in the country of origin. It also stipulated that individuals should lose their permanent residency only where the Board finds that their refugee status should be terminated on grounds other than an improvement in country conditions. The Board's approach appears to me to be consistent with the regime Parliament enacted.
>
> …
>
> [21] …As mentioned, IRPA permits the Board to consider any grounds of cessation set out in s 108(1). A respondent's concession that one ground has been satisfied would not prevent the Board from considering another. In the circumstances of that case, the Board felt obliged to consider other grounds of cessation that had been put forward by the Minister. The fact that the Board considered those other grounds does not suggest that the Board erred in not doing so in this case.

> [22] In sum, on a cessation application by the Minister, the Board can consider any ground set out in s 108(1) of IRPA. If the respondent refugee persuades the Board, or concedes, that his or her status has ceased by virtue of a change of country conditions (s 108(1)(e)), the Board has discretion to consider other grounds. It is neither compelled to do so, nor prevented from doing so. However, where there is uncontradicted and undisputed evidence that the refugee's status has ceased under another ground (e.g., acquisition of citizenship in a country capable of protection), the Board should consider it.

[21] In *Tung*, Justice McDonald found that the RPD acted reasonably in deciding the ultimate issue of cessation on a ground not raised by the parties, as this was in keeping with the discretion afforded to it by the IRPA. A similar conclusion was subsequently reached by Justice Walker in *Lu*.

[22] In the matter before me, the RPD clearly stated in the section of its decision entitled "Determination" that its determination was that the Minister's application for cessation was allowed under s 108(1)(a). It is correct, as the Applicant points out, that the RPD also stated in the findings, or analysis, portion of its reasons that "the determinative issue in deciding this application is the first ground upon which it is based, whether the respondent has though her actions, voluntarily, intentionally and actually re-availed herself of the protection of the authorities in Nigeria and the determination of whether the reasons for the respondent's fear have ceased to exist as set out in subsection 108(1)(e)". Ultimately, however, the decision was based only on s 108(1)(a).

[23] In her submissions to the RPD, the Applicant asserted that the matter should be decided under s 108(1)(e). The RPD addressed that ground but found it to have no application. It stated that the Applicant's subjective knowledge of the death of her agent of persecution was relevant, and that without knowledge of his death she willingly returned to Nigeria with the belief that he

still posed a threat. Further, if the Applicant had renewed her Nigerian passports or returned to Nigeria after learning of the death of her agent of persecution in 2014, then the provision could apply, but this was not the case. The RPD then went on to address voluntariness, intention, and actual reavailment.

[24] The Applicant submits that the RPD erred in its interpretation of s 108(1)(e) by requiring subjective knowledge of the lack of ongoing risk. However, in my view, even if the RPD's interpretation was unreasonable, and I make no finding in that regard, the jurisprudence is clear that the RPD was entitled to make its decision on one or more of the s 108(1) grounds. Here the RPD identified and applied two grounds. Its ultimate conclusion was based on s 108(1)(a). Further, for the reasons set out below, its decision regarding s 108(1)(a) was reasonable. Accordingly, even if the RPD erred finding that s 108(1)(e) did not apply, this is not determinative or fatal to the decision under review as the outcome would remain the same based on the s 108(1)(a) analysis (see *Maple Lodge Farms Ltd v Canada (Food Inspection Agency)*, 2017 FCA 45, at para 51).

Agent of persecution

[25] In *Cerna v Canada (Citizenship and Immigration)*, 2015 FC 1074 ("*Cerna*") Justice O'Reilly noted that:

> [12] Reavailment comprises three elements: (1) the refugee must have acted voluntarily; (2) the refugee must have intended to reavail himself or herself of the protection of the country of nationality; and (3) the refugee must actually have obtained protection (*Nsende v Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 at paras 12-15; *Cabrera Cadena v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 67 at para 22).

[26] The Applicant asserts that the RPD erred by failing to explicitly address her argument concerning the fact that the agent of persecution was a non-state actor, which she says relates to her intention to reavail and is a material fact not considered by the RPD.

[27] She submits that the RPD was "legally incorrect in rendering a finding of re-availment where the agent of persecution was a non-state actor". She further submits that she had, before the RPD, posed the question of whether "... a person who was unable to obtain the protection of his or her state [could] 'reavail' him or herself of a protection that was absent when the claim was determined?" In this regard, she submits that a person who has been found to be a Convention refugee because they were found to have a well-founded fear of persecution at the hands of state actors could "reavail" themselves of protection that they were unwilling to previously accept. But, where the protection was absent "because the agents of persecution were non-state actors, then if a person obtains protection he is obtaining it for the first time and therefore there can be no reavailment". In the context of persecution by a non-state actor, the Applicant argues that "there must have been a finding by the RPD that the state was ***unable*** to provide protection" and the Applicant cannot reavail herself because there was never any protection with which to avail herself.

[28] In my view, while the RPD did not explicitly refer to the Applicant's argument, it is apparent from its reasons that it was aware that the agent of persecution was a non-state actor. The RPD also acknowledged the Applicant's evidence that she took precautions during her visits: usually staying for only 10-14 days at a time, staying at her husband's home, not informing anyone of her visits, and travelling to her home village on only one occasion, when her father was ill, at which time she travelled at night and did not speak to any of the family

present in his home – all of which was aimed at not alerting her agent of persecution to her presence in Nigeria. The RPD also acknowledged the Applicant's testimony that she was informed by her former counsel that there was no concern with her returning to Nigeria, but the RPD rejected this explanation in the absence of evidence that the Applicant had made a complaint against her former counsel. Having considered her explanations, the RPD found that these did not rebut the presumption that she had voluntarily and intentionally reavailed and, by travelling to Nigeria on her Nigerian passports, had actually obtained the protection of that state. Further, through her actions – her reavailment – the Applicant was acknowledging her confidence in the Nigerian government to protect her.

[29] As to the Applicant's intention, her evidence was that when she obtained and travelled on her Nigerian passports, she believed that her agent of persecution was still alive and posed a risk to her. The RPD assessed her intention to reavail in that context and with the knowledge that her agent of persecution was a non-state actor.

[30] I also note that a distinction has been made between state protection related to the ground on which an applicant made a refugee claim, and diplomatic protection, the latter being the relevant protection for purposes of actual reavailment in a cessation assessment. In *Cerna*, Justice O'Reilly stated:

> [13] The fact that a refugee has obtained or renewed a passport issued by the country of nationality creates a rebuttable presumption that the refugee intended to reavail himself or herself of that country's protection (*Li v Canada (Minister of Citizenship and Immigration)*, 2015 FC 459 at para 39). If the refugee acquires the passport in order to return to his or her country of origin, as Mr Cerna did, then the refugee has also obtained actual protection from that state. In these circumstances, unless the refugee has rebutted the presumption of intention, the only remaining question is whether he or she voluntarily acquired his or her passport.

And, in *Lu*, Justice Walker made a similar comment:

> [60] … [The applicant] appears to conflate state protection related to the ground on which she made her refugee claim with diplomatic protection, which is the relevant protection for the purposes of reavailment. The Applicant actually received protection when she decided to travel to China and the United States while relying on the international diplomatic protection of her country of origin.

(Also see *Abadi* at paras 19 and 21; *Peiqrishvili v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1205 at para 22.)

[31] The test for state protection is whether a country is able and willing to provide adequate protection to its citizens. Presumably, the Applicant was granted Convention refugee status because the RPD believed her evidence that she was at risk of a forced marriage and FGM and that the state, Nigeria, could not adequately protect her against this risk at the hands of her agent of persecution, Umukoro. As subsequently noted by the RPD at the cessation hearing, by obtaining Nigerian passports and returning to Nigeria on multiple occasions, the Applicant, by her actions, was acknowledging her confidence in the Nigerian government to protect her. That is, that adequate state protection now existed to protect her from harm at the hands of the non-state agent of persecution. She had demonstrated that she was no longer unable or unwilling to avail herself of the protection of the country of her nationality (IRPA, s 96; UNHCR Handbook, s 118).

[32] In sum, when considering the cessation application, the RPD was not unaware and did not ignore the fact that the Applicant's agent of persecution was a non-state actor. Rather, the RPD considered whether the actions of the Applicant herself met the three-part test of reavailment, which test does not distinguish between state and non-state agents of persecution.

The RPD found that she had not rebutted the presumption of reavailment arising from her obtaining and utilizing her Nigerian passports and had voluntarily, intentionally, and actually reavailed of the protection of Nigeria.

[33] It is also of note that the Applicant's submissions to the RPD did not include a statutory interpretation analysis and that the two decisions that she referenced, *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 and my decision in *Hasa v Canada (Citizenship and Immigration)*, 2018 FC 270, do not support her proposition, but instead speak to the test for state protection. This is whether there exists adequate state protection at an operational level. Nor do they support the Applicant's premise that if a refugee was "unable" to avail of state protection, such protection must have been entirely non-existent. In any event, while the RPD did not explicitly address the Applicant's argument, it stated that it had considered the evidence, the testimony of the Applicant, and the written submissions of both parties and acknowledged that the Applicant's counsel had submitted that the Minister's application should fail on multiple grounds. Moreover, as the Supreme Court of Canada held in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62:

> [15] In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.
>
> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No.*

> *333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

(Also see *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 at paras 137-140.)

[34] While the RPD's reasons were not perfect, I am satisfied that, despite the lack of an explicit reference to the Applicant's arguments concerning reavailment where the agent of persecution is a non-state actor, the reasons permit me to understand the why the RPD decided as it did. I also see no error in the RPD's finding that the Applicant voluntarily, intentionally, and actually reavailed of the protection of her state of origin. The RPD's decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

JUDGMENT in IMM-363-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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