

Federal Court



Cour fédérale

Date: 20150908

Docket: IMM-7389-14

Citation: 2015 FC 1041

Ottawa, Ontario, September 8, 2015

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

MAZIN HELMY ISMAEL AL-OBEIDI

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 1998, Mr Mazin Helmy Ismael Al-Obeidi fled from Iraq to Lebanon fearing political persecution as an opponent of Saddam Hussein. In 2002, Canadian officials granted him refugee protection, making him eligible for permanent residence once his application was processed. He arrived in Canada in 2007 and acquired permanent resident status.

[2] Over the ensuing years, Mr Al-Obeidi made six trips back to Iraq. At first, he used a Canadian passport, but he later obtained an Iraqi passport and used it on subsequent trips.

[3] In 2012, after Mr Al-Obeidi had applied for Canadian citizenship, Canadian officials asked him about his trips to Iraq. His answers led to an application by the Minister to cease Mr Al-Obeidi's refugee protection in Canada on the grounds that, by virtue of his trips back to Iraq, he had reavailed himself of Iraq's protection (relying on para 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] – see Annex for provisions cited). Mr Al-Obeidi's citizenship application is currently frozen.

[4] A panel of the Immigration and Refugee Board heard the Minister's application and determined that Mr Al-Obeidi's refugee status had indeed ceased. However, the Board did not deal with the Minister's reavilment claim; rather, it found that Mr Al-Obeidi's status had ceased because a change of conditions in Iraq meant that the basis for his refugee claim no longer existed (relying on s 108(1)(e) of IRPA).

[5] If the Board had accepted the Minister's position on reavilment, Mr Al-Obeidi would have lost his permanent resident status (s 46(1)(c.1)) and become inadmissible to Canada (s 40.1(2)). The Board's finding that Mr Al-Obeidi had lost his refugee status as a result of a change of country conditions did not have those consequences.

[6] The Minister argues that the Board failed to discharge its duty to address the grounds underlying the cessation application. While the Board is free to consider other grounds for

cessation, the Minister concedes, it does not have the power to refuse to deal with a ground specifically raised by the Minister, especially where, as here, there was evidence supporting that position. The Minister characterizes the Board's decision as arbitrary and a deliberate effort to avoid the operation of laws duly enacted by Parliament. The Minister asks me to quash the Board's decision and order another panel of the Board to reconsider the cessation application.

[7] I disagree with the Minister's submission. In my view, the Board can address any grounds for cessation arising from the Minister's application and need not make its decision on the specific ground raised in it. IRPA specifically grants the Board the jurisdiction to determine cessation on the basis of any of the grounds identified in it. Therefore, I must dismiss this application for judicial review.

[8] The sole issue is whether the Board's interpretation of the applicable provisions in IRPA was reasonable.

II. The Board's Decision

[9] Before the Board, the Minister argued that the Board had a duty to consider only the specific basis on which the cessation application was brought. Alternatively, the Minister maintained that the Board had a duty to consider all possible grounds for cessation. Regarding the possibility of cessation based on a change of conditions in Iraq, the Minister actually argued that the improvements in Iraq were likely temporary, meaning that it would be unsafe for Mr Al-Obeidi to return. The Board found this position to be at odds with the Minister's efforts to terminate Mr Al-Obeidi's refugee status.

[10] The Board concluded that it had the jurisdiction, on an application by the Minister, to consider any potential ground for cessation, not just the specific ground on which the Minister chose to rely. In particular, IRPA states that, on an application for cessation by the Minister, the Board can consider whether refugee protection has ceased “for any of the reasons” described in s 108(1) of IRPA (s108(2)).

[11] The Board was satisfied that Mr Al-Obeidi’s refugee status had ceased as a result of a durable, lasting, and substantial change of conditions in Iraq. In fact, Mr Al-Obeidi conceded that he no longer feared persecution in Iraq. The Board also concluded that, once one ground of cessation had been satisfied, it was unnecessary to consider other possible grounds. Accordingly, it did not address reavilment as a possible ground of cessation.

[12] While the Board stated that it should not be concerned about the consequences of a cessation finding, it nonetheless described the result of a finding based on grounds other than a change of conditions (loss of permanent residence) as being inconsistent with Canada’s international obligations and the objectives of IRPA.

III. Was the Board’s decision reasonable?

[13] The Minister argues that the Board’s approach was unreasonable because the Board failed to deal with the issue raised in the cessation application before it and, instead, based its decision on a ground that was not raised.

[14] I disagree. IRPA gives the Board a broad discretion in cessation matters which, in most cases, works in the Minister's favour. Where the Minister has failed to make out a case for cessation on one ground, the Board can consider whether another ground has been satisfied. The fact that the Minister did not achieve the ultimate objective of the cessation application (termination of Mr Al-Obeidi's permanent resident status) does not justify, in my view, a finding that the Board's approach was unreasonable.

[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 reavilment (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] The Minister also submits that the Board acted beyond its jurisdiction and deliberately thwarted the will of Parliament by ruling on a basis that would avoid the removal of Mr Al-Obeidi's permanent resident status. I disagree. 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.

[18] The Minister also points to a subsequent decision of the same Board member which, according to the Minister, contradicts the member's approach here (*Re X*, VB4-00719, 20 February 2015). In the latter case, the Minister applied for cessation on the grounds that the respondent had reavailed himself of the protection of his country of origin (s 108(1)(a)) and had acquired citizenship of another country that could protect him (s 108(1)(c)). In turn, the respondent submitted that the basis for his refugee claim had ceased as a result of a change of country conditions (s 108(1)(e)), and that the Board should refuse to deal with the grounds put forward by the Minister.

[19] The Board accepted the respondent's argument that s 108(1)(e) applied. However, it disagreed with the contention that it should not consider any other grounds. In particular, the evidence before the Board clearly showed that the respondent was a citizen of the United States; indeed, he did not dispute the issue. The Board concluded that it would be improper to ignore the evidence of the respondent's US citizenship, and ruled that his refugee status had ceased under both s 108(1)(c) and s 108(1)(e). It was, according to the Board, unnecessary to consider s 108(1)(a).

[20] I do not see any contradiction in the Board's approach. In both cases, the Board concluded that it could consider any ground set out in s 108(1) and that it was unnecessary in the circumstances to consider reavilment under s 108(1)(a). The sole difference is that, in *Re X*, the Board felt compelled to rule on s 108(1)(c) given the clear evidence before it and the respondent's concession on the point. That circumstance distinguishes that case from this one.

[21] The Minister also contends that the Board's decision in this case is inconsistent with the decision of another Board member (TB3-05609, 12 August 2014). There, the Board found that the respondent's concession that her refugee status had ceased under s 108(1)(e) did not deprive the Board of jurisdiction to consider other potential grounds of cessation. Again, I do not see a contradiction. 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.

[23] Therefore, I find that the Board's interpretation of its jurisdiction under IRPA was reasonable.

IV. Conclusion and Disposition

[24] In my view, the Board reasonably concluded that it could decide the issue of cessation on a ground not raised by the Minister. Therefore, I must dismiss this application for judicial review. The Minister opposed the certification of a question of general importance and, in light of the manner in which I have decided this application, none will be stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance will be stated.

“James W. O’Reilly”

Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27 *Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27*

Cessation of refugee protection — permanent resident Perte de l'asile — résident permanent

40.1 (2) A permanent resident is inadmissible on a final determination that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d).

40.1 (2) 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 d'un résident permanent emporte son interdiction de territoire.

Permanent resident

Résident permanent

46. (1) A person loses permanent resident status

46. (1) Emportent perte du statut de résident permanent les faits suivants :

...

[...]

(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);

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;

Rejection

Rejet

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 themselves 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;

...

[...]

(c) the person has acquired a new nationality and enjoys the protection of the country of that

c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;

new nationality;

...

[...]

(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.

Cessation of refugee protection

Perte de l'asile

(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).

FEDERAL COURT
SOLICITORS OF RECORD

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