Federal Court of Appeal | Cour d'appel fédérale

Date: 20220329

Docket: A-79-20

Citation: 2022 FCA 50

CORAM: **STRATAS J.A.**
RIVOALEN J.A.
MACTAVISH J.A.

BETWEEN:

MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

MARIA CAMILA GALINDO CAMAYO

Respondent

and

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES and CANADIAN ASSOCIATION OF REFUGEE LAWYERS

Interveners

Heard by online video conference hosted by Registry on December 8, 2021.

Judgment delivered at Ottawa, Ontario, on March 29, 2022.

REASONS FOR JUDGMENT BY: MACTAVISH J.A.

CONCURRED IN BY: STRATAS J.A.
RIVOALEN J.A.

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REASONS FOR JUDGMENT

MACTAVISH J.A.

[1] Maria Camila Galindo Camayo is a citizen of Colombia. As a child, she and members of her family were found to be people in need of protection in Canada, based upon her mother having been targeted for extortion by the Fuerzas Armadas Revolucionarias de Colombia.

[2] When it came to the attention of the Minister of Citizenship and Immigration that Ms. Galindo Camayo had used a Colombian passport to take numerous trips to Colombia and other countries, the Minister commenced an application for the cessation of her protected person status. The Refugee Protection Division (RPD) of the Immigration and Refugee Board found that Ms. Galindo Camayo had voluntarily reavailed herself of the diplomatic protection of Colombia. As a result, the Minister's application was granted, and Ms. Galindo Camayo's claim for protection was deemed to have been rejected.

[3] In reasons reported as 2020 FC 213, the Federal Court set aside the RPD's decision on the basis that the RPD's finding that Ms. Galindo Camayo intended to reavail herself of the protection of the Colombian government was unreasonable. The Federal Court ordered that the matter be remitted to a differently constituted RPD panel for redetermination. The Federal Court did, however, certify the following questions:

> 1) Where a person is recognized as a Convention refugee or a person in need of protection by reason of being listed as a dependent on an inland refugee claim heard before the Refugee Protection Division [RPD], but where the RPD's decision to confer protection does not confirm that an individual or personalized risk assessment of the dependent was performed, is that person a Convention refugee as contemplated in paragraph 95(1) of the [*Immigration and Refugee Protection Act*, S.C. 2001, c. 27, c. 27 ("*IRPA*")] and therefore subject to cessation of refugee status pursuant to subsection 108(2) of the *IRPA*?
>
> 2) If yes to Question 1, can evidence of the refugee's lack of subjective [let alone any] knowledge that use of a passport confers diplomatic protection be relied on to rebut the presumption that a refugee who acquires and travels on a passport issued by their country of origin to travel to a third country has intended to avail themselves of that state's protection?

> 3) If yes to Question 1, can evidence that a refugee took measures to protect themselves against their agent of persecution [or that of their family member who is the principal refugee applicant] be relied on to rebut the presumption that a refugee who acquires [or renews] a passport issued by their country of origin and uses it to return to their country of origin has intended to avail themselves of that state's protection?

[4] I understand from the parties that the first question is no longer in issue as this Court has previously held that a minor who obtains refugee protection as a dependant under a parent's claim is indeed subject to the same immigration consequences as the parent claimant: *Canada (Minister of Citizenship and Immigration) v. Tobar Toledo*, 2013 FCA 226.

[5] Insofar as the second question is concerned, the Minister asserts that the Federal Court erred in finding the RPD's decision to be unreasonable. The Federal Court found that Ms. Galindo Camayo's lack of knowledge of the Canadian immigration consequences of travelling internationally using a Colombian passport was sufficient to rebut the presumption of intent to reavail. According to the Minister, the state of the individual's knowledge is not the legal test for cessation nor is it a factor for consideration under that test.

[6] With respect to the third question, the Minister observes that refugee protection is available to individuals who can establish on a balance of probabilities that they would be at risk of facing persecutory treatment in their country of nationality. Implicit in such a finding is that the person cannot protect themselves from their agent of persecution or obtain such protection anywhere in that country. It is therefore inconsistent with a finding that a person is in need of protection for the individual to later claim that they are able to protect themselves sufficiently as to allow them to return to their country of nationality. The Minister says that the Federal Court

thus erred in considering the fact that Ms. Galindo Camayo obtained private security while she was in Colombia as evidence that she did not intend to reavail herself of the protection of the state.

[7] For the reasons that follow, I have concluded that the Federal Court did not err in finding that the Board's decision was unreasonable. Consequently, I would dismiss the appeal. I would only answer the second and third questions and I would answer them in the affirmative.

I. Background

[8] Ms. Galindo Camayo was a minor when she arrived in Canada. She received protected person status in Canada in 2010, when she was 15 years old (for the sake of simplicity, the terms "person in need of protection", "protected person", and "refugee" will be used interchangeably in these reasons). Ms. Galindo Camayo returned to Colombia five times since 2010, taking her last trip in late 2016 and early 2017, when she was a 21-year-old college student.

[9] Ms. Galindo Camayo travelled on a Colombian passport on each of these occasions. She initially used the passport that her mother had obtained for her. However, she turned 18 during her second trip to Colombia and she was advised by Colombian authorities that she had to apply for an adult passport in order to be able to return to Canada. Ms. Galindo Camayo received a new adult Colombian passport in August of 2013, returning to Canada shortly thereafter.

[10] In addition to the five trips to Colombia that Ms. Galindo Camayo took after receiving protected person status, she visited Mexico three times, and she took trips to the United States and Cuba. Ms. Galindo Camayo travelled on her Colombian passport on each occasion.

[11] On January 27, 2017, the Minister applied to cease Ms. Galindo Camayo's protected person status, pursuant to subsection 108(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*). Subsection 108(2) provides that "[o]n application by the Minister, the Refugee Protection Division may determine that refugee protection … has ceased for any of the reasons described in subsection (1)".

[12] Paragraph 108(1)(*a*) of *IRPA* provides that "[a] claim for refugee protection shall be rejected, and a person is not … a person in need of protection … [if] the person has voluntarily reavailed themself of the protection of their country of nationality". The full text of these and other relevant statutory provisions is attached as an appendix to these reasons.

[13] The Minister asserts that Ms. Galindo Camayo had voluntarily and intentionally reavailed herself of the protection of her country of nationality by obtaining a Colombian passport and by using it to travel to Colombia and elsewhere. As a result, the Minister says that Ms. Galindo Camayo's claim for protected person status should be deemed to have been rejected.

II. The RPD's Decision

[14] Ms. Galindo Camayo argued before the RPD that she did not voluntarily reavail herself of Colombia's protection under section 108 of *IRPA* by acquiring Colombian passports. It was her mother, and not Ms. Galindo Camayo herself, who had applied for her first passport while she was still a minor, and Ms. Galindo Camayo was compelled to obtain her second Colombian passport in 2013 in order to be able to return to Canada.

[15] Ms. Galindo Camayo testified that she travelled to Colombia to assist her sick father and to volunteer for a humanitarian mission, and that she did not understand the consequences of her travel for her status in Canada. Ms. Galindo Camayo further stated that she did not avail herself of Colombia's protection while she was there, as she hired armed private security guards to provide her with protection during each of her trips.

[16] The RPD agreed with the Minister, finding that Ms. Galindo Camayo had voluntarily reavailed herself of Colombia's protection as described in paragraph 108(1)(*a*) of *IRPA*. The Minister's application for the cessation of Ms. Galindo Camayo's status as a protected person was therefore allowed, and her claim for protection was deemed to have been rejected in accordance with subsection 108(3) of *IRPA*.

[17] In coming to the conclusion that the Minister's application should be granted, the RPD only focused on the cessation principles discussed in the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the*

Status of Refugees, UNHCR, 2019, UN Doc. HCR/1P/4/ENG/REV.4 (*Refugee Handbook*). Although it acknowledged (at para. 19) that it was "not bound" by the *Refugee Handbook* and the guidelines set out in it, the RPD found them "useful and relevant".

[18] The RPD noted that in accordance with Article 1C(1) of the 1951 *Convention Relating to the Status of Refugees*, 28 July 1951, 189 U.N.T.S. 137 (*Refugee Convention*) there are three implied criteria to be considered in determining whether cessation had occurred. These are:

(1) Voluntariness: The refugee must have acted voluntarily;

(2) Intention: The refugee must have intended by his or her actions to reavail him or herself of the protection of their country of nationality; and

(3) Reavailment: The refugee must actually obtain state protection.

[19] In reality, when the RPD decision is examined in its totality in light of the record before it, it is clear that the RPD fastened onto the *Refugee Handbook* and the particular wording of the *Refugee Handbook* as if it was domestic law that was binding on the RPD. At paragraph 17 of its reasons, the RPD set out the text of section 108 of *IRPA*, but it did not interpret it. Indeed, at no time did the RPD attempt to interpret section 108 by examining its text, context and purpose.

[20] Accepting that on a proper interpretation of section 108 of *IRPA* the three criteria of voluntariness, intention and reavailment are part of the inquiry required by law, what do these terms mean? For example, what acts or statements are relevant to voluntariness or intention?

[21] The questions can multiply and become more focused, especially in a fact-laden case such as the one at bar. Is the RPD to look solely at the actual subjective intention of the relevant individual and accept it, or is the RPD able to import an objective element into the analysis, such as the reasonableness of the actions and intentions of the relevant individual? These and other questions that can arise in a particular case involve questions of statutory interpretation: exactly when does section 108, properly interpreted, apply to allow the RPD to deem a person's claim for refugee protection to have been rejected?

[22] Insofar as the question of *voluntariness* was concerned, the RPD accepted that Ms. Galindo Camayo did not act voluntarily in obtaining her Colombian passports. Her first passport was acquired by her mother when she was a minor, which was a matter outside Ms. Galindo Camayo's control, and she was compelled to obtain her second Colombian passport in order to be able to leave the country.

[23] The RPD asserted, however, without any analysis of the requirements of section 108, that the acquisition of passports is not the only relevant factor to consider in assessing the voluntariness of Ms. Galindo Camayo's actions, and that her use of those passports also had to be considered. In this regard, the RPD found that Ms. Galindo Camayo acted voluntarily when she used her Colombian passports to travel to Colombia, Mexico, Cuba and the United States

between 2012 and 2016, and there was insufficient evidence before it to establish that Ms. Galindo Camayo was compelled to use her Colombian passports to take any of these trips.

[24] With respect to the question of Ms. Galindo Camayo's *intention* in using her Colombian passports, the RPD was concerned with respect to her evidence regarding the need for her to care for her father in Colombia. It observed that Ms. Galindo Camayo's father (who was a permanent resident of Canada) was actually in Canada during one of the periods that Ms. Galindo Camayo was in Colombia, purportedly caring for him there, and that he had visited Canada on numerous other occasions. The RPD further noted that Ms. Galindo Camayo claimed that her father had stayed in Colombia rather than come to Canada with the rest of his family, as he did not want to impose a burden on his family. It found, however, that this assertion was undermined by the fact that her father's conduct regularly exposed Ms. Galindo Camayo to a dangerous situation in Colombia, thus imposing a significant burden on her.

[25] Notwithstanding its concerns with respect to Ms. Galindo Camayo's evidence on this point, the RPD did not find in clear and unmistakeable terms that her evidence lacked credibility: *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 130 N.R. 236, 15 Imm. L.R. (2d) 199 (F.C.A.). Thus, the facts the RPD had to work with were those presented by the parties, and the case turned solely on whether the facts met the requirements of section 108.

[26] In the course of its reasons, the RPD made certain assertions that were, in reality, bottom-line views of what section 108 means. I will return to these assertions later on in these reasons.

[27] The RPD thus found that the Minister had established that Ms. Galindo Camayo had acted voluntarily when she used her Colombian passports to travel to Colombia, Mexico, Cuba and the United States between 2012 and 2016. The Minister had further established that Ms. Galindo Camayo had intended by her actions to reavail herself of Colombia's protection as contemplated by paragraph 108(1)(*a*) of *IRPA*, and that she had in fact done so.

[28] Consequently, the RPD allowed the Minister's application for cessation and Ms. Galindo Camayo's protection claim was deemed to have been rejected.

III. The Federal Court's Decision

[29] The Federal Court was satisfied that the RPD had reasonably found that while Ms. Galindo Camayo's acquisition of her Colombian passports was involuntary, her subsequent use of them to return to Colombia and to travel to other countries was voluntary. The Federal Court further found that the RPD had reasonably relied on the presumption of reavailment—both with respect to Ms. Galindo Camayo's intention to reavail, and whether she actually had reavailed. The RPD also observed that the presumption of reavailment arises when a protected person acquires, renews, or uses a passport issued by their country of nationality.

[30] However, the Federal Court observed that the presumption of reavailment is a rebuttable one. The RPD thus had to consider whether Ms. Galindo Camayo had rebutted the presumption in this case. The Federal Court identified the question for determination as being whether the RPD had reasonably considered Ms. Galindo Camayo's subjective intent to reavail and her

efforts to obtain private security to protect her during her visits to Colombia as evidence that could rebut the presumption of reavailment.

[31] The Federal Court noted that the outcome in each cessation case will be largely fact-dependent. However, by interpreting Ms. Galindo Camayo's use of her passport as satisfying all three essential and conjunctive elements of the reavailment test (voluntary, intentional, and actual reavailment), no room was left for Ms. Galindo Camayo to demonstrate that despite her acquisition and use of her Colombian passport, she did not intend to avail herself of the protection of the state. In other words, intention in the cessation context cannot be based solely on intending to complete the underlying act itself; one also has to understand the consequences of one's actions.

[32] As can be seen, the Federal Court developed its own view of section 108 and how it should operate, and then applied it to the RPD's decision. In so doing, it departed from its role as a reviewing court and delved into issues that were for the RPD to consider.

[33] In the end result, the Federal Court granted Ms. Galindo Camayo's application for judicial review, certifying the three questions identified at the beginning of these reasons.

IV. The Certified Questions and the Standard of Review

[34] As noted earlier, the first of the questions certified by the Federal Court is no longer in issue. The second question was not appropriate for certification in its original form, as its premise does not fully accord with the facts of this case.

[35] It will be recalled that the second question certified by the Federal Court was:

> If yes to Question 1, can evidence of the refugee's lack of subjective [let alone any] knowledge that use of a passport confers diplomatic protection be relied on to rebut the presumption that a refugee who acquires and travels on a passport issued by their country of origin *to travel to a third country* has intended to avail themselves of that state's protection? [my emphasis]

[36] It is undisputed that Ms. Galindo Camayo did not just use her Colombian passport to travel to third countries, but that she also used it to travel to Colombia on five separate occasions. Consequently, I would first reformulate this question as follows:

> Can evidence of the refugee's lack of subjective [let alone any] knowledge that use of a passport confers diplomatic protection be relied on to rebut the presumption that a refugee who acquires and travels on a passport issued by their country of origin has intended to avail themselves of that state's protection?

[37] It is well established that the certification requirement in subsection 74(*d*) of *IRPA* is to serve as a control on the types of cases that can be placed before this Court. However, once a question is certified for the consideration of this Court, this Court is entitled to deal with all of the issues that arise in the appeal: *Canadian Association of Refugee Lawyers v. Canada*

(Immigration, Refugees and Citizenship), 2020 FCA 196 at para. 28; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157 at para. 50.

[38] Often, as here, the central issue before the reviewing court is whether the RPD's decision was reasonable. In an appeal from a decision of the Federal Court in an application for judicial review, this Court's task is to determine first, whether the Federal Court identified the appropriate standard of review, and second, whether it properly applied that standard: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47. This has often been described as requiring that this Court "step into the shoes" of the Federal Court judge, and focus on the administrative decision. This is the approach to be followed even where the Court is dealing with questions of general importance that have been certified by the Federal Court: *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at para. 44 (*Kanthasamy* SCC).

[39] I understand the parties and the interveners to agree that the Federal Court correctly identified reasonableness as the standard to be applied in reviewing the RPD's cessation findings. The focus is therefore on the way that the Federal Court applied the reasonableness standard to the RPD's decision.

[40] However, the fact that we have certified questions before us gives rise to an awkward situation. Certified questions generally raise questions of law, including, as in this case, questions of statutory interpretation. However, the questions, as phrased by the Federal Court,

require a yes or no answer. This invites correctness review by this Court. That said, as described above, this Court is required to engage in reasonableness review on questions of statutory interpretation. This creates the possibility that, in some cases, this Court may find the RPD's interpretation of a statutory provision to be reasonable, yet this Court may say something entirely different in providing its own view of the matter in answering the certified question—something that the Supreme Court expressly tells us not to do: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 83 (*Vavilov* SCC), citing *Delios v. Canada (Attorney General)*, 2015 FCA 117 at para. 28.

[41] This Court raised this awkward situation—the misfit between answering the certified question properly and conducting reasonableness review—in *Kanthasamy v. Canada (Citizenship and Immigration)*, 2014 FCA 113 at paragraphs 30 to 37. One solution suggested by this Court in *Kanthasamy* was to regard the Court's need to answer certified questions as a statutory indication that correctness should be the standard of review. This solution would seem to gain greater credence now that the Supreme Court has held that statutory standards can have a bearing on the standard of review: *Vavilov* SCC at paras. 34-35.

[42] Nevertheless, the Supreme Court subsequently confirmed that certified questions are *not* decisive of the standard of review, and that reasonableness should remain the standard of review applied by this Court: see *Kanthasamy* SCC, above at paras. 43-44. The Supreme Court appeared to recognize that this effectively renders the answer to the certified question mere surplusage, relegating the role of such questions to fulfilling a gatekeeping function.

[43] This situation was replicated in *Vavilov*. The certified question in *Vavilov v. Canada (Minister of Citizenship and Immigration)*, 2017 FCA 132 posed a yes-no question. This Court conducted a reasonableness review of the administrative decision but gave a precise answer, akin to a correctness review answer, to the question. In dismissing the appeal, the Supreme Court in effect ratified how this Court approached the certified question.

[44] The potential misfit between reasonableness analysis and the definitive correct answer required by a certified question can, however, be avoided if the Federal Court were to formulate certified questions in a manner that asks whether a particular statutory interpretation or approach is reasonable. In this case, the second and third questions, as stated, call for a correctness response. I would therefore amend them to ask whether the particular statutory interpretation or approach suggested by the question is or is not reasonable.

[45] Consequently, I have reformulated the second and third questions as follows:

> (2) Is it reasonable for the RPD to rely on evidence of the refugee's lack of subjective [let alone any] knowledge that use of a passport confers diplomatic protection to rebut the presumption that a refugee who acquires and travels on a passport issued by their country of origin has intended to avail themselves of that state's protection?
>
> (3) Is it reasonable for the RPD to rely upon evidence that a refugee took measures to protect themselves against their agent of persecution [or that of their family member who is the principal refugee applicant] to rebut the presumption that a refugee who acquires [or renews] a passport issued by their country of origin and uses it to return to their country of origin has intended to avail themselves of that state's protection?

V. What makes a Decision Reasonable?

[46] The Supreme Court stated in *Vavilov* that "[r]easonableness review aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law": *Vavilov* SCC, above at para. 82.

[47] Reasonableness review involves both an assessment of the outcome of the case and of the reasoning process leading to that outcome: *Vavilov* SCC, above at para. 83. The Supreme Court further affirmed that it is not sufficient for the outcome of a decision to be *justifiable*. Where reasons are required, the decision must also be *justified* by the decision maker to those to whom the decision applies: *Vavilov* SCC, above at para. 86.

[48] *Vavilov* teaches that reasons "must not be assessed against a standard of perfection" and that administrative decision makers should not be held to the "standards of academic logicians": *Vavilov* SCC, above at paras. 91, 104. Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis": *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 25 (*Newfoundland Nurses*); *Vavilov* SCC, above at para. 128. Nor are they required to "make an explicit finding on each constituent element, however subordinate, leading to [their] final conclusion": *Newfoundland Nurses*, above at para. 16.

[49] That said, reasons "are the primary mechanism by which administrative decision makers show that their decisions are reasonable": *Vavilov* SCC, above at para. 81. The principles of justification and transparency thus require that administrative decision makers' reasons "meaningfully account for the central issues and concerns raised by the parties": *Vavilov* SCC, above at para. 127. The failure of a decision maker to "meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it": *Vavilov* SCC, above at para. 128. As a result, "where reasons are provided but they fail to provide a transparent and intelligible justification ... the decision will be unreasonable": *Vavilov* SCC, above at para. 136.

[50] Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention: *Vavilov* SCC, above at para. 133. The failure to grapple with the consequences of a decision should thus be considered: *Vavilov* SCC, above at para. 134, citing *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3.

[51] In this case, the seriousness of the impact of the RPD's decision on Ms. Galindo Camayo increases the duty on the RPD to explain its decision. Specifically:

> a) The loss of refugee or protected person status unquestionably has serious consequences for the affected individual and persons like her, and legislative changes have made those consequences harsher in the last decade. In the past, protected persons who became permanent residents and who were then subject to

> cessation findings were able to maintain their permanent resident status in Canada. However, with changes brought about by the *Protecting Canada's Immigration System Act*, S.C. 2012, c. 17, sections 18 and 19, this is no longer the case.
>
> b) Moreover, a cessation finding cannot be appealed to either the Immigration Appeal Division or the Refugee Appeal Division of the Immigration and Refugee Board: *IRPA*, subsections 63(3) and 110(2). Individuals whose refugee protection has been ceased are also barred from seeking a Pre-removal Risk Assessment or an application for permanent residence on humanitarian and compassionate grounds for at least one year: *IRPA*, sections 25(1.2)(*c*)(i), 40.1, 46(1)(*c.1*), 63(3), 101(1)(*b*), 108(3), 110(2), and 112(2)(*b.1*). They are also inadmissible to Canada for an indeterminate period: *IRPA*, subsection 40.1(2) and paragraph 46(1)(*c.1*), and are subject to removal from Canada "as soon as possible": *IRPA*, subsection 48(2).

[52] Where, as here, the administrative decision maker has to deal with issues of statutory interpretation, certain additional considerations must be kept in mind by both the administrative decision maker and the reviewing court.

[53] First, the administrative decision maker must deal with any statutory interpretation issues by examining the text, context and purpose of the relevant provisions. Its analysis need not be the sort of formalistic statutory interpretation exercise that a court would perform: *Vavilov* SCC, above at paras. 92 and 119; *Canada (Minister of Citizenship and Immigration) v. Mason*, 2021 FCA 156 at para. 39. Due allowance must be made for the fact that Parliament has given the responsibility to interpret the statutory provisions to an administrative decision maker, not a court, and certainly not to the reviewing court.

[54] Second, in conducting reasonableness review, a reviewing court must be on guard not to engage in what is called "disguised correctness" review. It should not interpret the statutory provision itself and then use its own interpretation as a yardstick to measure the interpretation

reached by the administrative decision maker: *Delios*, above at para. 28; *Mason*, above at para. 12. Reviewing courts can adopt specific techniques to avoid doing this: *Mason*, above at paras. 15-20, citing *Hillier v. Canada (Attorney General)*, 2019 FCA 44 at paras. 13-17.

[55] Third, largely in pre-*Vavilov* jurisprudence, the Federal Court has offered interpretations of section 108 that shed light on when cessation under section 108 will be warranted. While in some cases, decisions of the Federal Court disagree with each other, it must again be remembered that under *Vavilov*, the Federal Court is not the body that interprets section 108. Rather, it is restricted to the role of a reviewing court.

[56] Nevertheless, the leading interpretations of section 108 offered by the Federal Court that are relevant to the case at hand should be considered and assessed by the RPD, with supporting reasoning. As a general matter, judicial interpretations of statutory provisions bind the RPD unless the RPD can distinguish them or explain why a departure from them is warranted.

[57] In the end result, in cases where the administrative decision maker has to consider the proper meaning of a statutory provision, the reviewing court must be satisfied that the administrative decision maker is "alive [either implicitly or explicitly] to [the] essential elements" of text, context and purpose and has touched on at least "the most salient aspects of the text, context [and] purpose": *Vavilov* SCC, above at paras. 120-122; *Mason*, above at para. 42.

VI. Was the RPD's Decision Reasonable?

[58] In my view, the decision of the RPD was not reasonable. As set out above, many questions arise as to the proper interpretation of section 108 of *IRPA*. The RPD simply stated its own view of what section 108 requires, without any real analysis. In broad terms, it set out the text of section 108, fastened onto the *Refugee Handbook*, and then asserted its own views of what section 108 requires, without considering the text, context and purpose of section 108. It also failed to analyze and consider the Federal Court's jurisprudence in order to see whether its decision was legally constrained in any way. It then stated its conclusion on various issues, but did not provide a sufficient pathway of reasoning to explain how it got there.

[59] In saying this, I recognize that due allowance must be made for the fact that the RPD is an administrative decision maker, often staffed by lay people, with its own way of dealing with and articulating legal issues. That said, even affording that allowance to the RPD, it fell short of the mark in this case.

(a) The Interpretation of Section 108 of IRPA

[60] In the course of its reasons, the RPD made certain assertions that were, in reality, bottom-line views of what section 108 of *IRPA* means. However, it adopted these views without conducting any statutory interpretation analysis. Examples include the following:

> (a) The RPD rejected Ms. Galindo Camayo's claim that she was unaware of the potential consequences of using her Colombian passport. Noting that ignorance of the law was no excuse, the RPD observed that Ms. Galindo Camayo was an educated, sophisticated adult who could have sought information about the steps that she needed to take to secure her status in Canada. At root here was the bare assertion that ignorance of the law is no excuse under section 108, an assertion adopted without any statutory interpretation analysis.

(b) Referring to Ms. Galindo Camayo's evidence that she had engaged private security to protect her while she was in Colombia, the RPD stated that Ms. Galindo Camayo knew enough about the threats or harm that she faced in that country to hire private security to accompany her while she was there. According to the RPD, this indicated that Ms. Galindo Camayo recognized the dangers associated with travel to Colombia. However, the RPD never explains what the legal relevance of this was for the analysis under section 108. An interpretation of section 108 in light of its text, context and purpose would have assisted in this regard.

(c) The RPD noted that refugee protection lasts only as long as the reasons for fearing persecution in the country of nationality persist. It accepted that merely obtaining a Colombian passport may not, by itself, be evidence of an individual's intent to use it. However, Ms. Galindo Camayo's repeated use of her Colombian passport to visit Colombia and other countries was an indication that she intended to travel under the protection of the Colombian government and that she intended to reavail herself of the protection afforded her by her Colombian passport. However, the leap from merely carrying a Colombian passport to a finding that Ms. Galindo Camayo intended to reavail herself of the protection of the Colombian government was unexplained. The RPD's reasoning implies some undisclosed and unexplained understanding of what "intention" means, and by extension, an undisclosed and unexplained interpretation of section 108 of *IRPA*.

(d) Finally, insofar as *actual reavailment* was concerned, the RPD found that Ms. Galindo Camayo's years of travel to third countries on Colombian passports (where she could seek the assistance of the Colombian government if something went wrong), and her repeated trips to Colombia for reasons that were neither necessary nor compelling, demonstrated that she had actually reavailed herself of Colombia's protection. This involved an unexplained determination of what falls within or outside section 108, and, more particularly, the meaning of the elements of intention, voluntariness and reavailment.

(b) The Significance of the State of a Protected Person's Knowledge with Respect to the Immigration Consequences of Their Actions

[61] Key to the assessment of the reasonableness of the RPD's decision is whether it could rely on evidence of a refugee's lack of subjective knowledge that use of a passport confers diplomatic protection to rebut the presumption that a refugee who acquires and travels on a passport issued by her country of nationality has intended to avail herself of that state's

protection. On this point, there is jurisprudence in the Federal Courts that constrains the RPD's decision-making in this area.

[62] It will be recalled that the first element of the test for cessation relates to the voluntariness of the individual's actions. The RPD found that Ms. Galindo Camayo did not act voluntarily when she obtained and renewed her Colombian passports, but that she did act voluntarily when she used those passports to return to Colombia. No issue has been taken with respect to this latter finding. The question for the RPD then was whether Ms. Galindo Camayo intended by her actions to reavail herself of Colombia's protection.

[63] As noted earlier, there is a presumption that refugees who acquire and travel on passports issued by their country of nationality to travel to that country or to a third country have intended to avail themselves of the protection of their country of nationality. This is because passports entitle the holder to travel under the protection of the issuing country. This presumption is even stronger where refugees return to their country of nationality, as they are not only placing themselves under diplomatic protection while travelling, they are also entrusting their safety to governmental authorities upon their arrival.

[64] As the Federal Court observed in *Ortiz Garcia v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 1346, "[r]eavailment typically suggests an absence of risk or a lack of subjective fear of persecution. Absent compelling reasons, people do not abandon safe havens to return to places where their personal security is in jeopardy": at para. 8.

[65] Constraining case law from the Federal Court, suggests, however, that the presumption is a rebuttable one. The onus is on the refugee to adduce sufficient evidence to rebut the presumption of reavailment: *Canada (Minister of Citizenship and Immigration) v. Nilam*, 2015 FC 1154 at para. 26; *Li v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 459 at para. 42.

[66] The RPD should therefore have carried out an individualized assessment of all of the evidence before it, including the evidence adduced by the refugee as to her subjective intent, in determining whether the presumption of reavailment has been rebutted in this case.

[67] Ms. Galindo Camayo testified that she was not aware that using her Colombian passport to travel to Colombia and elsewhere could have consequences for her immigration status in Canada. The RPD rejected this claim, not because Ms. Galindo Camayo was not credible, but because it found that ignorance of the law was not a valid argument. The RPD noted that Ms. Galindo Camayo was an educated and sophisticated individual who could have sought information as to the requirements that she had to uphold in order to maintain her status in Canada. With respect, this misses the point.

[68] If it were acting reasonably, at this point in its analysis, the RPD should have considered not what Ms. Galindo Camayo *should have* known, but rather whether she *did* subjectively intend by her actions to depend on the protection of Colombia. Having failed to find that Ms. Galindo Camayo's testimony on this point lacked credibility, the RPD is deemed to have accepted her claim that she did not know that using her Colombian passport to return to

Colombia and to travel elsewhere could result in her being deemed to have reavailed herself of Colombia's protection, and that this was not her intent.

[69] The Minister contends that the cessation provisions of *IRPA* would be stripped of any meaning if it was sufficient for an individual faced with a cessation application to simply state that they did not know that their actions could put their status in Canada in jeopardy. Not only did the Federal Court explicitly reject this argument, it also overstates the issue.

[70] An individual's lack of actual knowledge of the immigration consequences of their actions may not be *determinative* of the question of intent. It is, however, a key factual consideration that the RPD must either weigh in the mix with all of the other evidence, or properly explain why the statute excludes its consideration.

[71] In order for it to make a reasonable decision, the RPD was required to take account of the state of Ms. Galindo Camayo's actual knowledge and intent before concluding that she had intended to reavail herself of Colombia's protection. I agree with the Federal Court that without this analysis, the RPD's conclusion on reavailment was not a defensible outcome based on the constraining facts and law, and that it was thus unreasonable: *Cerna v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 1074 at paras. 18-19; *Mayell v. Canada* (*Minister of Citizenship and Immigration)*, 2018 FC 139 at paras. 17-19.

[72] The RPD also conflated the question of *voluntariness* with that of *intention* to reavail and this led, in part, to an unreasonable decision. Much of the RPD's analysis of the intention issue is

taken up with an examination of the reasons cited by Ms. Galindo Camayo for returning to Colombia. I agree with Ms. Galindo Camayo that the question of whether one intended to reavail oneself of the protection of one's country of origin has nothing to do with whether the motive for travel was necessary or justified: Federal Court decision at para. 31.

(c) The Significance of the Fact that Ms. Galindo Camayo Took Measures to Protect Herself in Colombia

[73] Key to the assessment of the reasonableness of the RPD decision is whether it could rely on evidence that Ms. Galindo Camayo took measures to protect herself against her agent of persecution while she was in Colombia to rebut the presumption of reavailment.

[74] According to Ms. Galindo Camayo, her family engaged the services of professional security guards to protect her on each of her trips to Colombia, and documentary evidence from security companies was provided to support her evidence in this regard.

[75] The RPD appears to have accepted Ms. Galindo Camayo's evidence on this point. It found however that while she might not have been fully aware of the reasons why her family had fled Colombia, Ms. Galindo Camayo knew enough about the dangers associated with travel to Colombia to engage private security personnel to accompany her while she was there.

[76] Given that the discussion with respect to Ms. Galindo Camayo's use of private security takes place in the section of the RPD's reasons dealing with intention, it appears that the RPD

understood this evidence to support its conclusion that by travelling to Colombia, Ms. Galindo Camayo intended to reavail herself of that country's protection.

[77] I agree with Ms. Galindo Camayo that this was an unreasonable finding: the evidence with respect to her use of private security while she was in Colombia speaks not to her intention to entrust her protection to Colombia, but is, rather, to the opposite effect. It is evidence of Ms. Galindo Camayo's ongoing subjective fear of the situation in Colombia, and her lack of confidence in the ability of the state to protect her.

[78] Once again, Ms. Galindo Camayo's evidence on this point was not necessarily determinative of the issue of intent, and it was open to the RPD to reject it. However, it had to at least consider it properly and, if it found it not to be probative or persuasive, to explain why that was the case. Its failure to do so in this case is a further reason for concluding that the RPD's decision was unreasonable.

[79] Before concluding this portion of these reasons, I would note that the RPD appears to have considered Ms. Galindo Camayo's use of her passport to travel to Colombia as satisfying all three elements of the test for reavailment (voluntary, intentional, and actual reavailment). This is evident from paragraph 22 of its reasons, where it found that Ms. Galindo Camayo's use of her Colombian passport for travel was *voluntary*. Similarly, at paragraph 31 of its reasons the RPD found that Ms. Galindo Camayo's use of her Colombian passport showed her *intention* to travel under the protection of Colombia, and paragraph 34 of its reasons, where the RPD found that Ms. Galindo Camayo's use of her Colombian passport to travel to Colombia and elsewhere was

evidence of *actual reavailment*. This approach left little room for Ms. Galindo Camayo to demonstrate that even though she had used her Colombian passport for travel, she did not intend to avail herself of the protection of that country.

VI. Some Final Comments

[80] This case represents the first opportunity that our Court has had to deal with a cessation case since the Supreme Court's decision in *Vavilov*. As such, the RPD may benefit from our guidance in this area. It would also be unfortunate if we remitted this case for redetermination and the RPD was to repeat some of the errors that occurred in this case, potentially leading to the "endless merry-go-round of judicial reviews and subsequent reconsiderations" that the Supreme Court cautioned against in *Vavilov*: above, at para. 142.

[81] It should be noted, however, that in providing this guidance, the Court is not recommending or suggesting any outcome one way or the other in relation to the cessation application involving Ms. Galindo Camayo. The merits of the redetermination are for the RPD to determine.

[82] As noted earlier, the RPD's reasons on the redetermination need not involve a microscopic examination of everything that could possibly be said on the matter. There need only be a reasoned explanation concerning the relevant evidence and key issues, including the key arguments made by the parties: *Sexsmith v. Canada (Attorney General)*, 2021 FCA 111 at para. 36.

[83] Moreover, as the Federal Court observed in this case, the outcome in each cessation proceeding will be largely fact-dependent. I further agree with the submission of the intervener, United Nations High Commissioner for Refugees, that the test for cessation should not be applied in a mechanistic or rote manner. The focus throughout the analysis should be on whether the refugee's conduct—and the inferences that can be drawn from it—can reliably indicate that the refugee intended to waive the protection of the country of asylum.

[84] Thus, in dealing with cessation cases, the RPD should have regard to the following factors, at a minimum, which may assist in rebutting the presumption of reavailment. No individual factor will necessarily be dispositive, and all of the evidence relating to these factors should be considered and balanced in order to determine whether the actions of the individual are such that they have rebutted the presumption of reavailment.

- The provisions of subsection 108(1) of *IRPA*, which operate as a constraint on the RPD in arriving at a reasonable decision: *Vavilov* SCC, above at paras. 115-124;

- The provisions of international conventions such as the *Refugee Convention* and guidelines such as the *Refugee Handbook*, as international law operates as an important constraint on administrative decision makers such as the RPD. Legislation is presumed to operate in conformity with Canada's international obligations, and the legislature is "presumed to comply with ... the values and principles of customary and conventional international law": *Vavilov* SCC, above at para. 114, citing *R. v. Hape*, 2007 SCC 26 at para. 53; *R. v. Appulonappa*, 2015 SCC 59 at para. 40; see also *IRPA*, paragraph 3(3)(*f*).

- The severity of the consequences that a decision to cease refugee protection will have for the affected individual. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes: *Vavilov* SCC, above at paras. 133-135;

- The submissions of the parties. The principles of justification and transparency require that an administrative decision maker's reasons meaningfully engage with the central issues and the concerns raised by the parties: *Vavilov* SCC, above at paras. 127-128;

- The state of the individual's knowledge with respect to the cessation provisions. Evidence that a person has returned to her country of origin in the full knowledge that it may put her refugee status in jeopardy may potentially have different significance than evidence that a person is unaware of the potential consequences of her actions;

- The personal attributes of the individual such as her age, education and level of sophistication;

- The identity of the agent of persecution. That is, does the individual fear the government of her country of nationality or does she claim to fear a non-state actor? Evidence that a person who claims to fear the government of her country of nationality nevertheless discloses her whereabouts to that same government by applying for a passport or entering the country may be interpreted differently than evidence with respect to individuals seeking passports who fear non-state actors.

In this latter situation, applying for a passport or entering the country will not necessarily expose the individual to their agent of persecution. This may be especially so when all the individual has done is apply for a passport: applying for a passport may have little bearing on the risk faced by a victim of domestic violence, for example, or her level of subjective fear;

- Whether the obtaining of a passport from the country of origin is done voluntarily;

- Whether the individual actually used the passport for travel purposes. If so, was there travel to the individual's country of nationality or to third countries? Travel to the individual's country of nationality may, in some cases, be found to have a different significance than travel to a third country;

- What was the purpose of the travel? The RPD may consider travel to the country of nationality for a compelling reason such as the serious illness of a family member to have a different significance than travel to that same country for a more frivolous reason such as a vacation or a visit with friends;

- The frequency and duration of the travel;

- What the individual did while in the country in question;

- Whether the individual took any precautionary measures while she was in her country of nationality. Evidence that an individual took steps to conceal her return, such as remaining sequestered in a home or hotel throughout the visit or

engaging private security while in the country of origin, may be viewed differently than evidence that the individual moved about freely and openly while in her country of nationality;

- Whether the actions of the individual demonstrate that she no longer has a subjective fear of persecution in the country of nationality such that surrogate protection may no longer be required; and

- Any other factors relevant to the question of whether the particular individual has rebutted the presumption of reavailment in a given case.

VII. Conclusion

[85] For these reasons, I would dismiss the appeal. I would answer the certified questions and, in the case of the second and third questions, the questions as reformulated, as follows:

> (1) Where a person is recognized as a Convention refugee or a person in need of protection by reason of being listed as a dependent on an inland refugee claim heard before the Refugee Protection Division [RPD], but where the RPD's decision to confer protection does not confirm that an individual or personalized risk assessment of the dependent was performed, is that person a Convention refugee as contemplated in paragraph 95(1) of the [*Immigration and Refugee Protection Act*, S.C. 2001, c. 27] and therefore subject to cessation of refugee status pursuant to subsection 108(2) of the *IRPA*?
>
> This question no longer needs to be answered.
>
> (2) Is it reasonable for the RPD to rely upon evidence of the refugee's lack of subjective [let alone any] knowledge that use of a passport confers diplomatic protection to rebut the presumption that a refugee who acquires and travels on a passport issued by their country of origin has intended to avail themselves of that state's protection?
>
> Yes.

(3) Is it reasonable for the RPD to rely upon evidence that a refugee took measures to protect themselves against their agent of persecution [or that of their family member who is the principal refugee applicant] to rebut the presumption that a refugee who acquires [or renews] a passport issued by their country of origin and uses it to return to their country of origin has intended to avail themselves of that state's protection?

Yes.

"Anne L. Mactavish"

J.A.

"I agree.
David Stratas J.A."

"I agree.
Marianne Rivoalen J.A."

APPENDIX

Paragraph 3(3)(*f*) of *IRPA*

Application	**Interprétation et mise en œuvre**
3 (3) This Act is to be construed and applied in a manner that	**3 (3)** L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet :
…	[…]
(f) complies with international human rights instruments to which Canada is signatory.	f) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.

Subparagraph 25(1.2)(*c*)(i) of *IRPA*

Exceptions	**Exceptions**
25 (1.2) The Minister may not examine the request if	**25 (1.2)** Le ministre ne peut étudier la demande de l'étranger faite au titre du paragraphe (1) dans les cas suivants :
…	[…]
(c) subject to subsection (1.21), less than 12 months have passed since	c) sous réserve du paragraphe (1.21), moins de douze mois se sont écoulés depuis, selon le cas :
(i) the day on which the foreign national's claim for refugee protection was rejected or determined to be withdrawn — after substantive evidence was heard — or abandoned by the Refugee Protection Division, in the case where no appeal was made and no application was made to the Federal Court for leave to commence an application for judicial review …	(i) le rejet de la demande d'asile ou le prononcé de son désistement — après que des éléments de preuve testimoniale de fond aient été entendus — ou de son retrait par la Section de la protection des réfugiés, en l'absence d'appel et de demande d'autorisation de contrôle judiciaire, …

Section 40.1 of *IRPA*

Cessation of refugee protection — foreign national	**Perte de l'asile — étranger**
40.1 (1) A foreign national is inadmissible on a final determination under subsection 108(2) that their refugee protection has ceased.	**40.1 (1)** La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant la perte de l'asile d'un étranger emporte son interdiction de territoire.
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.

Paragraph 46(1)(*c.1*) of *IRPA*

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; […]

Subsection 48(2) of *IRPA*

Effect	**Conséquence**
48 (2) If a removal order is enforceable, the foreign national against whom it was made must leave	**48 (2)** L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du

Canada immediately and the order must be enforced as soon as possible.	Canada, la mesure devant être exécutée dès que possible.

Subsection 63(3) of *IRPA*

Right to appeal removal order	**Droit d'appel : mesure de renvoi**
63 (3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision to make a removal order against them made under subsection 44(2) or made at an admissibility hearing.	**63 (3)** Le résident permanent ou la personne protégée peut interjeter appel de la mesure de renvoi prise en vertu du paragraphe 44(2) ou prise à l'enquête.

Paragraph 101(1)(*b*) of *IRPA*

Ineligibility	**Irrecevabilité**
101 (1) A claim is ineligible to be referred to the Refugee Protection Division if	**101 (1)** La demande est irrecevable dans les cas suivants :
…	[…]
(b) a claim for refugee protection by the claimant has been rejected by the Board; …	b) rejet antérieur de la demande d'asile par la Commission; […]

Subsections 108(1), (2) and (3) of *IRPA*

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 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 nationality;	b) il recouvre volontairement 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.
Cessation of refugee protection	**Perte de l'asile**
108 (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).	**108 (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).
Effect of decision	**Effet de la décision**
108 (3) If the application is allowed, the claim of the person is deemed to be rejected.	**108 (3)** Le constat est assimilé au rejet de la demande d'asile.

Subsection 110(2) of *IRPA*

Restriction on appeals	**Restriction**
110 (2) No appeal may be made in respect of any of the following:	**110 (2)** Ne sont pas susceptibles d'appel :
(a) a decision of the Refugee Protection Division allowing or rejecting the claim for refugee	a) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile d'un étranger désigné;

protection of a designated foreign national;

(b) a determination that a refugee protection claim has been withdrawn or abandoned;

b) le prononcé de désistement ou de retrait de la demande d'asile;

(c) a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;

c) la décision de la Section de la protection des réfugiés rejetant la demande d'asile en faisant état de l'absence de minimum de fondement de la demande d'asile ou du fait que celle-ci est manifestement infondée;

(d) subject to the regulations, a decision of the Refugee Protection Division in respect of a claim for refugee protection if

d) sous réserve des règlements, la décision de la Section de la protection des réfugiés ayant trait à la demande d'asile qui, à la fois :

(i) the foreign national who makes the claim came directly or indirectly to Canada from a country that is, on the day on which their claim is made, designated by regulations made under subsection 102(1) and that is a party to an agreement referred to in paragraph 102(2)(d), and

(i) est faite par un étranger arrivé, directement ou indirectement, d'un pays qui est — au moment de la demande — désigné par règlement pris en vertu du paragraphe 102(1) et partie à un accord visé à l'alinéa 102(2)d),

(ii) the claim — by virtue of regulations made under paragraph 102(1)(c) — is not ineligible under paragraph 101(1)(e) to be referred to the Refugee Protection Division;

(ii) n'est pas irrecevable au titre de l'alinéa 101(1)e) par application des règlements pris au titre de l'alinéa 102(1)c);

(d.1) a decision of the Refugee Protection Division allowing or rejecting a claim for refugee protection made by a foreign national who is a national of a country that was, on the day on which the decision was made, a

d.1) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile du ressortissant d'un pays qui faisait l'objet de la désignation visée au paragraphe 109.1(1) à la date de la décision;

country designated under subsection 109.1(1);

(e) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister for a determination that refugee protection has ceased;

(f) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister to vacate a decision to allow a claim for refugee protection.

e) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant la perte de l'asile;

f) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant l'annulation d'une décision ayant accueilli la demande d'asile.

Paragraph 112(2)(*b.1*) of *IRPA*

Exception

112 (2) Despite subsection (1), a person may not apply for protection if

…

(b.1) subject to subsection (2.1), less than 12 months, or, in the case of a person who is a national of a country that is designated under subsection 109.1(1), less than 36 months, have passed since

(i) the day on which their claim for refugee protection was rejected — unless it was deemed to be rejected under subsection 109(3) or was rejected on the basis of section E or F of Article 1 of the Refugee Convention — or determined to be withdrawn or abandoned by the Refugee Protection Division, in the

Exception

112 (2) Elle n'est pas admise à demander la protection dans les cas suivants :

[…]

b.1) sous réserve du paragraphe (2.1), moins de douze mois ou, dans le cas d'un ressortissant d'un pays qui fait l'objet de la désignation visée au paragraphe 109.1(1), moins de trente-six mois se sont écoulés depuis, selon le cas :

(i) le rejet de sa demande d'asile — sauf s'il s'agit d'un rejet prévu au paragraphe 109(3) ou d'un rejet pour un motif prévu aux sections E ou F de l'article premier de la Convention — ou le prononcé de son désistement ou de son retrait par la Section de la protection des réfugiés, en l'absence d'appel et de

case where no appeal was made and no application was made to the Federal Court for leave to commence an application for judicial review, or

demande d’autorisation de contrôle judiciaire,

(ii) in any other case, the latest of

(ii) dans tout autre cas, la dernière des éventualités ci-après à survenir :

(A) the day on which their claim for refugee protection was rejected — unless it was deemed to be rejected under subsection 109(3) or was rejected on the basis of section E or F of Article 1 of the Refugee Convention — or determined to be withdrawn or abandoned by the Refugee Protection Division or, if there was more than one such rejection or determination, the day on which the last one occurred,

(A) le rejet de la demande d’asile — sauf s’il s’agit d’un rejet prévu au paragraphe 109(3) ou d’un rejet pour un motif prévu aux sections E ou F de l’article premier de la Convention — ou le prononcé de son désistement ou de son retrait par la Section de la protection des réfugiés ou, en cas de pluralité de rejets ou de prononcés, le plus récent à survenir,

(B) the day on which their claim for refugee protection was rejected — unless it was rejected on the basis of section E or F of Article 1 of the Refugee Convention — or determined to be withdrawn or abandoned by the Refugee Appeal Division or, if there was more than one such rejection or determination, the day on which the last one occurred, and

(B) son rejet — sauf s’il s’agit d’un rejet pour un motif prévu aux sections E ou F de l’article premier de la Convention — ou le prononcé de son désistement ou de son retrait par la Section d’appel des réfugiés ou, en cas de pluralité de rejets ou de prononcés, le plus récent à survenir,

(C) the day on which the Federal Court refused their

(C) le refus de l’autorisation de contrôle

application for leave to commence an application for judicial review, or denied their application for judicial review, with respect to their claim for refugee protection, unless that claim was deemed to be rejected under subsection 109(3) or was rejected on the basis of section E or F of Article 1 of the Refugee Convention; …

judiciaire ou le rejet de la demande de contrôle judiciaire par la Cour fédérale à l'égard de la demande d'asile — sauf s'il s'agit d'un rejet de cette demande prévu au paragraphe 109(3) ou d'un rejet de celle-ci pour un motif prévu aux sections E ou F de l'article premier de la Convention; […]

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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