

Update on Cessation



**OTTAWA IMMIGRATION LAW CONFERENCE
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Cessation (s. 108 *IRPA*)



- (a) voluntary re-availment of the protection of the country of nationality;
- (b) voluntary re-acquisition of citizenship of that country;
- (c) acquisition of a new nationality in a safe country;
- (d) voluntary re-establishment in the country of origin;
- (e) where the reasons for which the person sought protection have ceased to exist.

Consequences of Cessation under s. 108 (a) to (d)



- Inadmissibility (s. 40.1 *IRPA*)
- Refugee Claim deemed to be rejected (s. 108(3) *IRPA*)
- Loss of permanent resident status (s. 46(1)(c.1) *IRPA*)
- No right to work or study without a permit (s. 30(1) *IRPA*)
- No right of appeal to RAD or IAD (s. 110(2)(c), 63(3) *IRPA*)

More consequences...



- No statutory stay of removal pending judicial review of cessation decision (s. 231(1) *IRP Regs*)
- Removal from Canada by departure order “as soon as possible” (s. 227 (b.1) *Regs*; s. 48(2) *IRPA*)
- In most cases, no consideration of H&C factors until one year after cessation decision (s. 25 (1.2) *IRPA*)
- No TRP for 12 months after cessation decision (s. 24(4) *IRPA*)
- No Pre-Removal Risk Assessment for one or three years (in the case of persons from DCOs) (s. 112(2) (b.1) *IRPA*)

Why?



- Jason Kenney: The new cessation provisions apply **“if people come to Canada, make an asylum claim that is accepted by the IRB, but shortly after receiving such status, they return to live in the country of origin which they allegedly fled due to a fear of persecution.”**
- Cessation applications will be made against persons **“only if they have done something to demonstrate essentially that they have defrauded our system.”**

But...



- Kandasamy (IMM-6875-14) (5 years/visits after change in country conditions)
- Al-Obeidi (IMM-7389-14)(10 years/visits after change in country conditions)
- Stanizai (2014 FC 74)(10 years/visits after change in country conditions)
- Bashir (2015 FC 51), Lee (IMM-2888-14) (passport for travel to 3rd country)

Prevention (Informing our clients)



- S. 108 applies to all protected persons, including resettled refugees (*Siddiqui* 2015 FC 329)
- It does not apply to dependents of CRs who have not themselves been determined to be CRs (*Esfand* VB4-01938; IMM-1133-15)
- Permanent residence is not a shield to cessation proceedings
- Beware of the triggers of cessation: travel to the country of nationality; applying for a national passport; applying for Canadian citizenship

Prevention (Discretion not to proceed)



- The duty of fairness in a cessation application is “minimal”. The government is not required to notify the person of its intent to commence such proceedings, or hold an interview. (*Olvera Romero*, 2014 FC 671); VS.
- “Given the importance of the decision to the Applicant, the duty of fairness required that the Applicant be given an opportunity to present full submissions as to why the application to the RPD should not be made.” *Bermudez*, 2015 FC 639)

Prevention (*Bermudez*, cont'd)



- 1. CBSA officers have a discretion not to proceed with a cessation application
- 2. Where the person concerned is a permanent resident, the factors set out in the Immigration Manual ENF 24 are relevant to the exercise of that discretion
- 3. They are also relevant to the question of cessation – i.e. whether the person has re-availed or re-established

At the hearing (Requirements for re-availment)



- For there to be re-availment, 3 requirements must be met:
 - 1. the refugee must act voluntarily;
 - 2. the refugee must have the intention to re-avail herself of the protection of her country; and
 - 3. there must be actual re-availment.

At the hearing (Obtaining a national passport)



- “When a person applies for a passport from her country there is a (rebuttable) presumption that she has re-availed herself of the protection of that country.” (*Cabrera-Cadena*, 2012 FC 67)
- In deciding whether obtaining a passport from one’s country constitutes re-availment, “the motivation of the refugee applying for the passport must be taken into account”. (*Bashir*, 2015 FC 51; *Chandrakumar*, [1997] F.C.J. No. 615)

Hathaway and Foster on the passport presumption



- “[The presumption that acquisition of a passport constitutes re-availment] is problematic, as it shifts the burden to the refugee to disprove a presumed – but factually highly unlikely – premise that securing or renewing a passport evinced the refugee’s intention to renounce refugee status in favour of the country of origin’s protection. The... presumption is ironically at odds with the UNHCR’s own insistence that...every case has to be assessed on its own merits.” (*The Law of Refugee Status*, 2nd edition, page 468)

At the hearing (Visiting the home country)



- Travelling back to one's country to visit a sick relative alone cannot justify re-availment. (*Siddiqui*, 2015 FC 329)
- However, returning to establish a business or to enroll a child in school are indicators of re-availment (*Siddiqui*)
- Risk to the person concerned in the home country is an irrelevant factor in a cessation hearing. (*Balouch* 2015 FC 765)

Hathaway and Foster on return to country of origin



- “The purpose of Art. 1(c)(4) – (re-availment) is to withdraw refugee status where there is evidence of diplomatic or consular protection, a matter not in play when a refugee returns to her own country...In some situations, return will be a prelude to re-establishment...but unless that is the case, the simple fact of return to the country of origin is not the basis of withdrawal or withholding of refugee status.” (*The Law of Refugee Status*, 2nd Edition, pages 469-470)

At the hearing (s.108(1) (e) *IRPA*)



- A finding under s. 108 (1)(e) does not result in the loss of permanent resident status.
- There is a question whether the RPD can make a finding that refugee status has ceased under s. 108(1)(e) when the Minister has not sought cessation under that provision. (see, for example, *Al-Obeidi* (IMM-7389-14), *Tauqir* (IMM-6457-14))

Other cases



- *Nsende* 2008 FC 531 (requirements for re-availment)
- *El Kaissi* 2011 FC 1234; *Camargo* 2003 FC 1434 (re-availment requires more than a temporary visit)
- *Kanji* [1997] FCJ no.374; *Shanmugarajah* [1992] FCJ no. 583 (not re-availment if compelled to return to one's country)
- *Stanizai* 2014 FC 74 (Mandamus ordering CIC to grant citizenship after cessation application made)

Before the Courts



- *Yuan* (IMM-5365-14) (Constitutionality of s. 40.1 (2))
- *Andrade* (IMM-7383-14) (Best interests of the child)
- *Al-Obeidi* (IMM-7389-14) (Cessation under s. 108(1)(e) when not raised by the Minister)