

Federal Court



Cour fédérale

**Date: 20200206**

**Docket: IMM-2155-19**

**Citation: 2020 FC 213**

**Ottawa, Ontario, February 6, 2020**

**PRESENT: The Honourable Madam Justice Fuhrer**

**BETWEEN:**

**MARIA CAMILA GALINDO CAMAYO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicant, Maria Camila Galindo Camayo, is a citizen of Colombia. Since obtaining protected person status in Canada as a minor, she has renewed and travelled under her Colombian passport numerous times, including returning to Colombia on five occasions. On January 27, 2017, the Minister of Citizenship and Immigration [MCI] applied to cease her

refugee status pursuant to section 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB], pursuant to IRPA s 108(3), allowed the MCI's Application to Cease Refugee Protection [ACRP] on March 15, 2019 and deemed the original claim for protection under IRPA s 95(1) to be rejected. This is an application for judicial review pursuant to IRPA s 72(1) of the RPD's decision.

[1] For the reasons that follow, I grant the judicial review application.

## II. Background

[2] When Ms. Galindo Camayo was 12 years old, she came to Canada with her mother and brothers. Her father, who suffers from mental illness and recurrent cancer, remained in Colombia. Ms. Galindo Camayo's mother filed an in-Canada claim for refugee protection on behalf of her and the children, alleging the Fuerzas Armadas Revolucionarias de Colombia was extorting her and that the Colombian state was unable to protect her and the children. Their claims were accepted on August 11, 2010, and Ms. Galindo Camayo was granted protected person status under IRPA s 95. Ms. Galindo Camayo later obtained permanent resident [PR] status on February 1, 2012 as a dependent listed on her mother's principal application.

[3] Since obtaining protected person status in Canada, Ms. Galindo Camayo has obtained or renewed her Colombian passport twice. The first passport, which her mother applied for on her behalf, issued on December 12, 2011. She herself renewed her passport a second time on August

28, 2013 after turning 18 while in Colombia and learning she would not be permitted to leave the country on the passport issued to her as a child.

[4] In addition to renewing her passport, Ms. Galindo Camayo has returned to Colombia five times since obtaining protected person status. The first four times allegedly were to visit and care for her father. She explains her father refuses to leave Colombia and join them in Canada permanently despite having valid status to do so because he feels his presence would place an additional burden on the family, who already is taking care of her severely ill brother. She also explains her father occasionally visits the family, but provides little to no notice. The final time Ms. Galindo Camayo travelled to Colombia was to participate in a humanitarian mission to aid children in poverty.

[5] Ms. Galindo Camayo alleges that during each of her visits to see family in Colombia, she took private measures to keep her safe and hidden. This included hiring professional armed guards, travelling in multiple cars with different licence plates which took different routes, and remaining inside family members' homes as much as possible. She claims no one knew she was in Colombia aside from her family members and the private security they employed. On her humanitarian mission, she hired her own security.

[6] Ms. Galindo Camayo also has travelled to several other countries on her Colombian passport, including Cuba (2012), the USA (2014), and Mexico (2015-2016, three times).

[7] On January 27, 2017, the Minister applied to cease her protected person status on the basis she had renewed and travelled under her Colombian passport, including to Colombia. Ms. Galindo Camayo alleges she was unaware until then of Canada's cessation laws and their consequences, which had come into effect only after her first visit to Colombia. Once aware, she applied for and since has travelled only on a Refugee Travel Document [RTD], and has not returned to Colombia. The RPD held a cessation hearing on March 11, 2019 in response to the Minister's ACRP, and issued its reasons on March 15, 2019.

### III. Impugned Decision

[8] The RPD first summarized the Minister's application grounds. Ms. Galindo Camayo had: (i) voluntarily reavailed herself of the protection of her country of nationality, Colombia, by obtaining a Colombian passport on two occasions; (ii) used the Colombian passport to travel to Colombia and other countries; and (iii) intended to reavail herself as she used the passport for the purposes of vacationing and for a humanitarian mission.

[9] The RPD next summarized Ms. Camayo's position: (i) she did not reavail herself voluntarily because her parents applied for the first passport on her behalf while she was a minor, and Colombia would not allow her to leave without an "adult passport" when she turned 18 while in Colombia in 2013; (ii) she only travelled to Colombia to assist her sick, ailing father [the first four times] and to volunteer for a humanitarian mission [the fifth and last time]; (iii) while her mother never explained the issues they had in Colombia or the reasons why they came to Canada, she hired private security to be with her at all times on all five of her trips because her parents warned her it was very dangerous; and (iv) she did not understand the

potential consequences to her status in Canada with respect to use of her Colombian passports to travel to Colombia and other countries. The RPD noted once aware of these consequences, Ms. Galindo Camayo, obtained an RTD and had relied on it to travel outside Canada since.

[10] Relying on IRPA s 108, Rule 64 of the *Refugee Protection Division Rules*, SOR/2012-256, and the United Nations High Commissioner for Refugees [UNHCR] *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, UN Doc HCR/1P/4/ENG/REV. 4 (reissued February 2019), online: <<https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>> [UNHCR Handbook] - Article 1C(1) of the 1951 *Convention Relating to the Status of Refugees* and its *1967 Protocol* [Convention], the RPD confirmed cessation proceedings consider the following three factors, and assessed each in turn, outlined in paragraph 119 of the UNHCR Handbook:

- (a) voluntariness: the refugee must act voluntarily;
- (b) intention: the refugee must intend by his [their] action to reavail himself [themselves] of the protection of the country of his [their] nationality; and
- (c) reavailment: the refugee must actually obtain such protection.

### **Voluntariness**

[11] The RPD accepted Ms. Galindo Camayo did not acquire her passports voluntarily, given she was a minor when the decision and action in obtaining the first passport was made by her parents, and officials in Colombia told her she must obtain the second one in order to leave the country. The RPD considered these circumstances outside her control. The RPD emphasized, however, “the act of acquiring a passport is not the only factor to review when assessing the

voluntariness of [her] actions” and found that she acted voluntarily when she used these passports to travel to Colombia and other countries. The RPD found there was insufficient evidence to suggest she was compelled to use her Colombian passport in order to make any of these trips.

### **Intention**

[12] The RPD found that while some of Ms. Galindo Camayo’s trips were for family or humanitarian reasons, others were for personal pleasure. It pointed to Ms. Galindo Camayo’s travels to Colombia in 2013 and 2014 and her father’s trips to Canada during this period as well, and emphasized “refugee protection does not have a provision that allows one to return to a country from where one seeks protection simply because they have a need to visit and assist their sick parent.” This was especially so given Ms. Galindo Camayo’s father had PR status in Canada and could seek assistance here, as he had done in the past. Given this, the RPD found she was not compelled to return. The RPD also noted while Ms. Galindo Camayo generally knew the dangers associated with going back, as evidenced from her hiring personal security, she chose to do so regardless. The RPD further pointed to Ms. Galindo Camayo’s humanitarian trip, finding that “while it [was] very honourable that [she] wanted to travel to Colombia in order to give to children in need, [she] did not need to travel to Colombia for these reasons but she chose to do so on her own goodwill and volition.”

[13] Overall, the RPD found that refugee protection lasts only as long as the reasons for fearing persecution in the country of origin persist; that a passport entitles the holder to travel under the protection of the issuing government to and from foreign countries; and that travelling multiple times on her Colombian passport, including to Colombia itself, demonstrated her intent

to reavail herself of Colombia's protection. The RPD noted Ms. Galindo Camayo is an educated, sophisticated adult who could have sought information on what was expected of her to retain her Canadian status. Thus, the RPD rejected her submission that she did not know the consequences of relying on her passport, finding "ignorance of the law is not a valid argument."

### **Availment**

[14] The RPD found Ms. Galindo Camayo's years of travel to Colombia and other countries using Colombian passports, for purposes that were not shown to be sufficiently necessary or compelling, demonstrated her intention to reavail and meant Colombia was responsible for her protection while travelling abroad. Noting IRPA s 108 is silent on the topic of humanitarian and compassionate [H&C] grounds, the RPD found it does not have jurisdiction to consider H&C grounds in Ms. Galindo Camayo's case.

#### IV. Issues

- A. *Does the RPD have jurisdiction to cease dependent Protected Person status? This involves a related or subsidiary issue: did the RPD interpret IRPA s 108(1)(a) too broadly?*
- B. *Was the decision reasonable? This also involves a related or subsidiary issue: did the RPD apply the correct legal test to reavailment?*

#### V. Relevant Provisions

[15] The relevant provisions are reproduced in Annex A.

## VI. Analysis

- A. *Does the RPD have jurisdiction to cease dependent Protected Person status? This involves a related or subsidiary issue: did the RPD interpret IRPA s 108(1)(a) too broadly?*

[16] Ms. Galindo Camayo asserts this is a question of true *vires*: *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 [CHRC]. I disagree. Until December 2019 when I heard this matter, it generally was accepted that where an administrative decision maker interprets its home statute, the presumed standard of review is reasonableness: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [Alberta Teachers] at para 30; *Canada (Citizenship and Immigration) v Paramo de Gutierrez*, 2016 FCA 211 at paras 28-29; CHRC, above at para 38. Given the RPD issued the cessation decision, it implicitly decided it had jurisdiction. Further, the Supreme Court of Canada [SCC] recently closed the door on “jurisdictional questions as a distinct category attracting correctness review”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 65-68. This Court therefore must assess whether this interpretation was reasonable.

[17] The December 19, 2019 decision in *Vavilov* adopted a rearticulated approach for determining the standard of review for reviewing the merits of administrative decisions. The starting point is that a rebuttable presumption of reasonableness is applicable in all cases: *Vavilov*, above at paras 10-11. I find none of the situations in which the presumption of reasonableness is rebutted [summarized in *Vavilov*, above at paras 17 and 69] is present in the instant proceeding. Further, “[i]n conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that



the decision as a whole is transparent, intelligible and justified”: *Vavilov*, above at para 15. The SCC defined a reasonable decision owed deference as “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”: *Vavilov*, above at para 85. The SCC found “it is not enough for the outcome of a decision to be justifiable ...[,] ...the decision must also be justified ...”: *Vavilov*, above at para 86 [emphasis in original]. In sum, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility – and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, above at para 99. The party challenging the decision has the onus of demonstrating that it is unreasonable: *Vavilov*, above at para 100.

[18] Ms. Galindo Camayo submits she obtained her protected person status solely because of family ties [*i.e.* as her mother’s dependent], and hence she does not fall within the ambit of IRPA s 108. If a protected person did not receive a personal, independent assessment of their risk of persecution, their status cannot be ceased: *Canada (Citizenship and Immigration) v Heidari Gezik*, 2015 FC 1268 [*Gezik*] at paras 4-8, 20, 32, 60-62; *Canada (Citizenship and Immigration) v Esfand*, 2015 FC 1190 [*Esfand*] at paras 18, 21, 25, 27. She submits *Gezik* and *Esfand* apply equally to inland and overseas refugee claims, as both processes grant protected person status based on either an individual risk assessment, or through family ties to someone who underwent a risk assessment. She argues her own personal risk never was assessed: she was only 12 years old when she accompanied her mother to Canada, was not involved in any incidents of persecution, was not aware of why they fled Colombia to be closer to relatives in Canada, and was only aware of generalized risks. Moreover, she asserts the Minister did not tender evidence

on record to show a personalized risk assessment was performed for her in connection with the original RPD claim. As such, she submits her status is premised on the IRPA's goal of family reunification.

[19] Finally, Ms. Galindo Camayo argues the jurisprudence relied on by the Minister is not applicable to her instance, as only one case—*Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 [*Abadi*—involves an applicant whose protected person status was derived from being an accompanying dependent. She submits *Abadi* did not consider or engage with *Gezik* or *Esfand*, but relied exclusively on the reavilment test in *Nsende v Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 [*Nsende*] at para 13.

[20] In sum, Ms. Galindo Camayo submits she was outside the ambit of IRPA s 108 and hence, the RPD lacked jurisdiction to cease her protected person status.

[21] In reply, the Minister emphasizes there are important distinctions between overseas and inland refugee applications. In the overseas application, there are two groups within the Convention refugees abroad [CRA] class: principal applicants who have been determined to be Convention refugees on the basis of having a well-founded fear of persecution, and family members of the principal applicant who are deemed Convention refugees without any assessment as to whether they meet the test: *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] ss 140, 145. The Minister asserts, however, Ms. Galindo Camayo's personal risk was assessed inland by the RPD, as per IRPA s 95, and she was granted protected person status in her own right. The RPD has found on other occasions it has jurisdiction to cease protected person

status for individuals afforded protection under IRPA s 95, including: *Abadi*, above at paras 18-19; *Siddiqui v Canada (Citizenship and Immigration)*, 2016 FCA 134 at paras 17-19 [*Siddiqui*]; *Canada (Citizenship and Immigration) v Bermudez*, 2016 FCA 131 at paras 22-24. In particular, the Federal Court of Appeal has found “the means or vehicle by which protection [i.e. protected person status] was conferred [having regard to IRPA ss 12(3) and 95] is irrelevant”: *Siddiqui*, above at para 19.

[22] Canada currently confers refugee protection and hence protected person status essentially in one of two ways under IRPA s 95:

1. By determining an individual is a member of one of the classes prescribed in IRPR Part 8, Division 1 [namely, the Convention refugees abroad [CRA] class, or the Country of Asylum [COA] class: IRPR ss 144, 146(2)], and granting them permanent or temporary residency.
2. By determining an individual is a Convention refugee or a person in need of similar protection, and accepting their inland refugee claim [*i.e.* claim made to the IRB] or application for protection [*i.e.* a pre-removal risk assessment application made to the MCI].

[23] The mechanisms related to conferring refugee protection for dependent family members, however, are different between the two processes. For simplicity, I refer only to the CRA class, although the same general process applies to the COA class.

[24] Overseas dependent claimants obtain protection by seeking permanent residence on the basis of being a member of the CRA class. Once an applicant is determined to be a Convention refugee [*i.e.* pursuant to IRPA s 96], all members of the family become members of the CRA class: IRPR ss 140, 144, 145. This Court has found, however, that applicants who are members of the CRA class only by virtue of being family members are not conferred refugee protection by virtue of a determination under IRPA s 95(1)(a) because their risks never were assessed independently against IRPA s 96: *Gezik*, above at paras 39, 50-53, 56, 61-63; *Esfand*, above at paras 20, 25, 27. Rather, they obtain Convention refugee protection and hence protected person status because IRPR s 140 deems them placed within the CRA class.

[25] Conversely, the Minister asserts inland claims are assessed individually by the RPD, with each applicant on an application—regardless of whether they are listed as the principal or dependent applicant—receiving their own risk assessment. In order to grant refugee protection, the RPD must assess each application member’s risk under IRPA ss 96 or 97 in order to accept their claim for refugee protection: IRPA s 107(1). Unlike the overseas process and CRA class, there is no corresponding or similar deeming provision in IRPR that places inland family members in the same “class” to be recognized as Convention refugees without a risk assessment. This is borne out to some extent by the August 11, 2010 RPD Notice of Decision [RPD’s Protection Decision] determining each of the named claimants “persons in need of protection” and stating that the RPD “accepts the claims” [plural]. All four claimants, including “Galindo Camayo, Maria Camila”, are listed individually without any differentiation between the “principal” applicant, Gloria Patricia Camayo, and her family members. Furthermore, though not

determinative but nonetheless instructive, I note the IRB's "Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues", which provides:

There are three broad categories of children who make refugee claims at the IRB. In all three categories, there are procedural and evidentiary issues which affect the child claimant:

1. The first category consists of children who arrive in Canada at the same time as their parents or some time thereafter. In most cases, the parents also seek refugee status. In these situations, the child should be considered an accompanied child. If the child arrives at the same time as the parents, then his or her claim is usually heard jointly with the parents but a separate refugee determination is made.
2. ...
3. ...

[26] As such, Ms. Galindo Camayo's suggestion that minors included on an inland claim for protection are granted refugee protection under IRPA s 95(1)(b) as an ancillary result of the principal applicant's claim is, in my view, incorrect. Noting that it is not to be judged against a standard of perfection, a holistic and contextual reading of the RPD's Protection Decision is that the RPD believed Ms. Galindo Camayo, whose risk was based on her mother's narrative, individually met the statutory definition for refugee protection without the necessity of a separate hearing: *Vavilov*, above at paras 91 and 97. Otherwise it would not have been authorized to recognize her as a person in need of protection: IRPA s 107(1). The Federal Court of Appeal has approved the RPD's practice of consolidating claims which rely on the same factual basis into one hearing: *Canada (Citizenship and Immigration) v Tobar Toledo*, 2013 FCA 226 [*Toledo*] at paras 49-56. I acknowledge *Toledo* was decided on the basis that the minor applicant originally had filed his own separate application and the two subsequently were joined; this is not what occurred in Ms. Galindo Camayo's case. Even absent Ms. Galindo Camayo filing a separate

application, however, the RPD nonetheless has a statutory duty to assess her claim individually regardless of her position on the application. This appears to be more evident in cases where the RPD determines, with reasons, the claimants are not persons in need of protection. For example, Justice Southcott of this Court emphasized this duty, finding that although the minor applicant was a dependant on the inland claim, the RPD had a duty to assess his risk factors individually from his father's: *Puerto Rodriguez v Canada (Citizenship and Immigration)*, 2015 FC 1360 at para 12.

[27] Accordingly, though the scheme of the IRPA and IRPR could be clearer in so far as inland claims involving family members are concerned, I agree with the Minister's position that Ms. Galindo Camayo falls within the ambit of IRPA s 95(1)(b), and consequently that the RPD has jurisdiction to cease her protected person status pursuant to IRPA s 108(3).

B. *Was the decision reasonable? This also involves a related or subsidiary issue: did the RPD apply the correct legal test to reavilment?*

[28] Ms. Galindo Camayo submits IRPA defines "the successful integration of permanent residents into Canada" as one of the central goals of the Canadian immigration system: IRPA s 3(1)(e); *Godinez Ovalle v Canada (Citizenship and Immigration)*, 2015 FC 935 at para 73. Moreover, she asserts IRPA s 108 must not be construed [broadly] in a manner that would authorize or effect the arbitrary exile of a person or that would result in refugees being *refouled* into the hands of their persecutors, which would contradict Article 33 of the Convention and peremptory norms in international law: *Canadian Bill of Rights*, SC 1960, c 44 at s 2(a); ICCPR General Comment No 20, Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or

Degrading Treatment or Punishment), UN Human Rights Committee, 10 March 1992, para 9; and *Németh v Canada (Justice)*, 2010 SCC 56 at paras 9, 24. She emphasizes the RPD's cessation decision carries heavy administrative finality: it cannot be appealed to the Immigration Appeal Division [IAD] nor the Refugee Appeal Division [RAD]; she will become inadmissible, lose her permanent resident status and revert to a foreign national; and she will be barred from making a pre-removal risk assessment application or a permanent residence application on humanitarian and compassionate grounds for at least one year: IRPA ss 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).

[29] Ms. Galindo Camayo further asserts the RPD failed to consider whether she actually had the subjective intention to reavail: *Chandrakumar v Canada (Minister of Employment and Immigration)*, 1997 CarswellNat 792 at para 5; *Canada (Public Safety and Emergency Preparedness) v Bashir*, 2015 FC 51 [*Bashir*] at para 70; *Din v Canada (Citizenship and Immigration)*, 2019 FC 425 [*Din*] at paras 37-39. She notes she obtained protected person status prior to, and hence was unaware of, the change in law that came into force on December 15, 2012 with the *Protecting Canada's Immigration System Act*, SC 2012, c 17 [PCISA], which made permanent residents subject to cessation proceedings. Before this change in law, cessation laws did not apply to those who obtained permanent residence status. She therefore submits it was incumbent on the RPD to show a particularly high level of understanding, on a case by case analysis, for protected persons who became permanent residents before PCISA was implemented: *Cerna v Canada (Citizenship and Immigration)*, 2015 FC 1074 [*Cerna*] at paras 19-20; *Mayell v Canada (Citizenship and Immigration)*, 2018 FC 139 [*Mayell*] at paras 18-19. Ms. Galindo Camayo notes a complete lack of analysis in the RPD's

decision on how PCISA could have affected her understanding of what travelling on a Colombian passport meant given that she was only 17 years old when it came into force and she had become a permanent resident a year earlier.

[30] In her view, the correct legal test is whether subjectively she intended to depend on [*i.e.* avail herself of] Colombia's protection by renewing and travelling under her Colombian passport, not whether she should have known renewing, using or travelling on her Colombian passport raised a presumption of reavailment: *Nsende*, above at para 13; *Din*, above at para 46. In other words, she submits the Minister must demonstrate she must have intended reavailment as a consequence of her action, which requires both actual subjective knowledge that an outcome is possible and deliberate pursuit of that outcome: *Islam v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 912 at paras 23-28. Furthermore, Ms. Galindo Camayo asserts the RPD conflated voluntariness with intention to reavail; whether one intended to reavail has nothing to do with whether the motive for travel was necessary or justified.

[31] Ms. Galindo Camayo submits the RPD also erred in not considering her state of mind, reflected in the efforts she took to hide from her agents of persecution, when analyzing whether she intended to avail herself of Colombia's protection while in Colombia. She asserts precautions are evidence against intention to reavail, not for it: *Yuan v Canada (Citizenship and Immigration)*, 2015 FC 923 [*Yuan*] at paras 36-39; *Peiqrishvili v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1205 [*Peiqrishvili*] at paras 17, 20, 24. Moreover, Ms. Galindo Camayo argues her application for citizenship, initially submitted in 2015, further signals a lack of intent to reavail: *Li v Canada (Citizenship and Immigration)*, 2015 FC 459 [*Li*] at para 48.



This is also strengthened by the fact that since she became aware of Canada's cessation laws, as a result of the Minister's ACRP, she has obtained and travelled outside Canada only on an RTD and she has not returned to Colombia.

[32] Pointing to the non-binding guidance offered in paragraphs 120-123 of the UNHCR Handbook, the Minister conversely submits that when a protected person returns to their home country using a passport of their nationality, the person concerned is presumed to have intended to avail themselves of the protection of that country, absent rebuttable evidence: *Abadi*, above at paras 16-17; *Olvera Romero v Canada (Citizenship and Immigration)*, 2014 FC 671 at para 41; *Kuoch v Canada (Citizenship and Immigration)*, 2015 FC 979 [*Kuoch*] at paras 28-29. The Minister notes Ms. Galindo Camayo could have applied for and relied on an RTD for her international travel.

[33] The Minister argues the RPD reasonably understood the above presumptions were rebuttable, but was not persuaded by Ms. Galindo Camayo's additional evidence and testimony that her situation was an exceptional circumstance. The Minister further submits that aside from the number of times Ms. Galindo Camayo travelled to her country of citizenship and several other countries, the facts of this matter are not materially different from other cases where the Court has upheld cessation decisions, including: *Norouzi v Canada (Citizenship and Immigration)*, 2017 FC 368 [*Norouzi*]; *Abadi*, above; *Siddiqui*, above; *Balouch v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 765; *Kuoch*, above; *Seid v Canada (Citizenship and Immigration)*, 2018 FC 1167 [*Seid*]; *Tung v Canada (Citizenship and Immigration)*, 2018

FC 1224; *Jing v Canada (Citizenship and Immigration)*, 2019 FC 104; and *Abechkhrishvili v Canada (Citizenship and Immigration)*, 2019 FC 313.

[34] Noting the presumption of reavilment must be rebutted on a balance of probabilities, as opposed to simply raising a doubt, the Minister emphasized, unlike the situation in *Cerna*, the RPD in Ms. Galindo Camayo's case considered her reasons for returning to Colombia but found these explanations did not rebut the presumption of reavilment: *Li*, above at para 43. The Minister also argues *Mayell* is distinguishable because there is no evidence Ms. Galindo Camayo was informed she could travel to Colombia numerous times without putting her protected person status at risk. Finally, the Minister distinguishes *Yuan* on the basis that, unlike the applicant's situation in *Yuan*, Ms. Galindo Camayo did not hide while she was in Colombia, nor did the RPD make contradictory findings as to whether Ms. Galindo Camayo actually obtained protection from Colombian authorities: *Yuan*, above at paras 2, 28-31, 35-36.

[35] In cessation proceedings, the Minister has the initial onus of demonstrating the protected person in Canada [in this case, Ms. Galindo Camayo] acted voluntarily, intentionally, and actually availed themselves of the protection of their country of origin: *Nsende*, above at para 13; *Seid*, above at para 14. As this is a conjunctive test, each element must be satisfied. Given the severe consequences of cessation, I agree that, as argued by Ms. Galindo Camayo, a narrow interpretation is the only reasonable approach: *Bashir*, above at para 44; *Yuan*, above at paras 6-11.

*Voluntariness in Availing*

[36] The RPD reasonably acknowledged that while Ms. Galindo Camayo's acquisition of her Colombian passports was involuntary, her subsequent use of them to return to Colombia and travel to other countries was voluntary. Ms. Galindo Camayo explained she did so to take care of her father and to participate in a humanitarian mission. The RPD held, however, that there was insufficient evidence to find she was compelled to use her Colombian passports to make any of these trips. Moreover, the RPD found that her father's ability to come to Canada to seek medical assistance and familial support, combined with his numerous trips to Canada, meant that she was not compelled to travel to Colombia to care for, nor was she caring exclusively for, her father during these trips. The RPD also found that her humanitarian mission, while honourable, was undertaken on her own goodwill and volition. I find the RPD's reasoning concerning voluntariness of availment internally coherent and rational.

*Intention to Avail and Actual Reavailment*

[37] The UNHCR Handbook provides that a refugee's application for, or renewal and use of, a passport from their country of origin creates a presumption, in the absence of proof to the contrary, that the refugee intended to reavail and actually reavailed themselves of the protection of their country of origin. This occurs because a passport entitles its holder to travel under the protection of the issuing government to and from foreign countries. This presumption is even stronger where the subject returns to their country of origin, as not only are they placing themselves under diplomatic protection while travelling, but also entrusting their safety to the authorities upon their arrival: *Norouzi*, above at para 21, citing *Abadi*, above at para 16.

Justices Bédard and Boswell have found that the RPD is reasonably entitled to rely on this presumption: *Bashir*, above at para 42; *Yuan*, above at paras 30-31.

[38] In my view, the RPD reasonably relied on the presumption of state protection both with respect of Ms. Camayo's intention to avail, and to whether she actually had availed, because the presumption arises when a protected person acquires, renews, or uses a passport issued by their country of origin. As the presumption is rebuttable, however, it was incumbent on the RPD to consider reasonably whether Ms. Galindo Camayo had rebutted it.

[39] The live issue in this judicial review therefore is: did the RPD undertake its analysis of whether Ms. Galindo Camayo rebutted the presumption reasonably? Given this assessment is premised on a finding of mixed fact and law, it is governed by the reasonableness standard: *Ruiz Triana v Canada (Citizenship and Immigration)*, 2019 FC 1431 at para 8. Both parties advocated the applicability of the reasonableness standard as articulated in *Alberta Teachers*. The reasonableness standard continues to apply to this matter, albeit as rearticulated in *Vavilov*, with no difference to the outcome before this Court.

[40] The relevant excerpts regarding intention and actual reavilment in the UNHCR Handbook, cited by the RPD, read as follows [emphasis added]:

**121.** In determining whether refugee status is lost in these circumstances, a distinction should be drawn between actual re-avilment 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 the protection of his country of origin while staying outside that country, or to return to that country.** As stated above, with the 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.

[41] Having reviewed the above, the RPD found that Ms. Galindo Camayo’s years of travel to Colombia and other countries showed both her intent to reavail and actual reavailment of protection from the Colombian government.

[31] The Respondent admitted that she used her Colombian passports to travel to Colombia and other locations in the world. By virtue of travelling on these Colombian passports, not just to Colombia but elsewhere, this does show intent to travel under the protection of the Colombian government. **While the action of obtaining the Colombian passport may not be evidence of her intent for use of the passport, her travel and use of the passport on so many occasions demonstrates her intent to re-avail herself of protection from the Colombian government.**

[32] The panel has considered the Respondent’s submissions with respect to her lack of knowledge regarding the potential consequences of using her Colombian passport to travel to

Colombia and other countries, however, the panel finds that ignorance of the law is not a valid argument. The Respondent is an educated, sophisticated adult who could have sought information regarding the requirement she must uphold in order to secure her status in Canada.

...

[34] The panel finds that years of travel to Colombia, Mexico and the United States, using Colombian passports shows the respondent did in fact re-avail. The panel finds that the Respondent's actions in returning to Colombia on numerous occasions for purposes that were not sufficiently shown to be necessary or compelling, demonstrate the Respondent's intentions to re-avail. The panel also finds the intention to re-avail applies to when the Respondent travelled to other countries as the use of a Colombian passport to travel internationally grants her the protection of the Colombian government in these foreign lands if something goes amiss. It is a protection for an individual to travel abroad, knowing he or she can contact the government if a need arises and that country will aid them if need be.

[Bold emphasis added.]

[42] In *Cerna*, above at paras 18-19, Justice O'Reilly held it unreasonable for the RPD to have found intention to avail where the protected person, who gained permanent residence prior to the implementation of PCISA and resulting amendments to IRPA's cessation provisions, attested he did not know of the consequences of renewing and returning to his country of origin on his passport from that country, and who believed he enjoyed the security of permanent residence and the corresponding protection it carried while he was there. Noting "the Board must take into account the refugees' subjective intentions before concluding that they have availed themselves of the protection of their countries of origin", Justice O'Reilly's found, "the Board should have considered whether the evidence relating to [the protected person]'s subjective understanding of the benefits of his permanent resident status rebutted the presumption that he had intended to obtain [his country of origin's] protection by acquiring a [...] passport. ... Without that analysis,

the Board's conclusion on reavilment [did] not represent a defensible outcome based on the facts and the law": *Cerna*, above at paras 19-20. Similarly, in *Mayell*, above at paras 17-19, Justice Zinn found the RPD erred in failing to consider whether the protected person's lack of subjective understanding that his activities could jeopardize his status in Canada would rebut the presumption. The protected person in the *Mayell* case was given incorrect legal advice; he was told it obtaining an Afghani passport would not jeopardize his Canadian status and it was "okay" to travel to Afghanistan.

[43] On the other hand, Justice Fothergill held it was reasonable for the RPD to find the protected person's subjective belief that their permanent residency would offer them protection in their country of origin was insufficient to rebut the presumption: *Abadi*, above at para 19. So too was the RPD's rejection of the protected person's erroneous belief he could return was sufficient, given there was no additional proof he took actions against his former counsel, as found by Justice Strickland: *Okojie v Canada (Citizenship and Immigration)*, 2019 FC 1287 [*Okojie*] at para 28.

[44] I note, however, in *Bashir*, above at paras 68-70, Justice Bédard upheld the RPD's finding that a protected person who acquired a passport in order to travel to a third country successfully rebutted the presumption, as there was no indication they intended to rely on their country of origin's protection. That said, the Court has found on other occasions the intention to receive diplomatic protection while travelling abroad, as evidenced by use of a passport, is sufficient to justify cessation: *Okojie*, above at para 31; *Canada (Citizenship and Immigration) v Nilam*, 2015 FC 1154 [*Nilam*] at para 33.

[45] Notwithstanding seeming inconsistencies on the face of several decisions of this Court in the area of cessation, it is apparent that the outcome in each case is largely fact dependent. On the circumstances of the instant matter, I find the RPD's decision with respect to whether Ms. Galindo Camayo intended to reavail was unreasonable.

[46] In my view, the UNHCR Handbook reasonably establishes, as interpretative guidance, that actions such as acquiring and using a passport are enough to trigger the presumption. Given the narrow interpretation applicable to IRPA s 108, however, and that the act of acquiring and/or relying on ones' passport is considered under the voluntariness and actual availment elements of the availment test, in my view it was unreasonable for the RPD to use this same set of facts to find she intended to avail, without examining whether she actually had such an intention. This is evident from the following finding of the RPD in its decision: "While the action of obtaining the Colombian passport may not be evidence of her intent for the use of the passport, her travel and use of the passport on so many occasions demonstrates her intent to re-avail herself of protection from the Colombian government."

[47] Interpreting her use of her passport in itself as satisfying all three essential and conjunctive elements of availment (voluntary, intentional, and actual availment) leaves no room for Ms. Galindo Camayo to demonstrate that despite her acquiring and using her passport, she did not intend to avail herself of state protection. This approach was rejected in *Bashir*, above at paras 67-69, and as noted in para 67: "an additional, irrebutable presumption of intention of reavailment as soon as a refugee intends to travel abroad with a national passport, without any



regard to the specific circumstances of each case... is not provided for in the UNHCR Handbook.”

[48] On the issue of intention, both *Bashir* [above at para 70] and *Nsende* [above at para 18] refer to the following excerpt from James C. Hathaway’s book, *The Law of Refugee Status*, (Toronto: Butterworths, 1991) at 193-195, which I find provides useful guidance:

Since there is no automatic linkage between the issuance or renewal of a passport and the granting of protection, it is critical that the real reason it is being sought form part of the determination authority’s considerations. **Unless the refugee’s motive is genuinely the entrusting of her interests to the protection of the state of her nationality, the requisite intent is absent.**

[Bold emphasis added.]

[49] I find the following passage from the RPD’s hearing indicative that Ms. Galindo Camayo did not have the requisite intention to reavail:

**Minister’s Counsel:** Now, you travelled quite a bit on your Colombian passports. Did you ever think of obtaining a travel document, given that you were a successful refugee claimant along with your family?

**Respondent:** Yeah, I do have a travel document now.

**Minister’s Counsel:** So why did you do all these trips on your Colombian passport?

**Respondent:** Because the passports were obtained by my mother and until now, I didn’t know I wasn’t supposed to use my Colombian passport and that’s when I decided to get the travel document.

[50] Ms. Galindo Camayo was a minor when her mother first renewed her passport; it was subsequently renewed involuntarily when she turned 18 because renewal was required by the Colombian authorities in order for her to leave the country. There is no evidence as to what if any intention Ms. Galindo Camayo formed as an adult when she repeated travel patterns commenced as a minor. Nor is there evidence that she was aware of the change in law resulting in her travel patterns jeopardizing her status as a protected person in Canada, a factor which could speak to her subjective and objective fear and must be assessed in this context. I therefore agree the RPD concluded unreasonably that “ignorance of the law is not a valid argument” in respect of whether a subject of cessation proceedings could form the requisite intention without knowledge of the consequences.

[51] As discussed above, 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 ones’ actions: *Cerna*, above at paras 19-20. I also find no justification for the RPD’s finding, in Ms. Galindo Camayo’s circumstances, that an educated, sophisticated adult could have sought information regarding requirements to maintain her status in Canada. It was not until the Minister’s ACRP that Ms. Galindo Camayo became aware of the serious consequences of her actions, post implementation of PCISA, sought legal advice, obtained an RTD and discontinued travel to Colombia, all of which speaks to her intention regarding reavilment. I note as well her credibility was not in issue.

[52] I further note the RPD commented that Ms. Galindo Camayo “knew enough [about her potential exposure to harm or threats] to get private security to accompany her upon her return to

Colombia, which indicates that she recognized the dangers associated with travelling to Colombia.” I agree, however, that the RPD failed to consider whether this was indicative she believed the state still could not protect her – a question directly relevant to her intention to avail: *Peiqrishvili*, above at paras 17-24; *Yuan*, above at para 35. It was open to the RPD to reject these measures as insufficient. Not considering them in their proper context, however, and instead focusing on whether she should have known of the danger rather than whether she knew of the possibility and consequences of reavilment and did so anyway, misses the point [of her evidence which, when viewed on the whole, was to show that she did not intend to reavail], and in my view, is unreasonable: *Din*, above at para 39.

## VII. Conclusion

[53] This judicial review application therefore is granted; the March 15, 2019 RPD decision is set aside; and the matter is to be remitted to a differently constituted RPD for redetermination.

## VIII. Question for Certification

[54] The Minister proposed the following question for certification:

After receiving Convention refugee status in Canada, should a lack of subjective awareness that returning to their country of nationality could negatively impact their Canadian immigration status be a sufficient reason to find that a person has not voluntarily re-availed themselves of the protection of that country as per s. 108(1)(a) of the IRPA?

[55] In my view, subjective awareness of a possible negative consequence is but one factor to consider when determining whether a protected person or refugee intends to avail themselves. Having devoted some thought to this matter, I am prepared to certify the following interrelated serious questions of general importance:

- (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 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?

**JUDGMENT in IMM-2155-19**

**THIS COURT'S JUDGMENT is that:**

1. The judicial review application is granted.
2. The March 15, 2019 RPD decision is set aside.
3. The matter is to be remitted to a differently constituted RPD for redetermination.
4. The following serious questions of general importance are certified:
  - (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 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?

“Janet M. Fuhrer”

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Judge

**Annex A: Relevant Provisions**

(1) Part 2 of the IRPA governs Canada's refugee regime. Canada confers refugee protection upon individuals who are found to be Convention refugees or persons in need of protection:

IRPA ss 95-97.

<b><i>Immigration and Refugee Protection Act (S.C. 2001, c. 27)</i></b>	<b><i>Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)</i></b>
<b>95 (1)</b> Refugee protection is conferred on a person when	<b>95 (1)</b> L'asile est la protection conférée à toute personne dès lors que, selon le cas :
<b>(a)</b> the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;	<b>a)</b> sur constat qu'elle est, à la suite d'une demande de visa, un réfugié au sens de la Convention ou une personne en situation semblable, elle devient soit un résident permanent au titre du visa, soit un résident temporaire au titre d'un permis de séjour délivré en vue de sa protection;
<b>(b)</b> the Board determines the person to be a Convention refugee or a person in need of protection; or	<b>b)</b> la Commission lui reconnaît la qualité de réfugié au sens de la Convention ou celle de personne à protéger;
<b>(c)</b> except in the case of a person described in subsection 112(3), the Minister allows an application for protection.	<b>c)</b> le ministre accorde la demande de protection, sauf si la personne est visée au paragraphe 112(3).
<b>(2)</b> A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).	<b>(2)</b> Est appelée personne protégée la personne à qui l'asile est conféré et dont la demande n'est pas ensuite réputée rejetée au titre des paragraphes 108(3), 109(3) ou 114(4).

<p><b>96</b> A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p>	<p><b>96</b> A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p>
<p><b>(a)</b> is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p>	<p><b>a)</b> soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p>
<p><b>(b)</b> not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p><b>b)</b> soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
<p><b>97 (1)</b> A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p>	<p><b>97 (1)</b> A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p>
<p><b>(a)</b> to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p>	<p><b>a)</b> soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;</p>
<p><b>(b)</b> to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p>	<p><b>b)</b> soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p>
<p><b>(i)</b> the person is unable or, because of that risk, unwilling to avail themselves of the</p>	<p><b>(i)</b> elle ne peut ou, de ce fait, ne veut se réclamer de la protection</p>



protection of that country,	de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

(2) At first instance, the RPD is the authorized decision maker in respect of an in-land refugee claim: IRPA s 107(1).

<b>107 (1)</b> The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.	<b>107 (1)</b> La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.
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(3) The RPD may refuse to grant refugee protection, or cease refugee protection that has already been conferred: IRPA s 108.

<b>108 (1)</b> 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:	<b>108 (1)</b> 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 :
<b>(a)</b> the person has voluntarily reavailed themselves of the protection of their country of nationality;	<b>a)</b> il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
<b>(b)</b> the person has voluntarily reacquired their nationality;	<b>b)</b> il recouvre volontairement sa nationalité;
<b>(c)</b> the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	<b>c)</b> il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
<b>(d)</b> 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	<b>d)</b> 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;
<b>(e)</b> the reasons for which the person sought refugee protection have ceased to exist.	<b>e)</b> les raisons qui lui ont fait demander l'asile n'existent plus.
<b>(2)</b> 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).	<b>(2)</b> 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).
<b>(3)</b> If the application is allowed, the claim of the person is	<b>(3)</b> Le constat est assimilé au

deemed to be rejected.	rejet de la demande d'asile.
<b>(4)</b> 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 punishment.	<b>(4)</b> 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.

(4) A person whose protected person status has been ceased is not eligible for various other mechanisms in the IRPA: IRPA ss 25(1.2)(c)(i), c40.1, 46(1)(c.1), 63(3), 101(1)(b), 110(2), and 112(2)(b.1).

<b>25 (1.2)</b> The Minister may not examine the request if	<b>25 (1.2)</b> Le ministre ne peut étudier la demande de l'étranger faite au titre du paragraphe (1) dans les cas suivants :
...	...
<b>(c)</b> subject to subsection (1.21), less than 12 months have passed since	<b>c)</b> sous réserve du paragraphe (1.21), moins de douze mois se sont écoulés depuis, selon le cas :
<b>(i)</b> 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	<b>(i)</b> 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,

judicial review, or	
...	...
<b>40.1 (1)</b> A foreign national is inadmissible on a final determination under subsection 108(2) that their refugee protection has ceased.	<b>40.1 (1)</b> 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.
...	...
<b>46 (1)</b> A person loses permanent resident status	<b>46 (1)</b> Emportent perte du statut de résident permanent les faits suivants :
...	...
<b>(c.1)</b> 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);	<b>c.1)</b> 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;
...	...
<b>63 (3)</b> 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.	<b>63 (3)</b> 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.
...	...
<b>101 (1)</b> A claim is ineligible to be referred to the Refugee Protection Division if	<b>101 (1)</b> La demande est irrecevable dans les cas suivants :
...	...
<b>(b)</b> a claim for refugee protection by the claimant has been rejected by the Board;	<b>b)</b> rejet antérieur de la demande d'asile par la Commission;
...	...
<b>110 (2)</b> No appeal may be made in respect of any of the following:	<b>110 (2)</b> Ne sont pas susceptibles d'appel :
...	...
<b>(e)</b> a decision of the Refugee Protection Division allowing or rejecting an application by the Minister for a	<b>e)</b> la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant la

determination that refugee protection has ceased;	perte de l'asile;
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**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2155-19

**STYLE OF CAUSE:** MARIA CAMILA GALINDO CAMAYO v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 17, 2019

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** FEBRUARY 6, 2020

**APPEARANCES:**

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