Federal Court  Cour fédérale

Date: 20150415

Docket: IMM-1614-14

Citation: 2015 FC 459

Ottawa, Ontario, April 15, 2015

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

PETER SUM LI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Peter Sum Li, a citizen of the People's Republic of China, achieved refugee status in Canada in 1990. Two years later, he became a permanent resident. In 2013, the Minister of Public Safety applied to the Immigration and Refugee Board to cease the refugee protection provided to Mr Li. The Board granted the Minister's application and nullified Mr Li's refugee status.

[2] The Minister's application was based on the fact that Mr Li obtained Chinese passports after he had acquired permanent resident status in Canada. In addition, Mr Li has made frequent trips to China over the years. He met and married his wife in China, and the couple carried on business there through Mr Li's Canadian company. Mr Li actually resided primarily in China for significant periods of time during 2000 to 2004.

[3] At the time of his departure from China, in 2004, an immigration officer in Hong Kong interviewed Mr Li about his Canadian permanent residence status based on concerns about the amount of time he was spending in China. Mr Li had tried to board a plane to Canada, but did not have a Canadian permanent resident card. The officer provided Mr Li a travel document allowing him to return to Canada, where he later acquired his permanent resident card.

[4] Based on this information, the Minister argued, in 2013, that Mr Li had re-availed himself of China's protection and had become re-established as a Chinese resident. The Board concluded that Mr Li had re-availed himself, and did not address the issue of re-establishment.

[5] Mr Li argues that the Minister's application for cessation was improper because, in effect, the same issues were already decided when the immigration officer facilitated his return to Canada in 2004. Further, he submits that the Minister's application amounts to an abuse of process given the delay in bringing it, the nature of the government policy that applies to it, and the oblique motive that lay behind it – namely, to remove him from Canada due to his criminal record. Mr Li also maintains that the Board erred by applying the wrong burden of proof, and by relying on a number of extraneous grounds, such as his failure to apply for Canadian citizenship,

his criminal record, and his travel history. He asks me to quash the Board's decision and order another panel to reconsider the Minister's application.

[6] I can overturn the Board's decision only if I find that it erred in law or arrived at an unreasonable conclusion.

[7] I can find no grounds for quashing the Board's decision and must, therefore, dismiss this application for judicial review. I would state the issues as follows:

1. Was the issue before the Board already decided?
2. Do the cessation proceedings against Mr Li amount to an abuse of process?
3. Did the Board apply the wrong burden of proof?
4. Was the Board's decision unreasonable?

II. The Board's Decision

[8] The Board rejected Mr Li's contention that the decisions in 2004 to grant him a travel document enabling him to leave Hong Kong for Canada, and to provide him later with a permanent residency card, meant that the Minister could not then seek cessation of his refugee status. Mr Li had argued that, in effect, the Minister was trying to re-litigate the same issues through cessation proceedings. The Board found otherwise; it accepted that there was an overlap of facts, but regarded the two issues as being entirely different. It pointed out that residency, re-availment, and re-establishment are separate concepts.

[9] The Board also rejected Mr Li's suggestion that the cessation proceedings were being used inappropriately as a substitute for inadmissibility proceedings, the latter being the usual mechanism for the removal of persons for criminality. While the Minister may have had other available remedies, the Board determined that its role was simply to rule on the merits of the cessation application.

[10] Mr Li argued before the Board that the Minister's decision not to bring cessation proceedings between 2004 and 2013 amounted to a waiver of the right to make an application. The Board disagreed, finding that Mr Li had not been prejudiced by the delay; he had not been able to show that there was evidence in his favour that was no longer available. Further, there was no real factual dispute about the number of trips Mr Li had made to China or their purposes. For similar reasons, the Board found that the delay did not amount to an abuse of process.

[11] Dealing with the merits of the Minister's application, the Board found it significant that Mr Li had not applied for Canadian citizenship but, rather, decided to maintain his Chinese citizenship through renewal of his Chinese passport. The Board found that Mr Li's conduct showed his intention to avail himself of Chinese, rather than Canadian, protection. It referred to the UNHCR Handbook which states that evidence that a refugee has applied for and obtained a passport creates a presumption that the person intends to re-avail himself or herself of the protection of the issuing state. The person's intention can also be presumed from numerous visits to his or her country of origin. The Board accepted Mr Li's explanation that he initially obtained a Chinese passport in order to travel to the United States, and that one of his trips to China was

for the purpose of visiting his sick mother-in-law. However, Mr Li had made at least 17 trips to China for various purposes, including business ventures.

[12] The Board noted that the reason Mr Li had not returned to China after 2004 was because he had been arrested in Canada in August of that year, and was subsequently convicted and sentenced for producing, importing, and possessing controlled substances. He served a sentence of more than two years for those offences, and was later subject to parole conditions that prevented him from travelling. Based on this evidence, the Board concluded that Mr Li could not credibly claim that his trips to China were all for legitimate business purposes.

[13] Further, the Board noted that Mr Li's travels to other countries – the United States, Venezuela and Thailand – also confirmed his intention to avail himself of Chinese protection. Since he was travelling on a Chinese passport, any consular assistance he might require in those countries would be provided by China, not Canada.

[14] The Board ultimately concluded that Mr Li had not rebutted the presumption of re-availment and allowed the Minister's application for cessation of Mr Li's refugee status in Canada.

III. Issue One - Was the issue before the Board already decided?

[15] Mr Li argues that the Board erred in finding that the decisions to grant him a travel document and a permanent resident card did not preclude the Minister from bringing an application for cessation of his refugee status.

[16] I disagree.

[17] In support of this argument, Mr Li relies on the doctrine of *res judicata*, which requires proof that the same issue was already decided, that the earlier decision involved the same parties, and that the decision was final (*Angle v Canada (Minister of National Revenue)*, [1975] 2 SCR 248). I am satisfied that the subject matter addressed in the 2004 decisions did not correspond with the issues that were before the Board. Therefore, Mr Li cannot meet the first element of the test. It is unnecessary to consider the other two.

[18] In 2004, the officers had to consider whether Mr Li had lost his permanent resident status by failing to be physically present in Canada for the statutory minimum period of time (*Immigration and Refugee Protection Act*, SC 2001, c 27, ss 28, 46(1)(*b*) [*IRPA*] – enactments cited are set out in an Annex). In most cases, this is mainly an arithmetic exercise.

[19] By contrast, in the cessation application, the Board had to decide whether Mr Li had re-availed himself of the protection of China (*IRPA*, s 108(1)). As seen above, this involved the consideration of many factors – the number of trips to China and elsewhere, the reasons for those trips, the acquisition and use of Chinese passports, and Mr Li's subjective intentions. This is a qualitative exercise.

[20] Obviously, some common facts would be relevant to both processes, particularly Mr Li's travel history. However, that does not mean the issues were the same.

[21] Mr Li also suggests that, in 2004, the officers must have turned their minds to the question of whether he had forfeited his refugee status and, by implication, determined that he had not. It makes no sense, he says, that a decision could be made supporting his permanent resident status when, before the deciding officer, there was evidence purportedly indicating that he had relinquished his refugee status. Further, since immigration officers in foreign posts must apply the definition of a refugee, they must also understand and apply the concept of cessation. This assertion has some logical force. However, I can see no basis for it either in the evidence, or by necessary implication. As I see it, in 2004, the officer did not address the issue of cessation, either explicitly or implicitly. The officer found that Mr Li had not lost his permanent resident status for want of physical presence in Canada and simply did not address the issue of cessation of refugee status.

[22] Similarly, I cannot agree with Mr Li's contention that the Minister should be taken to have waived the opportunity to bring cessation proceedings because the issue of cessation could have been dealt with at the same time as the decision relating to Mr Li's permanent residence status. Since the two issues are not legally connected, the proceedings relating to Mr Li's permanent residence do not indicate to me that the Minister waived the opportunity to make a cessation application. In these circumstances, the doctrine of waiver does not apply.

IV. Issue Two - Do the proceedings against Mr Li amount to an abuse of process?

[23] Mr Li argues that the delay in bringing a cessation application, from 2004 to 2013, amounts to an abuse of process. The delay has prejudiced him, he says, because he failed to keep the necessary records that would have enabled him to defend himself against the Minister's

application. In particular, he no longer has the documents he presented in 2004 in support of his permanent residency.

[24] Further, Mr Li submits that he has been the victim of a new government policy that arbitrarily subjects persons with refugee status to unwarranted cessation proceedings. Mr Li also argues that the Minister is wrongly applying this new policy on cessation to old cases. This is equivalent, he says, to applying the law retroactively, which is impermissible.

[25] In addition, Mr Li maintains that the proceedings are abusive because they have been brought for an oblique purpose – to remove him from Canada due to his criminal record. To do so, he says, the Minister must rely on inadmissibility proceedings, not a cessation application. Mr Li also argues that he has been treated unfairly because the same CBSA officer acted both in the inadmissibility proceedings brought against him and the cessation application. Since the officer initiated the cessation proceedings on his own motion, Mr Li maintains that the officer effectively represented himself in those proceedings.

[26] In my view, there has been no abuse of process.

[27] Courts can stop proceedings that have become unfair or oppressive, including where delay has caused significant prejudice (*Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 at paras 101-102). In addition, they can provide a remedy where the person affected carried on with his or her life reasonably believing that no further action would be taken (*Ratzlaff v British Columbia (Medical Services Commission)* (1996), 17 BCLR (3d) 336 (BC

CA) at para 23; *Fabbiano v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 1219 at para 8-10).

[28] Whether delay amounts to an abuse of process justifying a stay of proceedings depends on all of the circumstances (*Blencoe* at para 122). The test is whether the delay caused "actual prejudice of such magnitude that the public's sense of decency and fairness is affected" (at para 133).

[29] In my view, Mr Li's circumstances do not amount to an abuse of process based on delay. In the cases where courts have found an abuse of process, authorities had commenced proceedings but then had not acted on them for many years, to the person's prejudice. In *Fabbiano*, for example, through delay, the applicant lost the opportunity to make submissions on humanitarian and compassionate grounds. Here, the decision to bring a cessation application occurred in 2013, and was promptly prosecuted. Further, Mr Li has not stated what difference the allegedly missing documents would have made. Again, the facts regarding Mr Li's travel history are not in dispute. In the circumstances, I cannot see any prejudice to Mr Li.

[30] On the matter of alleged retroactive application of a new policy, the evidence shows that the law on cessation of refugee status changed in 2012. Pursuant to the amendment, persons whose refugee status has ceased also lose their permanent residence status (*IRPA*, s 46(1)(*c*.1)). Along with that change came increased funding for cessation applications. In turn, cessation applications were given somewhat higher priority within the Canadian Border Services Agency.

[31] In my view, this change in the consequences of a cessation finding and the corresponding shift in priority does not amount to a retroactive application of the law. Nor was there an impermissible application of a new policy. There was no change to the substantive grounds on which cessation applications could be brought. Canadian law continues to reflect the cessation provisions of the Refugee Convention (*IRPA*, s 108). The cessation proceedings relating to Mr Li were initiated after the change in the law and, therefore, the current statutory consequences of granting the Minister's application properly apply to Mr Li – they are not being applied retroactively. The fact that proceedings were not initiated earlier is likely a product of Mr Li's lengthy incarceration. In the circumstances, I cannot conclude that the fact that the result of a cessation finding changed while he was in prison imposed an abusive, arbitrary or unfair consequence on him.

[32] As for the purpose of bringing the cessation application, it appears likely that Mr Li's file came to the Minister's attention based on Mr Li's criminal offences. Does that make the application improper? I do not believe so. The fact that the circumstances could have (and did) provide the Minister with other recourses (*ie*, inadmissibility proceedings), that, in itself, does not make the cessation application abusive. The question is really whether the application is well-founded on its own merits. Why the Minister chose to make it is, at least on the facts before me, irrelevant.

[33] Further, I see nothing unfair or improper about the same CBSA officer acting both on the inadmissibility proceedings and the cessation application. In my view, based on the officer's evidence, this is simply a practical administrative arrangement. There is no basis for any

assertion that there is a conflict of interest or an improper motive underlying either proceeding, or any unfairness to Mr Li. Nor was there any breach of ethical principles, including any heightened ethical obligations applicable to government counsel. The officer explained that he acted on general instructions to proceed where the evidence supported a *prima facie* case for cessation. He was not, as Mr Li alleged, acting for himself.

[34] Mr Li cites concerns about the new policy, namely, that the increased priority given to cessation cases means that persons with only a fleeting connection with their countries of origin are being targeted and, potentially, removed from Canada. That may be a valid concern generally, but not in this case. As mentioned, Mr Li's travels to and connections with his country of origin were extensive, and reasonably motivated the Minister's cessation application, as well as the Board's decision in the Minister's favour.

V. Issue Three - Did the Board apply the wrong burden of proof?

[35] Mr Li points out that the presumption of re-availment is merely an evidentiary presumption that falls away in the presence of any evidence to the contrary. He contrasts it with a legal presumption that can only be defeated by proof on the balance of probabilities. He contends that the Board confused the two, and incorrectly required him to prove that he relied on Canada's protection, not China's.

[36] It is tempting to agree with "the assertion that 'presumption' is the slipperiest member of the family of legal terms, except its first cousin 'burden of proof'" (Edward W Cleary, ed, *McCormick on Evidence*, 3rd ed, (West Publishing Co: St Paul, Minnesota, 1984) at §342).

Presumptions defy rigid classification; indeed, the term "presumption" is often misused. There are, however, some differences between what are often referred to as "factual presumptions" and "legal presumptions".

[37] In any case, while there may be some differences between factual and legal presumptions, that is not the critical distinction here. Factual presumptions generally arise when proof of one fact is presumed to be proof of another. For example, where a person pays for something with a cheque that is later dishonoured, it is presumed that the person acquired the purchased item by false pretences. The presumption can be rebutted by evidence that the purchaser reasonably believed that he or she had sufficient funds to cover the cheque (s 362(4) of the *Criminal Code*, RSC 1985, c C-46).

[38] Legal presumptions generally state propositions presumed to be true and create a burden that must be met by those who seek to disprove them – a patent is presumed to be valid, unless there is some reliable evidence to the contrary (brought by the party challenging the patent); a state is presumed to be willing and able to protect its citizens, unless there is clear and convincing evidence to the contrary (presented by a refugee claimant); an accused person is presumed to be innocent unless proved guilty beyond a reasonable doubt (by the Crown). These are often more in the nature of broad legal principles, not true presumptions.

[39] The presumption of re-availment is a factual presumption. Proof that someone obtained a passport creates a presumption that the person re-availed himself or herself of the protection of

the issuing state. However, as mentioned, it is not the classification of the presumption that really matters. The real question relates to the quantum of evidence required to defeat it.

[40] Mr Li argues that the Board wrongly imposed on him a burden to prove on the balance of probabilities his intent to rely on Canada's protection.

[41] I disagree. I believe the presumption operates as follows.

[42] The Minister has the burden of proving re-availment on the balance of probabilities. In doing so, the Minister is entitled to rely on the presumption of re-availment by proving that the refugee obtained or renewed a passport from his or her country of origin. Once that has been proved, the refugee has the burden of showing that that he or she did not actually seek re-availment. As stated in the UNHCR Handbook, where there is proof that a refugee has obtained or renewed a passport "[i]t 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" (para 121).

[43] Mr Li relies on a statement in a legal article on cessation in which the authors state that the "benefit of the doubt must be given to the refugee, as is consistent with the restrictive interpretation appropriate to the cessation clauses" (Joan Fitzpatrick and Rafael Bonoan, "Cessation of Refugee Protection" in Erika Feller, Volker Türk and Frances Nicholson, eds, *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (New York: Cambridge University Press, 2003) 491 at 525). However, just above that statement, the authors actually cite the UNHCR Handbook which clearly places a legal burden

on refugees to rebut the presumption of re-availment on a balance of probabilities. In that context, I take the authors to mean that refugees should be given the benefit of the doubt as to whether they have rebutted the presumption. They do not say that refugees merely have to raise a doubt about re-availment.

[44] Here, the Minister was entitled to rely on the presumption, having proved that Mr Li had acquired a Chinese passport. However, the Minister did not rely solely on that piece of evidence; other evidence relating to re-availment was also tendered – the number of trips Mr Li made to China, his failure to apply for Canadian citizenship, his criminal record for importing controlled substances, and his travel to other countries.

[45] The Board considered all of that evidence, as well as Mr Li's testimony about the purposes of his trips. In the end, it found that Mr Li had not rebutted the presumption of re-availment. In light of the evidence before it, the Board's conclusion was the equivalent of stating the Minister had met the burden of proving re-availment on the balance of probabilities. I see no error on the Board's part.

VI. Issue Four - Was the Board's decision unreasonable?

[46] Mr Li argues that the Board's decision was unreasonable because it unfairly relied on the fact that he had not applied for Canadian citizenship, improperly considered his criminal record, wrongly took into account the theoretical possibility that he might have required the protection of Chinese consular officials, improperly equated trips to Hong Kong with trips to mainland China, and unduly emphasized the number of trips he made to China rather than their purposes.

[47] In my view, the Board's treatment of the evidence was not unreasonable. The Board properly relied on evidence that was relevant to re-availment.

[48] The fact that Mr Li had not applied for Canadian citizenship indicated his intention, based on his possession of a Chinese passport, to avail himself of China's protection instead. Mr Li's explanation for his failure to apply for citizenship – that he was too busy – was reasonably considered and dismissed by the Board.

[49] Likewise, the Board considered Mr Li's criminal history simply as a possible explanation for the fact that Mr Li ceased travelling to China. It did not contradict Mr Li's presumed re-availment to China.

[50] Mr Li argues that the Board failed to take account of the fact that a few of his trips were to Hong Kong, an area administered separately from mainland China. His trips there, he says, cannot be used to show his re-availment of Chinese protection. However, the evidence showed that Mr Li made only four trips to Hong Kong, while he travelled to mainland China at least 13 times. On this evidence, even if the trips to Hong Kong were removed from consideration for the reason Mr Li advances, the Board's conclusion on re-availment would still be reasonable.

[51] Further, the Board specifically considered the purposes of Mr Li's trips to China – to visit family and to conduct business – as well as the number of trips. I cannot find that the Board ignored the purposes of Mr Li's trips.

[52] Accordingly, the Board's conclusion represented a defensible outcome based on the facts and the law. It was not unreasonable.

VII. Conclusion and Disposition

[53] For the reasons above, I must dismiss this application for judicial review.

[54] Mr Li proposed the following questions for certification:

1. Is cessation an issue that could have been raised and therefore *res judicata* when a visa office grants a permanent resident travel document or the respondent grants a permanent resident card?
2. Can the doctrine of waiver apply where the decision is not one to which the doctrine of *res judicata* applies?
3. Does the principle that "the power to make retroactive policies will not be inferred unless the statute requires it" apply to the policy to give increased priority to cessation applications consequent on the changes to the *Immigration and Refugee Protection Act* which came into force on December 15, 2012?
4. Is the presumption of re-availment on obtaining a passport an evidentiary or legal presumption?
5. Is the duty of fairness in cessation proceedings breached where the Minister of Public Safety has sought a removal order and the Canada Border Services Agency hearings officer who is acting for the Minister in admissibility proceedings both applies to the Refugee Protection Division of the Immigration and Refugee Board

for cessation and represents the Minister of Citizenship and Immigration at cessation proceedings?

6. Is the duty of fairness in cessation proceedings breached where the Canada Border Services Agency hearings officer who exercises the delegated jurisdiction to seek cessation is the same as the officer who represents the Minister at cessation proceedings?

[55] My responses to Mr Li's proposed questions are as follows:

1. Cessation is an issue entirely separate from permanent residence and was not addressed by the officials who considered Mr Li's permanent resident status. In theory, the officials could have considered cessation, but this possibility is not sufficient to render their decisions *res judicata* under these circumstances. That proposition would only apply where the cause of action is the same; that is not the case here. Therefore, the doctrine of *res judicata* does not apply here;
2. This question is speculative, as there was no waiver;
3. Mr Li has cited no authority for the proposition that a new policy cannot be applied to past circumstances. Therefore, this does not raise a serious question of general importance;
4. Nothing turns on this question;
5. And 6. No factual basis for the claim of unfairness has been made out. Therefore, no serious question of general importance arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is denied, and no serious question of general importance arises.

"James W. O'Reilly"

Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27	*Loi sur l'immigration et la protection des réfugiés,* LC 2001, ch 27
Residency obligation	Obligation de résidence
28. (1) A permanent resident must comply with a residency obligation with respect to every five-year period.	**28.** (1) L'obligation de résidence est applicable à chaque période quinquennale.
(2) The following provisions govern the residency obligation under subsection (1):	(2) Les dispositions suivantes régissent l'obligation de résidence :
(*a*) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are	*a*) le résident permanent se conforme à l'obligation dès lors que, pour au moins 730 jours pendant une période quinquennale, selon le cas :
(i) physically present in Canada,	(i) il est effectivement présent au Canada,
(ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,	(ii) il accompagne, hors du Canada, un citoyen canadien qui est son époux ou conjoint de fait ou, dans le cas d'un enfant, l'un de ses parents,
(iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province,	(iii) il travaille, hors du Canada, à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale,
(iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, or	(iv) il accompagne, hors du Canada, un résident permanent qui est son époux ou conjoint de fait ou, dans le cas d'un enfant, l'un de ses parents, et qui travaille à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale,
(v) referred to in regulations providing for other means of compliance	(v) il se conforme au mode d'exécution prévu par règlement;
(*b*) it is sufficient for a permanent resident to demonstrate at examination	*b*) il suffit au résident permanent de prouver, lors du contrôle, qu'il se conformera à l'obligation pour la période quinquennale suivant l'acquisition de son statut, s'il est résident permanent depuis moins de cinq ans,
(i) if they have been a permanent resident for less than five years, that they will be able to meet the residency	

obligation in respect of the five-year period immediately after they became a permanent resident;
(ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year period immediately before the examination; and

et, dans le cas contraire, qu'il s'y est conformé pour la période quinquennale précédant le contrôle;

(*c*) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.

c) le constat par l'agent que des circonstances d'ordre humanitaire relatives au résident permanent — compte tenu de l'intérêt supérieur de l'enfant directement touché — justifient le maintien du statut rend inopposable l'inobservation de l'obligation précédant le contrôle.

Permanent resident

46. (1) A person loses permanent resident status

Résident permanent

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

(*a*) when they become a Canadian citizen;

a) l'obtention de la citoyenneté canadienne;

(*b*) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;

b) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;

(*c*) when a removal order made against them comes into force;

c) la prise d'effet de la mesure de renvoi;

(*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;

(*d*) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination to vacate a decision to allow their application for protection; or

d) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou celle d'accorder la demande de protection;

(*e*) on approval by an officer of their application to renounce their permanent resident

e) l'acceptation par un agent de la demande de renonciation au statut de résident

status.

Rejection

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:

(*a*) the person has voluntarily reavailed themself of the protection of their country of nationality;

(*b*) the person has voluntarily reacquired their nationality;

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

(*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

(*e*) the reasons for which the person sought refugee protection have ceased to exist.

Criminal Code, RSC, 1985, c C-46

False pretence or false statement

362. (1) Every one commits an offence who

…

Presumption from cheque issued without funds

(4) Where, in proceedings under paragraph (1)(*a*), it is shown that anything was obtained by the accused by means of a cheque that, when presented for payment within a reasonable time, was dishonoured on the ground that no funds or insufficient funds were on deposit to the credit of

permanent.

Rejet

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) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;

b) il recouvre volontairement sa nationalité;

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

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) les raisons qui lui ont fait demander l'asile n'existent plus.

Code criminel, LRC (1985), ch C-46

Escroquerie : faux semblant ou fausse déclaration

362. (1) Commet une infraction quiconque, selon le cas :

[…]

Présomption découlant d'un chèque sans provision

(4) Lorsque, dans des poursuites engagées en vertu de l'alinéa (1)*a*), il est démontré que le prévenu a obtenu une chose au moyen d'un chèque qui, sur présentation au paiement dans un délai raisonnable, a subi un refus de paiement pour le motif qu'il n'y avait

the accused in the bank or other institution on which the cheque was drawn, it shall be presumed to have been obtained by a false pretence, unless the court is satisfied by evidence that when the accused issued the cheque he believed on reasonable grounds that it would be honoured if presented for payment within a reasonable time after it was issued.

pas de provision ou de provision suffisante en dépôt au crédit du prévenu à la banque ou autre institution sur laquelle le chèque a été tiré, il est présumé que la chose a été obtenue par un faux semblant, sauf si la preuve établit, à la satisfaction du tribunal, que lorsque le prévenu a émis le chèque il avait des motifs raisonnables de croire que ce chèque serait honoré lors de la présentation au paiement dans un délai raisonnable après son émission.

FEDERAL COURT

SOLICITORS OF RECORD

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