

Federal Court



Cour fédérale

**Date: 20220818**

**Docket: IMM-4839-21**

**Citation: 2022 FC 1211**

**Ottawa, Ontario, August 18, 2022**

**PRESENT: Mr. Justice James W. O'Reilly**

**BETWEEN:**

**RACHEL PINNICO BINDA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Ms Rachel Pinnico Binda arrived in Canada in 2019. She claimed to fear persecution in her native country, Liberia, but was ineligible to claim refugee status in Canada. However, Ms Binda was afforded a pre-removal risk assessment (PRRA).

[2] In her PRRA application, Ms Binda explained that she was at risk of serious mistreatment in Liberia at the hands of a prominent public figure who, in the 1990s, had kidnapped her, sexually assaulted her, and murdered her grandparents. She also feared political persecution because of her association with her (now deceased) ex-husband who was a political activist. Finally, she claimed to fear persecution based on her family connection to freed American slaves.

[3] The PRRA officer found that Ms Binda was neither a Convention refugee nor a person in need of protection. Ms Binda argues that the officer's decision was unreasonable because the officer failed to consider that there were compelling reasons to grant her application even if she did not, strictly speaking, qualify for refugee protection. In addition, Ms Binda submits that the officer erred by giving little weight to the photographs she provided showing the injuries she had sustained while held captive in Liberia. Finally, Ms Binda contends that the officer failed to adequately consider the personal risk to which she would be exposed if she had to return to Liberia. She asks me to quash the officer's decision and order a different officer to reconsider her application.

[4] I agree with Ms Binda that the officer's decision was unreasonable on the issue of compelling reasons. I will grant her application for judicial review on that basis; I need not, therefore, consider the other arguments she presented to me.

[5] The sole issue is whether the officer should have considered whether there were compelling reasons to grant Ms Binda's application.

## II. The Statutory Framework

[6] The issue of compelling reasons is addressed in section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see Annex for provisions cited). It states a general rule that a claim for refugee protection should be rejected if the reasons for seeking it have ceased to exist (s 108(1)(e)). This provision applies, for example, where the conditions in the country from which a claimant has fled have improved to the point that there is no longer a serious possibility of persecution there.

[7] Subsection 108(4) provides an exception to that general rule. It says that the rule does not apply where claimants can show compelling reasons arising from past persecution or mistreatment for not availing themselves of the protection of their home country. In other words, claimants can obtain refugee protection in Canada if they can show compelling reasons why, based on past persecution or mistreatment, they should not be required to return to their home country, even if they will no longer be exposed to that persecution or mistreatment.

## III. Should the officer have considered whether there were compelling reasons supporting Ms Binda's application?

[8] The Minister argues that the compelling reasons exception applies only where a person has already been found to be a Convention refugee or a person in need of protection and the reasons for granting the person protection have ceased to exist. In making that submission, the Minister relies on a decision of mine in which I said that the exception in s 108(4) applied only “to persons previously found to be refugees” (*Cardenas v Canada (Citizenship and*

*Immigration*), 2018 FC 262 at para 28. However, that was a case where the claimant had failed in her refugee claim and, therefore, there was no “previous persecution, torture, treatment or punishment” (s 108(4)) that would provide a basis for concluding that there were compelling reasons justifying her refusal to return to her home country. The exception simply did not apply in the circumstances of that case.

[9] Similarly, Justice Russel Zinn found that s 108(4) did not apply to a person who had never qualified for refugee protection: *Liu v Canada (Citizenship and Immigration)*, 2010 FC 819 at para 29.

[10] Does the exception apply in Ms Binda’s case?

[11] In effect, the officer found that Ms Binda would no longer be subject to persecution or mistreatment in Liberia. The officer found that Ms Binda had been traumatized by her past experiences but she had not proved that medical or psychological treatment would be unavailable if she returned to Liberia. In addition, while Ms Binda claimed to fear a prominent politician in Liberia, that person’s status had diminished in the intervening years and there was little evidence to show that he would still have the means or motivation to seek her out if she returned home. As for Ms Binda’s fear of political persecution due to her deceased ex-husband’s activities, the officer found that there was no longer any reason why authorities would associate her with those activities.

[12] As I see it, the officer arrived at a conclusion that falls within the conditions set out in subsection 108(1)(e) of IRPA – the officer found that, while Ms Binda may have been subject to past persecution and mistreatment in Liberia, she was no longer likely to be exposed to the same risks if she returned to Liberia today. On that basis, the officer denied Ms Binda’s application.

[13] In light of that conclusion, the officer had a duty to consider the reasons that Ms Binda put forward as a justification for not availing herself of the protection of her home country. Again, section 108(4) creates an exception to the general rule that protection is not available where the basis for a person’s claim no longer exists: Persons who can show compelling reasons, based on previous persecution or mistreatment, for not seeking protection in their home country may still be eligible for refugee protection in Canada.

[14] The officer accepted that Ms Binda experienced persecution and mistreatment in the past, yet failed to consider whether there were compelling reasons why she should not be required to seek protection in Liberia today. In the circumstances, the officer’s failure to consider the issue of compelling reasons rendered the decision unreasonable.

#### IV. Conclusion and Disposition

[15] In the circumstances, the PRRA officer should have considered the question of whether Ms Binda had shown compelling reasons for not seeking protection in her home country of Liberia. In the absence of that analysis, the officer’s conclusion was unreasonable. Therefore, I must allow this application for judicial review and order another officer to consider Ms Binda’s

PRRA application. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-4839-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed.
2. The matter is returned to another officer for reconsideration.
3. No question of general importance is stated.

"James W. O'Reilly"

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Judge

ANNEX

**Immigration and Refugee  
Protection Act**

**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:

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

**Exception**

(4) 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.

**Loi sur l'immigration et la  
protection des réfugiés**

**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 :

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

**Exception**

(4) 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.



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4839-21

**STYLE OF CAUSE:** RACHEL PINNICO BINDA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARING HELD BY VIDEOCONFERENCE IN  
TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 20, 2022

**JUDGMENT AND REASONS** O'REILLY J

**DATED:** AUGUST 18, 2022

**APPEARANCES:**

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