Federal Court  Cour fédérale

Date: 20250129

Docket: IMM-7986-23

Citation: 2025 FC 186

Ottawa, Ontario, January 29, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

TEKINA TELET

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a citizen of China. In 2013, she was granted refugee protection on the basis of her well-founded fear of persecution at the hands of the Chinese government because of her Uyghur ethnicity and because of her past association with an activist who had been targeted by the Chinese government. The applicant became a permanent resident of Canada in 2015.

[2] Subsequently, using her Chinese passport, the applicant travelled to China for extended periods in 2017, 2018, and 2019 to visit her parents. While she was in China in 2019, the applicant renewed her Chinese passport. The applicant also used her Chinese passport several times to travel to the United States.

[3] In July 2020, the Minister of Citizenship and Immigration applied to the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada under subsection 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), for an order determining that the applicant's refugee protection has ceased due to re-availment pursuant to paragraph 108(1)(a) of that Act. While the application was pending, the applicant visited China again in 2023 to see her father, who was ill.

[4] The applicant conceded that she had voluntarily re-availed herself of the protection of her country of nationality within the meaning of paragraph 108(1)(a) of the *IRPA*. She submitted, however, that the RPD should not determine that her refugee protection has ceased by reason of re-availment; rather, it should determine pursuant to paragraph 108(1)(e) that her refugee protection has ceased because the reasons for which she sought refugee protection have ceased to exist. Specifically, the applicant maintained that, as a result of having returned to China several times without incident, she no longer feared persecution there. In reply, the Minister initially submitted that the cessation application should be determined under both paragraphs 108(1)(a) and 108(1)(e) or, in the alternative, only under paragraph 108(1)(a); ultimately, however, the Minister maintained its original position that the application should be granted only on the basis of re-availment.

[5] The RPD allowed the Minister's application in a decision dated May 29, 2023. The RPD determined that the applicant's refugee protection has ceased pursuant to paragraph 108(1)(a) of the *IRPA* due to re-availment. Further, the RPD rejected the applicant's contention that her refugee protection has ceased pursuant to paragraph 108(1)(e). The RPD found that this was "not supported by the facts and evidence before the panel." On the contrary, there was no evidence before it that China had "in any way slowed or stopped" its persecution of Uyghurs or those thought to be sympathetic to their causes. The RPD therefore declined to make a finding of cessation under paragraph 108(1)(e).

[6] As a result of the determination that the applicant's refugee protection has ceased, the applicant's claim for refugee protection was deemed to be rejected pursuant to subsection 108(3) of the *IRPA*. Since this determination was made under paragraph 108(1)(a) of the *IRPA*, and not under paragraph 108(1)(e), the applicant also lost her permanent resident status in Canada and she became inadmissible: see *IRPA*, section 40.1 and paragraph 46(1)(c.1).

[7] The applicant now applies for judicial review of the RPD's decision under subsection 72(1) of the *IRPA*. She does not challenge the finding of re-availment in its own right, nor could she given the concession she made before the RPD. Rather, the applicant submits that it was unreasonable for the RPD to decline to find that her refugee protection has ceased solely under paragraph 108(1)(e). She also submits that, in rejecting her contention that her refugee protection has ceased under paragraph 108(1)(e), the RPD breached the requirements of procedural fairness.

[8] As I will explain, the applicant has not persuaded me that the RPD's decision is flawed in either of these ways. This application for judicial review will, therefore, be dismissed.

II. STANDARD OF REVIEW

[9] As just noted, the applicant challenges both the reasonableness of the RPD's decision and the fairness of the process that led to it. The applicable standards of review are not in dispute.

[10] The substance of the RPD's decision is reviewed on a reasonableness standard. A reasonable decision "is 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid*.). That being said, the impact of a finding that refugee protection has ceased on the person in question can be profound. In addition to the loss of refugee protection, a serious matter in and of itself, depending on the ground on which refugee protection is found to have ceased, such a finding can have significant collateral effects, including the loss of permanent resident status and becoming inadmissible. As a result, there is a heightened duty on the RPD to explain its decision granting a cessation application (*Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 at paras 50-51). To establish that the decision should be set aside because it is unreasonable, the applicant must demonstrate that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

[11] To determine whether the requirements of procedural fairness were met, on the other hand, a reviewing court must conduct its own analysis of the process followed by the decision maker and determine for itself whether the process leading to the decision was fair in all the circumstances (*Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56). Although, strictly speaking, no standard of review is implicated, it has been said that this inquiry is functionally the same as applying a correctness standard (*Canadian Pacific Railway Co*, at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The essential questions a reviewing court must answer are whether the applicant knew the case she had to meet and whether she had a full and fair chance to meet that case (*Canadian Pacific Railway Co*, at para 56).

III. ANALYSIS

A. *Cessation of Refugee Protection*

[12] Section 108 of the *IRPA* provides as follows:

Cessation of Refugee Protection	**Perte de l'asile**
Rejection	**Rejet**
108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	**108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants:
(a) the person has voluntarily reavailed	**a)** il se réclame de nouveau et volontairement de la

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.

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.

Cessation of refugee protection

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

Perte de l'asile

(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

Effect of decision

(3) If the application is allowed, the claim of the person is deemed to be rejected.

Effet de la décision

(3) Le constat est assimilé au rejet de la demande d'asile.

Exception

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.	**(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.

[13] Section 108 can be engaged in two different ways. One is under subsection 108(1), which provides that a claim for refugee protection that is pending shall be rejected in the event that any of paragraphs 108(1)(a) to (e) are found to be satisfied. The other is under subsection 108(2), which provides that, in relation to a person on whom refugee protection has been conferred, the Minister can apply for a determination that refugee protection has ceased on the basis of any of the circumstances described in paragraphs 108(1)(a) to (e). If the Minister demonstrates that this is the case, the RPD "may determine" that refugee protection has ceased. If the application is allowed, the refugee claim, which had previously been accepted, is then deemed to be rejected. It is in the latter respect that section 108 was engaged in the applicant's case.

[14] Paragraphs 108(1)(a) to (e) of the *IRPA* implement section 1C, clauses (1) to (5), of the 1951 *Refugee Convention* (*Karasu v Canada (Citizenship and Immigration)*, 2023 FC 654 at para 37). Article 1 of the *Refugee Convention* sets out the definition of the term "refugee". Section 1A provides a lengthy set of criteria for determining to whom, for the purpose of the *Convention*, the term "refugee" shall apply. For present purposes, the material parts of that

definition (as amended by Article 1 of the 1967 Optional Protocol) are enacted in paragraph 96(a) of the *IRPA*. Paragraph 96(a) states:

Convention refugee	**Définition de *réfugié***
96 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,	**96** 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 :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	**a)** 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;

[15] Returning to section 1C of the *Refugee Convention*, it identifies several circumstances under which the *Refugee Convention* shall cease to apply to an individual. In relevant part, it provides as follows:

> **C.** This Convention shall cease to apply to any person falling under the terms of section A if:
>
> (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
>
> (2) Having lost his nationality, he has voluntarily reacquired it; or
>
> (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
>
> (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

> (5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

[16] As will be discussed below, clause (5) of section 1C of the *Refugee Convention* is a relevant constraint against which the reasonableness of the RPD's decision must be assessed.

B. *Is the decision unreasonable?*

[17] As already noted, the Minister sought a determination under subsection 108(2) of the *IRPA* that the applicant's refugee protection has ceased because she had re-availed herself of the protection of China, her country of nationality – in other words, that the applicant is a person described in paragraph 108(1)(a) of the *IRPA*. In the originating notice of application, the Minister did not rely on any other grounds for cessation apart from this.

[18] At the hearing before the RPD, the applicant conceded that her refugee protection has ceased due to re-availment. She argued, however, that her refugee protection has also ceased under paragraph 108(1)(e) because the reasons for which she sought refugee protection no longer exist. Specifically, she no longer feared persecution in China.

[19] The applicant set out her position more fully in post-hearing written submissions. According to the applicant, both paragraph 108(1)(a) and paragraph 108(1)(e) were satisfied.

However, given the harsh legal consequences that would follow from a finding that her refugee protection has ceased under paragraph 108(1)(a), consequences that would not follow from a finding that it has ceased under paragraph 108(1)(e) – namely that, among other things, she would lose not only her refugee status but also her status as a permanent resident of Canada and she would immediately become inadmissible – the RPD should make a determination of cessation only under paragraph 108(1)(e).

[20] In reply, the Minister submitted that the RPD should find that the applicant's refugee protection has ceased under both paragraph 108(1)(a) and paragraph 108(1)(e) or, in the alternative, only under paragraph 108(1)(a). The Minister did not concede, however, that paragraph 108(1)(e) was satisfied. On the contrary, the Minister submitted that there was no evidence before the RPD that there had been meaningful, effective and durable changes with respect to the circumstances of Uyghurs in China since the applicant was granted refugee protection. In the end, as reflected in further written submissions provided to the RPD on May 18, 2023, the Minister maintained its original position that the applicant's refugee protection should be found to have ceased only under paragraph 108(1)(a).

[21] The RPD began its analysis with paragraph 108(1)(a) of the *IRPA*. It correctly stated that the test for re-availment has three requirements: the applicant must have acted voluntarily; she must intend to re-avail herself of the protection of her country of nationality; and she must actually obtain that protection. The RPD then explained why it was satisfied that all three elements of the test were met and, consequently, that the applicant had re-availed herself of the protection of China within the meaning of paragraph 108(1)(a) of the *IRPA*. Since this

determination is not challenged directly on this application, it is not necessary to set out the RPD's reasoning in support of it.

[22] Turning to paragraph 108(1)(e), the RPD began by noting that the applicant had submitted that, notwithstanding her concession that the test for re-availment under paragraph 108(1)(a) was met, the RPD should make a finding of cessation only under paragraph 108(1)(e) because of the harsh consequences of a finding under the former provision compared to the latter. The RPD concluded, however, that the test for cessation under paragraph 108(1)(e) was not met. Even though the applicant herself maintained that she no longer feared persecution at the hands of the Chinese government, one "need only look at the myriad [of] evidence in the National Documentation Package for China" to see that there is no evidence before the panel that Chinese officials have "in any way slowed or stopped" their persecution of Uyghur individuals or anyone thought to be sympathetic to their causes. The RPD stated: "To make a decision based on 108(1)(e), that the reasons for which the person sought refugee protection have ceased to exist, is not supported by the facts and evidence before the panel. I decline to make a finding that 108(1)(e) is applicable, considering all the circumstances of this case."

[23] In setting out the legal framework for its analysis, the RPD commenced by quoting subsection 108(1) of the *IRPA* in full and italicizing the word "shall" in the opening sentence of that provision ("A claim for refugee protection *shall* be rejected, etc."). The RPD then noted that paragraphs 108(1)(a) to (e) "are to be read disjunctively." Thus, according to the RPD, where a person who was granted protection by Canada "voluntarily re-avails themselves of the protection

of their country of nationality under paragraph 108(1)(a), they are considered to have ceased to be a Convention refugee and their claim for protection is deemed to have been rejected as of the time it was initially determined."

[24] The applicant submits that the RPD fell into reviewable error by relying on the imperative "shall be rejected" in subsection 108(1) when what was engaged in her case was the discretion to find that refugee protection has ceased ("may determine") in subsection 108(2). I agree with the applicant that, at first blush, this suggests that the RPD may have misunderstood the task before it under subsection 108(2): see my decision in *Taji v Canada (Citizenship and Immigration)*, 2023 FC 1587 at para 19. Nevertheless, this does not impugn the overall reasonableness of the decision. This is because, unlike in *Taji*, where the person concerned had also urged the RPD to find that his refugee protection had ceased only under paragraph 108(1)(e), the RPD did not simply end its analysis once it was satisfied that paragraph 108(1)(a) was satisfied. Instead, having made this determination, the RPD goes on to explain why it found that paragraph 108(1)(e) was not satisfied.

[25] The applicant also submits that the RPD's analysis is unreasonable because it rests on an unreasonably narrow understanding of the phrase "the reasons for which the person sought refugee protection" in paragraph 108(1)(e) of the *IRPA*. More specifically, the applicant submits that the reasons for which she sought refugee protection included her fear of persecution and the RPD erred by failing to consider that the fact that her fear no longer exists would bring her within the scope of paragraph 108(1)(e), irrespective of the conditions Uyghurs face generally in China.

[26] I do not agree.

[27] The applicant's position before the RPD raised a question of statutory interpretation: Do "the reasons for which the person sought refugee protection" referred to in paragraph 108(1)(e) include the refugee claimant's fear of persecution? The RPD did not answer this question explicitly. As the Supreme Court of Canada observed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, however, "even if a decision does not explicitly consider the meaning of a relevant provision, the court may be able to discern the interpretation adopted from the record and evaluate whether it is reasonable" (at para 69; see also *Vavilov*, at para 123, and *Galindo Camayo*, at para 57).

[28] It is true that the RPD focused exclusively on conditions in China and did not address the applicant's claim that she no longer feared persecution in this part of its decision (although it is addressed elsewhere). It is clear, however, that the RPD held implicitly that, under paragraph 108(1)(e), the reasons for which the applicant sought refugee protection must include the conditions in the country of nationality – in particular, the persecution of Uyghurs and their perceived supporters. Since those conditions had not "ceased to exist," the RPD concluded that paragraph 108(1)(e) was not satisfied.

[29] This is a reasonable interpretation of paragraph 108(1)(e) of the *IRPA*. The RPD's understanding of the reasons for which the applicant sought protection, in the context of paragraph 108(1)(e), is consistent with the jurisprudence interpreting that provision. It is also consistent with how clause (5) of section 1C of the *Refugee Convention* has been interpreted.

[30] Looking first at how paragraph 108(1)(e) of the *IRPA* has been interpreted, Justice St-Louis (as she then was) stated recently in *Karasu* that "the jurisprudence has established that a change of circumstances is relevant for determining whether, after an absence from the country of nationality, there has been a 'substantial', 'effective' and 'durable' change in country conditions or in the personal circumstances of the applicant, and if there has been, if the change in circumstances support a continuation of a risk on return today" (at para 67).

[31] The applicant argues that the disappearance of her fear of persecution is a change in her "personal circumstances" that could satisfy paragraph 108(1)(e), as contemplated in *Karasu.* She submits that it was unreasonable for the RPD to fail to recognize this and, instead, to focus exclusively on country conditions. In support of this submission, the applicant also relies on *Wang v Canada (Citizenship and Immigration)*, 2024 FC 632 at paras 18-21.

[32] I would begin by observing that, while Justice St-Louis refers to changes in country conditions *or* in the personal circumstances of the applicant, the cases she cites in support of the summary of what is at issue under paragraph 108(1)(e) – specifically, *Winifred v Canada (Citizenship and Immigration)*, 2011 FC 827 at para 32, and *Mahdi v Canada (Citizenship and Immigration)*, 2022 FC 1576 at para 16 – refer exclusively to changed country conditions; there is no mention of changes in personal circumstances. The same is true of the jurisprudence cited in those decisions.

[33] Furthermore, I do not understand the reference to personal circumstances in *Karasu* to have as broad a scope as the applicant suggests. Reading the phrase in context and against the

backdrop of the issues before her, I take Justice St-Louis to be referring to changes in personal circumstances that would entail that, objectively, there is no longer "a risk on return today."

[34] As stated in *Karasu*, whether the change is in country conditions or in personal circumstances, the question is the same: Does the change "support a continuation of a risk on return today"? This is an objective determination. Consequently, it is insufficient for the party facing a cessation application simply to maintain that, subjectively, they no longer fear persecution and, therefore, the reasons for which they sought refugee protection no longer exist. As Justice St-Louis held in *Karasu*, even if the person's subjective fear, which would have been one of the reasons for which refugee protection was sought, no longer exists, it does not follow that the reasons (plural) for which the person sought refugee protection have all ceased to exist, as paragraph 108(1)(e) requires (at para 71; see also *Kaya v Canada (Citizenship and Immigration)*, 2023 FC 123 at para 33). Those reasons also necessarily included conditions in the country of nationality.

[35] As in the present case, Mr. Karasu had attempted to bring himself within the scope of paragraph 108(1)(e) of the *IRPA* in response to the Minister's application for a determination that his refugee protection has ceased on the basis of re-availment. Among other things, he had argued before the RPD that paragraph 108(1)(e) was satisfied because his personal circumstances had changed. He had resolved the problem of his having evaded compulsory military service in Turkey and, with the passage of time and his relocation to Canada, he was no longer a young Kurd from the southeast of Turkey. These were among the reasons he had sought refugee protection in Canada and, he maintained, they no longer existed. Justice St-Louis found that the

RPD had concluded reasonably that such changes did not bring Mr. Karasu within the scope of paragraph 108(1)(e). In so concluding, she observed that "Kurdish identity is well established as a reason for refugee protection, and it appears Mr. Karasu relied on this heavily in his RPD hearing" (at para 71). In other words, even if Mr. Karasu maintained today that he himself no longer feared persecution because of changes in his own circumstances, the RPD reasonably determined that this was insufficient to bring him within paragraph 108(1)(e) because other reasons for which he sought refugee protection such as his Kurdish identity continued to exist. I do not understand *Wang* to have adopted a broader view.

[36] Taking a step back, one must not lose sight of the fact that it is the Minister who is seeking the cessation of refugee protection because the person in question no longer comes within the definition of Convention refugee – that is, because the person no longer has a well-founded fear of persecution by reason of which they are unable or unwilling to avail themselves of the protection of their country of nationality. While there is a subjective element to this question, it is the objective element – whether the fear is well founded – that is determinative. As the *Refugee Handbook* explains, when it is alleged that the circumstances that gave rise to the fear have ceased to exist, the changes must be such that it "can be assumed to remove the basis of the fear of persecution" (at para 135). The focus must be on the basis of the fear or, stated otherwise, on the reasons for which the person sought refugee protection. When a respondent to a cessation application claims to no longer have a subjective fear of persecution, this certainly suggests that they no longer wish to be considered a refugee but this is beside the point when it comes to cessation under paragraph 108(1)(e) of the *IRPA*. That person may, for understandable reasons, prefer a determination under paragraph 108(1)(e) over one under any other paragraph of

subsection 108(1) but this does not change the test that must be applied under paragraph 108(1)(e).

[37] Even if it did not spell this out explicitly, the approach of the RPD in the present case is consistent with the interpretation of paragraph 108(1)(e) set out above.

[38] The RPD's approach is also consistent with how clause (5) of section 1C of the *Refugee Convention* has been interpreted.

[39] Paragraph 3(2)(b) of the *IRPA* expressly identifies one of the objectives of that Act as being "to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement." In *Németh v Canada (Justice)*, 2010 SCC 56, the Court observed that the *IRPA* is "the main legislative vehicle for implementing Canada's international refugee obligations" (at para 21). Furthermore, paragraph 3(3)(f) of the *IRPA* provides that that Act is to be construed and applied in a manner that "complies with international human rights instruments to which Canada is signatory." This includes the 1951 *Refugee Convention* as well as the 1967 Optional Protocol. Consequently, as the Supreme Court held in *Mason*, the *Refugee Convention* is "determinative of how the IRPA must be interpreted and applied, in the absence of contrary legislative intention" (at para 106, quoting *de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 at para 87).

[40] As already stated, paragraphs 108(1)(a) to (e) of the *IRPA* incorporate clauses (1) to (5) of section 1C of the *Refugee Convention* into domestic law. At the outset, it should be noted that while paragraph 108(1)(e) corresponds to clause (5), they are worded differently. Unlike the former, which refers to "the reasons for which the person sought refugee protection," clause (5) refers to "the circumstances in connection with which [the person in question] has been recognized as a refugee." Clause (5) also draws a direct link between those circumstances having ceased to exist and the question of whether the person can "continue to refuse to avail himself of the protection of the country of his nationality," an essential precondition for international protection. Nevertheless, there has been no suggestion in the jurisprudence that clause (5) of section 1C of the *Refugee Convention* and paragraph 108(1)(e) of the *IRPA* have different meanings.

[41] In the interpretation and application of clause (5), changes in country conditions are the primary, if not the exclusive focus. For example, the United Nations High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection* (reissued February 2019) (*Refugee Handbook*), contrasts the first four cessation clauses (see paragraph 15, above), which "reflect a change in the situation of the refugee that has been brought about by himself," with clause (5), which is "based on the consideration that international protection is no longer justified on account of changes in the country where persecution was feared, because the reasons for the person becoming a refugee have ceased" (at para 115). The *Refugee Handbook* also states: "'Circumstances' refer to fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution. A mere – possibly transitory – change in the facts surrounding the individual's fear,

which does not entail such major changes of circumstances, is not sufficient to make this clause applicable" (at para 135). Thus, the RPD's focus on country conditions when determining whether the applicant's refugee protection has ceased under paragraph 108(1)(e) also finds support in how clause (5) of section 1C of the *Refugee Convention* has been interpreted.

[42] In sum, the RPD concluded that paragraph 108(1)(e) was not satisfied in the circumstances of this case. This conclusion is justified in light of the facts and law that constrained the decision maker. As well, the RPD provided reasons that were responsive to the applicant's submissions and that meaningfully accounted for the issues and concerns raised by the parties (*Vavilov*, at para 127). To repeat, the applicant's position was that the RPD should not find that paragraph 108(1)(a) was satisfied despite her concession to this effect; rather, it should find that her refugee protection has ceased only under paragraph 108(1)(e) because the conditions for such a finding were present and such a finding would protect her from the deleterious collateral consequences of a finding of re-availment under paragraph 108(1)(a). The RPD's reasons demonstrate that it was alert and sensitive to the serious consequences of a finding that the applicant's refugee protection has ceased due to re-availment. The RPD concluded that, despite those consequences, since the requirements of paragraph 108(1)(e) were not satisfied, there was no basis to opt for a finding of cessation under that provision instead of under paragraph 108(1)(a), as the applicant had urged it to do.

[43] While it would have been better if the RPD had expressly explained why a change in the applicant's state of mind – she no longer feared persecution in China – was, on its own, insufficient to satisfy paragraph 108(1)(e) of the *IRPA*, its failure to do so does not render the

decision unreasonable. On the contrary, by focusing on whether there had been sufficient changes in conditions in China for Uyghurs and their supporters, and then finding that there had not been (a finding that the applicant does not challenge), the RPD's decision is consistent with the legal constraints upon it (*Mason*, at para 72). It is also supported by the evidence before the tribunal.

[44] The applicant did not suggest any other reason why the RPD should not find that her refugee protection has ceased under paragraph 108(1)(a) apart from the argument that it should be found to have ceased under paragraph 108(1)(e) instead. As I have explained, the rejection of paragraph 108(1)(e) as a ground of cessation was altogether reasonable. Consequently, the determination that the applicant's refugee protection has ceased due to re-availment was the only reasonable conclusion given the positions of the parties, the legal constraints on the RPD, and the evidence before it. There is no basis to interfere with that determination. This ground of review must, therefore, be rejected.

C. *Did the RPD breach the requirements of procedural fairness?*

[45] As set out above, in concluding that paragraph 108(1)(e) of the *IRPA* was not satisfied, the RPD relied on evidence concerning the conditions of Uyghurs in China found in the National Documentation Package [NDP] for China. The RPD marked the NDP as an exhibit despite the fact that it was not introduced or referred to during the hearing. The applicant submits that the RPD breached the requirements of procedural fairness by relying on the NDP without first giving the parties notice that it intended to do so.

[46] I do not agree.

[47] The applicant was on notice that the conditions of Uyghurs in China generally was a live issue in her case. While this issue was not raised during the hearing, it arose squarely in the parties' post-hearing written submissions. In response to the applicant's submissions urging the RPD to find that the applicant's refugee protection has ceased under paragraph 108(1)(e) of the *IRPA*, counsel for the Minister wrote:

> Cessation under s. 108(1)(a) only deals with re-availment, not country conditions. The Respondent argues that s. 108(1)(e) should be applied to her case; this section takes into account changes in country conditions, yet no evidence has been brought forth to suggest that country conditions for people of Uyghur or Uzbek ethnicity have improved since the Respondent was granted protection. The Respondent was granted protection due to her affiliation with an anti-China activist as well as her declared Uyghur ethnicity.

[48] In reply submissions, counsel for the applicant acknowledged the Minister's reliance on conditions in China. He wrote:

> The only basis that the Minister appears to be asserting that [paragraph 108(1)(a)] should be preferred is if [paragraph 108(1)(e)] has not been made out. The Minister has indicated that (e) ought to be rejected in this case on the grounds that there is no durable and effective change. Is the Minister suggesting therefore that the Respondent has ceased to be a refugee under (a) but not under (e) because there remains some possibility of a risk of [*sic*] return? This creates a conundrum because the need to establish a durable and effective change was clearly designed to *protect refugees from the consequences of cessation under (e)*. This is then irrationally and immediately undermined by a finding under (a) given the consequences Parliament has mandated. [Emphasis in original.]

[49] Despite this acknowledgement, counsel for the applicant did not address the issue of whether conditions for Uyghur people generally in China have improved. Instead, he focused on why the collateral consequences of a finding of cessation due to re-availment adopted by Parliament were irrational. Following this, counsel for the Minister provided further written submissions, stating:

> A finding under 108(1)(e) requires the board to determine that there has been a meaningful, effective and durable change to the treatment of individuals of Uyghur ethnicity in China. 108(1)(e) is the only cessation section that does not require an action on behalf of the Respondent [now, the applicant]. A refugee whose country has undergone a meaningful, effective and durable change and for which they have not actively re-availed themselves could have their refugee status ceased and as such Parliament has distinguished this section to have no impact on Permanent Resident status given the lack of action required by the refugee for a finding under 108(1)(e).
>
> . . .
>
> The Respondent has put forth arguments that principles of settlement and integration matter and that these should persuade the board to find cessation under 108(1)(e) versus the more clearly established 108(1)(a) yet this does not accurately reflect Parliaments [*sic*] intentions. The distinguishing factor between 108(1)(a) and 108(1)(e) is that 108(1)(e) may cease status with no action on the part of the refugee. In the case at hand, the Respondent actively re-availed herself and as such the Minister maintains the position that 108(1)(a) is the more appropriate section for which cessation should occur; particularly when the claimant has not established meaningful, effective and durable change in country conditions related to one of the grounds for which status was granted.

[50] Given how the parties framed their respective post-hearing written submissions, the issue of whether there was evidence that there had been a meaningful, effective and durable change in the treatment of individuals of Uyghur ethnicity in China was clearly in play. Indeed, for the reasons set out above, this was a necessary element of the test for cessation under

paragraph 108(1)(e) of the *IRPA*. The RPD did not introduce a new issue by citing the NDP for China in its decision; rather, this was responsive to the submissions of the parties and the requirements of the law. Since the RPD decided to rely on information found in the NDP, it was appropriate to make it part of the record by marking it as an exhibit.

[51] Even though it was not referred to during the hearing or in the parties' post-hearing written submissions, I am satisfied that the applicant would have understood that the NDP for China would be in issue and that she could have addressed it before the RPD made its decision, if she had wished to. Refugee claimants are deemed to be aware of publicly available documents describing general country conditions, including the NDP, and that the RPD may rely on them (*Zerihaymanot v Canada (Citizenship and Immigration)*, 2022 FC 610 at para 48; *Lin v Canada (Citizenship and Immigration)*, 2021 FC 380 at para 26; *Lamsal v Canada (Citizenship and Immigration)*, 2023 FC 807 at para 51). In my view, given the issues engaged in a cessation application, this principle applies equally to the party responding to the application, even if they are not, strictly speaking, a refugee claimant in that proceeding.

[52] Furthermore, the applicant has not established that she was prejudiced by the RPD's reliance on the NDP in its decision. She has not provided any evidence that she was taken by surprise by the RPD's reliance on the NDP for China. Nor has she suggested that there is evidence in the NDP (or any other evidence, for that matter) to which she could have directed the RPD in order to show that its assessment of the conditions faced by Uyghurs in China today is erroneous, if only she had had the chance.

[53] Instead, the applicant submits that, had she known that the RPD was thinking of relying on country conditions in making its determination under paragraph 108(1)(e), she could have stated her position that those conditions are actually irrelevant in her case more clearly and forcefully. For the reasons set out above, any such argument is legally unsound. The applicant's right to answer the case against her does not encompass the right to advance invalid arguments.

[54] The applicant has not established that the process followed by the RPD did not comply with the requirements of procedural fairness. The applicant knew the case she had to meet and she had a full and fair opportunity meet that case. This ground of review must also be rejected.

IV. CONCLUSION

[55] For these reasons, the applicant has not established any basis to interfere with the RPD's conclusion that a finding that the applicant's refugee protection has ceased under paragraph 108(1)(e) is not warranted. This application for judicial review will, therefore, be dismissed.

[56] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-X-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7986-23
STYLE OF CAUSE:	TEKINA TELET v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	AUGUST 1, 2024
JUDGMENT AND REASONS:	NORRIS J.
DATED:	JANUARY 29, 2025

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