Federal Court of Appeal | Cour d'appel fédérale

Date: 20100510

Docket: A-275-09

Citation: 2010 FCA 118

CORAM: **NOËL J.A.**
LAYDEN-STEVENSON J.A.
STRATAS J.A.

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

GUANQIU ZENG and YANHONG FENG

Respondents

Heard at Toronto, Ontario, on April 28, 2010.

Judgment delivered at Ottawa, Ontario, on May 10, 2010.

REASONS FOR JUDGMENT BY: LAYDEN-STEVENSON J.A.

CONCURRED IN BY: NOËL J.A.
STRATAS J.A.

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REASONS FOR JUDGMENT

LAYDEN-STEVENSON J.A.

Introduction

[1] This appeal concerns Section E of Article 1 (Article 1E) of the *United Nations Convention Relating to the Status of Refugees*, 189 U.N.T.S. 150 (the Convention) and more particularly, the issue of asylum shopping. Article 1E is an exclusion clause. It precludes the conferral of refugee protection if an individual has surrogate protection in a country where

the individual enjoys substantially the same rights and obligations as nationals of that country. Asylum shopping refers to circumstances where an individual seeks protection in one country, from alleged persecution, torture, or cruel and unusual punishment in another country (the home country), while entitled to status in a "safe" country (the third country).

[2] The appellant Minister of Citizenship and Immigration (the Minister) appeals from the judgment of Gibson D.J. of the Federal Court (the application judge) on an application for judicial review of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board. The RPD determined that the respondents, Zeng and Feng, were excluded from refugee protection pursuant to Article 1E.

[3] In allowing the application for judicial review, the application judge identified a discrepancy in the jurisprudence regarding the appropriate date for assessing the applicability of the Article 1E exclusion (date of application or date of hearing). He concluded that a more fluid approach is required and proposed a three-step test to be followed in Article 1E exclusion determinations.

[4] At paragraph 34 of his reasons, the application judge articulated the test as follows:

> 1. Did the applicant or applicants, as of the date of his, her or their application for protection in Canada, have status in a third country, on the facts of this matter Chile, to which are attached rights and obligations recognized by the competent authorities of that country to be equivalent to those attached to the possession of the nationality of that country? If the answer to that question is "no", then the applicant or applicants are not excluded under Article 1E. If the answer to the question is "yes", then the decision-maker should go on to the following question:

2. Would the applicant or applicants, if he, she or they have attempted to enter the country in question, in this case Chile, on the date their refugee claim was determined, on a balance of probabilities, have been admitted to the country in question with status equivalent to that which they had on the date they applied for protection in Canada? If the answer to the foregoing question is "yes" then the applicant or applicants should be excluded under Article 1E. If the answer if "no", the decision-maker should proceed to the following question:

3. If the applicant or applicants would not be admitted to the country in question, in this case Chile, could the applicant or applicants have prevented that result and, if so, did he, she or they have good and sufficient reason for failing to do so? If the applicant or applicants could have preserved his, her or their right to be permitted entry and failed to do so without good and sufficient reason for failing to do so, the applicant or applicants should be excluded under Article 1E. If the applicant or applicants could not have preserved his, her or their right of entry or could have but provided good and sufficient reason for failing to do so, then he, she or they should not be excluded under Article 1E.

[5] The application judge certified the following question:

> Is it permissible for the Refugee Division to consider an individual's status in a third country upon arrival in Canada and thereafter, up until and including the date of the hearing before the Refugee Division in order to determine whether an individual should be excluded under Article 1E of the Refugee Convention? Is it also permissible for the Refugee Division to consider what steps the individual took or did not take to cause or fail to prevent the loss of status in a third country in assessing whether Article 1E should apply?

Relevant Facts

[6] Zeng and Feng, citizens of the People's Republic of China (PRC), are married and have two children. Their daughter was born in China and has always lived there. Their son was born in Chile.

[7] On November 6, 2002, Zeng left the PRC to work in Chile. He obtained permanent resident status there on November 8, 2005. Feng followed on a visitor's visa on December 23, 2003. On April 23, 2004, she obtained a work permit and on November 17th of that year, obtained temporary residence status. She applied for permanent residence status in October, 2005. Her application was pending when the couple left Chile, with their son, on May 19, 2006.

[8] Zeng and Feng testified before the RPD that they left Chile with the intention of returning to the PRC permanently. After transiting through Canada and Hong Kong, they arrived in the PRC on May 23, 2006. They allege that, after arriving there, they faced persecutory treatment from the authorities because of their breach of the one-child policy.

[9] Leaving their daughter in the care of her paternal grandparents, as they had done before, the respondents left the PRC with their son on June 19, 2006. They transited through Hong Kong where they obtained a visa from the Chilean Embassy allowing Feng to return to Chile (her temporary status had expired in November, 2005). When they arrived in Vancouver, Canada, on June 21st, they did not continue the journey to Santiago via Toronto. Rather, they remained in Canada. One week later, they claimed refugee protection.

Legislative Provisions

[10] The text of all statutory provisions referred to in these reasons is attached as Schedule "A". Section 98 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27

(IRPA) incorporates Article 1E of the Convention into domestic law. For ease of reference, the text of section 98 as well as Article 1E is set out below.

Immigration and Refugee Protection Act, S.C. 2001, c. 27	*Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, ch.27
98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.
United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150	*Convention des Nations Unies relative au statut des réfugiés*, 189 U.N.T.S. 150
1E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	1E. Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.

The Standards of Review

[11] The parties agree, and I concur, that the test for exclusion under Article 1E of the Convention is a question of law of general application to the refugee determination process and is reviewable on a standard of correctness. Whether the facts give rise to exclusion is a question of mixed fact and law yielding substantial deference to the RPD. On an appeal from a decision disposing of an application for judicial review, the question is whether the reviewing court identified the appropriate standard of review and applied it correctly.

The Certified Question

[12] The certified question comprises two parts. The first part relates to whether it is permissible for the RPD "to consider an individual's status in a third country upon arrival in Canada and thereafter, up until and including, the date of the hearing." The second part asks whether it is permissible for the RPD to consider "what steps the individual took or did not take to cause or fail to prevent the loss of status in a third country, in assessing whether Article 1E should apply."

Part 1- The Time Issue

[13] There is no debate on this issue. The parties agree, as do I, that the date must be fluid to ensure consideration is given to both the status and the actions of a claimant throughout. The facts at the date of the application are relevant; the facts as of the date of the hearing are relevant; pre-application facts may be relevant, depending upon the circumstances. These cases are largely fact-driven.

[14] Such an approach is consistent with the one taken by this Court in *Madhi v. Canada (Minister of Citizenship and Immigration)* (1995), 191 N.R. 170; 32 Imm. L.R. (2d) 1 (F.C.A.) (*Madhi*) and by Justice Rothstein, then of the Federal Court Trial Division, in *Wassiq v. Canada (Minister of Citizenship and Immigration)* (1996), 112 F.T.R. 143; 33 Imm. L.R. 143 (F.C.T.D.) (*Wassiq*). See also: the concurring opinion of Sharlow J.A. in *Parshottam v. Canada (Minister of Citizenship and Immigration)* (2008), 382 N.R. 186; 75

Imm. L.R. (3d) 165 (F.C.A.) (*Parshottam*), in the context of a pre-removal risk assessment (PRRA).

[15] *Madhi* does not stand for the proposition that the relevant date is the date of the application. The *Madhi* case concerned an application by the Minister to vacate an individual's refugee status on the basis that it was obtained by misrepresentation and concealment. The question of misrepresentation turned on the information provided in the application. However, at paragraphs 11 and 12 of the reasons for judgment, the court held that the individual's status at the time of the hearing was a relevant consideration in determining whether protection could nonetheless be granted.

[16] In sum, an inquiry regarding whether a claimant should be excluded under Article 1E should take into account all relevant facts to the date of the hearing.

[17] I agree with the Minister that the first step of the application judge's test does not allow for the possibility that a claimant's status could change between the date of the application and the date of the hearing (for example, a pending application for status could have been granted in the interim). The respondent acknowledges that this is the case.

Part 2 – The Status Issue

[18] The Minister, in written submissions, took the approach that asylum shopping results in pre-emptive application of the Article 1E exclusion even when the individual no longer

has status in the third country. That position, while maintained at the hearing, was refined to take into account the specific circumstances discussed later in these reasons. The respondent argued that the true issue is whether the claimant requires protection at the date of the hearing, regardless of whether the claim might involve asylum shopping.

[19] At the hearing of this appeal, the submissions of the parties evolved toward common ground. The Minister and the respondents agreed on a number of basic propositions, each of which I consider to be unassailable. Those propositions are:

- the objectives set out in subsection 3(2) of the IRPA seek, among other things, to provide protection to those who require it and, at the same time, provide a fair and efficient program that maintains the integrity of the system;
- the purpose of Article 1E is to exclude persons who do not need protection;
- asylum shopping is incompatible with the surrogate dimension of international refugee protection;
- Canada must respect its obligations under international law;
- there may be circumstances where the loss of status in the third country is through no fault of a claimant in which case the claimant need not be excluded.

[20] The Minister's quarrel is with a claimant who controls the third country status by choosing not to access it and then loses it as a result. The refugee claim process is not intended to provide a route to better protection when there is existing and available protection elsewhere.

[21] However, in view of the propositions that require the provision of protection to those in need as well as adherence to Canada's international law obligations, the Minister concedes that, in limited circumstances, when Article 1E is applied to those asylum shoppers who cannot return to the third country, the potential for removal from Canada to the home country without the benefit of a risk assessment exists. If this were to occur, it opens the door to the possibility of Canada indirectly running afoul of its international obligations.

[22] The Minister recognizes that the PRRA process does not provide a complete response to the dilemma. If a PRRA officer concludes that Article 1E applies, even if risk is established, refugee protection cannot follow by virtue of section 98 of the IRPA. Further, the claimant cannot reap the benefit of a section 114 stay of removal because Article 1E does not fall within subsection 112(3). Although it is within the power of the PRRA officer to determine that Article 1E does not apply, the paragraph 113(a) requirement for new evidence (in order to arrive at such a determination) presents a formidable hurdle for the claimant to overcome.

[23] The respondents propose, in circumstances where an individual has voluntarily forfeited (or has chosen not to access) the protection of the third country, but is at risk in the home country, the exclusion should not apply. Rather, the RPD should proceed to the section 96 and, if required, the section 97 inquiry where the claimant's actions would go to the issue of credibility. The Minister asserts that such an approach renders Article 1E

redundant and suggests section 25 (exemption on humanitarian and compassionate grounds) as a possible alternative, when return to the third country is not an option.

[24] I do not consider the Minister's suggestion to be a viable solution. Section 25 is a discretionary remedy granted in exceptional circumstances. Employing it in the suggested manner could result in a fettering of that discretion.

[25] The application judge's proposed test does not address this dilemma for, at the third step, if a claimant could have prevented the loss of status in the third country and did so without good reason, the claimant is excluded on the basis of Article 1E. This conclusion results in the same quandary. Because the application judge's proposed test is flawed at the first and third steps, it cannot stand in its present form.

[26] It seems to me that it is possible to fashion a response to the concern within the confines of the Article 1E analysis. In my view, that is the preferable route given the statutory objectives and the principles delineated in paragraph 19 of these reasons. The respondents acknowledge that the practical effect arising from the formulation of the test described in these reasons is the same as that arising from the solution they proposed.

[27] Accordingly, the reformulated test to be applied to Article 1E determinations, set out in the paragraph below, will accommodate the substance of the earlier-noted propositions in a meaningful way, within the framework of the Article 1E analysis.

[28] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[29] It will be for the RPD to weigh the factors and arrive at a determination as to whether the exclusion will apply in the particular circumstances.

[30] Counsel are to be commended for their thoughtful and articulate submissions on this issue. I found them to be most helpful.

The RPD Decision

[31] The RPD conducted the exclusion analysis as of the date of the hearing. No issue is taken with that approach. After examining the rights and obligations attached to permanent resident status in Chile, it was satisfied that such persons possess the rights and obligations of Chilean nationals. The RPD reviewed the respondents' testimony, the documentary evidence, the submissions of the respondents' counsel and those of the Minister. It relied

upon exhibit 17 (appeal book, vol. 2, tab 6, pp. 653-665). These documents were the product of the Minister's request to the Chilean authorities. They stated that both respondents had attained permanent residence visa status in Chile.

[32] The RPD was satisfied, on a balance of probabilities, that exhibit 17 best reflected the position of the Chilean government regarding the respondents' status at the time of the hearing. It also demonstrated that the respondents possessed the rights and obligations attached to a person of Chilean nationality.

[33] The application judge, applying his proposed test, found that the RPD failed to properly consider whether the respondents' status would have lapsed due to their absence from Chile for more than one year. The application judge concluded that it was impossible for the RPD to have fulfilled the objective to offer protection to the displaced and persecuted as set out in paragraph 3(2)(a) of the IRPA without examining the respondents' fear of persecution if they were required to return to the PRC because they might not be readmitted to Chile.

[34] I reiterate that the task, on an appeal from a judicial review, is to determine whether the reviewing judge identified the proper standard of review and applied it correctly. The application judge determined that whether the facts "support the conclusion that a person is excluded pursuant to Article 1E of the Refugee Convention, by virtue of section 98 is a question within the specialized area of expertise of the RPD and thus attracts a standard of

review of reasonableness." I agree. I am also satisfied, for reasons that will become apparent, that the analysis conducted by the RPD conforms to the reformulated test articulated at paragraph 28 of these reasons.

[35] In my view, the RPD considered the discrepancies in the documents, but nevertheless concluded, on a balance of probabilities, that the respondents were persons recognized by the competent authorities in Chile as having most of the rights and obligations which are attached to a person of that nationality. At paragraph 32 of its reasons, the RPD specifically referred to the submissions of the respondents' counsel regarding the possible expiration of the respondents' status. Noting this contention, the RPD concluded:

> In my assessment, the Minister has established that Article 1E is applicable to these two claimants. The evidence indicates, on a balance of probabilities, that the claimants held permanent residence status in Chile at the time of the hearing. Moreover, if the status could have been lost, as suggested by claimant's counsel, because the claimants were outside of Chile for more than a year without applying to extend their permanent status, the failure to make such an application is that of the claimants themselves which, as stated by the authorities, cannot avail to their benefit. (my emphasis)

[36] A finding that specific evidence is credible and indicative, on a balance of probabilities, that the respondents possessed status in Chile is a factual finding to which deference is owed. Moreover, on the record, it is a reasonable one because it falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190. It is not open to the reviewing court to substitute its appreciation of the appropriate solution: *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[37] Returning to the test set out in paragraph 28 and its first question – considering all relevant factors to the date of the hearing, does the claimant have status substantially similar to that of its nationals in the third country – the RPD answered the question affirmatively thereby ending the matter. It did so after thoroughly reviewing the evidence and the submissions. Its subsequent comment, regarding the possibility that the status was lost," is gratuitous and irrelevant.

Conclusion

[38] I would answer the certified questions as follows:

Is it permissible for the Refugee Division to consider an individual's status in a third country upon arrival in Canada and thereafter, up until and including the date of the hearing before the Refugee Division in order to determine whether an individual should be excluded under Article 1E of the Refugee Convention?

Answer: Yes

[39] Is it also permissible for the Refugee Division to consider what steps the individual took or did not take to cause or fail to prevent the loss of status in a third country in assessing whether Article 1E should apply?

Answer: Yes, subject to the qualification expressed in paragraph 28 of these reasons.

[40] I would allow the appeal and set aside the decision of the application judge. Rendering the judgment that the Federal Court ought to have rendered, I would dismiss the application for judicial review.

"Carolyn Layden-Stevenson"

J.A.

"I agree.
Marc Noël J.A."

"I agree David Stratas J.A."

SCHEDULE "A"
to the Reasons
for A-275-09
The Minister of Citizenship and Immigration
and
Guanqiu Zeng and Yanhong Feng

United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150	*Convention des Nations Unies relative au statut des réfugiés,* 189 U.N.T.S. 150
1E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	1E**.** Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.
Immigration and Refugee Protection Act, S.C. 2001, c. 27	*Loi sur l'immigration et la protection des réfugiés,* L.C. 2001, ch.27
3.(2) The objectives of this Act with respect to refugees are (*a*) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted; (*b*) 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; (*c*) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution; (*d*) to offer safe haven to persons with a	3.(2) S'agissant des réfugiés, la présente loi a pour objet : *a*) de reconnaître que le programme pour les réfugiés vise avant tout à sauver des vies et à protéger les personnes de la persécution; *b*) de remplir les obligations en droit international du Canada relatives aux réfugiés et aux personnes déplacées et d'affirmer la volonté du Canada de participer aux efforts de la communauté internationale pour venir en aide aux personnes qui doivent se réinstaller; *c*) de faire bénéficier ceux qui fuient la persécution d'une procédure équitable reflétant les idéaux humanitaires du Canada;

well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;
(*e*) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;
(*f*) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;
(*g*) to protect the health and safety of Canadians and to maintain the security of Canadian society; and
(*h*) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.

d) d'offrir l'asile à ceux qui craignent avec raison d'être persécutés du fait de leur race, leur religion, leur nationalité, leurs opinions politiques, leur appartenance à un groupe social en particulier, ainsi qu'à ceux qui risquent la torture ou des traitements ou peines cruels et inusités;
e) de mettre en place une procédure équitable et efficace qui soit respectueuse, d'une part, de l'intégrité du processus canadien d'asile et, d'autre part, des droits et des libertés fondamentales reconnus à tout être humain;
f) d'encourager l'autonomie et le bien-être socioéconomique des réfugiés en facilitant la réunification de leurs familles au Canada;
g) de protéger la santé des Canadiens et de garantir leur sécurité;
h) de promouvoir, à l'échelle internationale, la sécurité et la justice par l'interdiction du territoire aux personnes et demandeurs d'asile qui sont de grands criminels ou constituent un danger pour la sécurité.

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,
(*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
(*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.

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) 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;
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.

97. (1) 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
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(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,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

97. (1) 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 :
a) 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;
b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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) 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) 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.

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee

98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité

or a person in need of protection.

112. (3) Refugee protection may not result from an application for protection if the person
(*a*) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;
(*b*) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;
(*c*) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or
(*d*) is named in a certificate referred to in subsection 77(1).

113. Consideration of an application for protection shall be as follows:

(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

114. (1) A decision to allow the application for protection has
(*a*) in the case of an applicant not

de réfugié ni de personne à protéger.

112. (3) L'asile ne peut être conféré au demandeur dans les cas suivants :
a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;
b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;
d) il est nommé au certificat visé au paragraphe 77(1).

113. Il est disposé de la demande comme il suit :

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

114. (1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur;

described in subsection 112(3), the effect of conferring refugee protection; and

(*b*) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.

toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-275-09
(APPEAL FROM A JUDGMENT OR ORDER OF THE HONOURABLE MR. JUSTICE GIBSON OF THE FEDERAL COURT DATED JUNE 3, 2009 IN DOCKET NO. IMM-4183-08)	
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. GUANQIU ZENG and YANHONG FENG
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 28, 2010
REASONS FOR JUDGMENT BY:	**LAYDEN-STEVENSON J.A.**
CONCURRED IN BY:	**NOËL J.A.** **STRATAS J.A.**
DATED:	**May 10, 2010**

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