



RPD File No. / N° de dossier de la SPR : MB1-05286

Private Proceeding

Huis clos

Claimant(s)

Demandeur(e)s d'asile

**XXXXX XXXXX
a.k.a. XXXXX XXXXX**

Date(s) of Hearing

Date(s) de l'audience

Place of Hearing

Lieu de l'audience

Montréal, Quebec

Date of Decision

Date de la décision

November 29, 2011

Panel

Tribunal

M^c Elaine Doyle

Claimant's Counsel

Conseil du demandeur d'asile

M^c Jared Will

Tribunal Officer

Agent du tribunal

N/A

Designated Representative

Représentant désigné

N/A

Minister's Counsel

Conseil du ministre

Salvatore D'Aloia

[1] On September 19, 2011, Canada's Minister of Justice issued an authority to proceed under section 15 of the *Extradition Act* against the claimant, **XXXXXX XXXXXX**, a.k.a. **XXXXXX XXXXXX**. After establishing that the offence concerned is punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years, the panel suspended consideration of her refugee protection claim, in accordance with section 105 of the *Immigration and Refugee Protection Act*, until a final decision with respect to her discharge or surrender has been made.

[2] On November 2, 2011, the Refugee Protection Division (RPD) received a letter from the claimant's counsel informing the RPD that the claimant was withdrawing her refugee protection claim in accordance with rule 52¹ of the RPD Rules (the Rules).

[3] On November 10, 2011, the panel sent the Minister a letter requesting submissions on that application for withdrawal, particularly with regard to the panel's jurisdiction to allow the withdrawal, given the fact that the claim had been suspended.

[4] On November 15, 2011, the claimant, through her counsel, presented her objections to the request for submissions from the Minister, alleging that she had withdrawn her refugee protection claim in order to speed up the extradition proceeding. The claimant argued that nothing in the Act or the Rules gives the panel the authority to refuse the withdrawal because, in this case, no evidence was heard and because, according to rule 52 of the Rules, a claimant can withdraw his or her refugee protection claim if no substantive evidence has been accepted.

[5] On November 23, 2011, the Minister objected to the application for withdrawal, alleging that that application cannot be examined or decided until a notice has been issued in accordance with subsection 105(2) of the Act. The Minister argued that while the refugee protection claim is suspended, the panel has no jurisdiction to examine this application for withdrawal because

¹ 52. (1) Withdrawal of a claim, or of an Application to Vacate Refugee Protection or an Application to Cease Refugee Protection, is an abuse of process if withdrawal would likely have a negative effect on the integrity of the Division. If no substantive evidence has been accepted in the proceedings, withdrawal is not an abuse of process.

(2) If no substantive evidence has been accepted in the proceedings, a party may withdraw the party's claim or Application to Vacate Refugee Protection or Application to Cease Refugee Protection by notifying the Division orally at a proceeding or in writing.

(3) If substantive evidence has been accepted in the proceedings, a party who wants to withdraw the party's claim or Application to Vacate Refugee Protection or Application to Cease Refugee Protection must make an application to the Division under rule 44.

withdrawal of a claim constitutes disposal. The Minister was of the opinion that the panel cannot decide this application for withdrawal until a decision has been made regarding the extradition proceeding. Subsection 105(3) of the Act indicates that if the person is ordered surrendered under the *Extradition Act*, the order of surrender is deemed to be a rejection of a claim for refugee protection based on paragraph (b) of Section F of Article 1 of the Refugee Convention. The Minister argued that accepting an application to withdraw a suspended claim would amount to circumventing the law.

[6] On November 24, 2011, the panel received, from the claimant's counsel, her reply to the Minister's submissions. The claimant argued that the Minister based his submissions on a false premise—that the claimant had made an application to withdraw her refugee protection claim. The claimant indicated that she did not apply for leave to withdraw her refugee protection claim, but that she did indeed withdraw her refugee protection claim in accordance with rule 52 of the Rules.

ANALYSIS

[7] First, the panel found that the maximum term of imprisonment for the offence allegedly committed by the claimant (section 282 of the *Criminal Code* of Canada) is 10 years. Because an authority to proceed was issued against the claimant under section 15 of the *Extradition Act*, that finding resulted in the refugee protection claim being suspended.

[8] The panel would like to mention that it agrees with the claimant that she did not make an application to withdraw her refugee protection claim but, rather, informed the panel of the withdrawal of her claim. However, the panel is of the opinion that it does not have the jurisdiction to receive or to allow that withdrawal because the refugee protection claim has been suspended until a final decision with respect to her discharge or surrender has been made.

[9] The panel is of the opinion that, if the claimant could simply withdraw her refugee protection claim, as she suggests, she would thereby avoid the consequences set out in subsection 105(3) of the Act should the Minister issue an order of surrender. In fact, that section stipulates that if the person is ordered surrendered by the Minister of Justice under the *Extradition Act* and the offence for which the person was committed by the judge under section 29 of that Act is punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years, the order of surrender is deemed to be a rejection of a claim for refugee protection based on paragraph (b) of Section F of Article 1 of

the Refugee Convention. The panel is of the opinion that the legislative intent of that section of the Act was to provide for a person being extradited by operation of section 105 of the Act to be excluded, under Article 1F(b) of the Convention, from the protection offered by Canada and to ensure that that person could not be deemed a refugee or a person in need of protection under section 98 of the Act. Allowing a claimant to simply withdraw his or her refugee protection claim while the claim is suspended under section 105 of the Act would go against the legislative intent and would amount to saying that the legislation provided for that consequence for nothing.

[10] The panel is of the opinion that the clear legislative intent of section 105 of the Act must supersede the provisions regarding withdrawal in subsection 168(2) of the Act and rule 52 of the Rules.

[11] For all these reasons, the panel determines that the claimant cannot withdraw her refugee protection claim because that claim has been suspended until a final decision has been made with respect to her discharge or surrender.

Elaine Doyle

M^e Elaine Doyle

November 29, 2011

Date

IRB translation

Original language: French