Immigration and
Refugee Board
Refugee Protection Division

Commission de l'immigration
et du statut de réfugié
Section de la protection des réfugiés

RPD File No. / N^{o} de dossier de la SPR : MA8-04454

Private Proceeding ***Huis clos***

APPLICATION TO VACATE – S. 109

Applicant **Demandeur**

Minister of Public Safety and Emergency Preparedness

Respondent **Intimé**

XXXXXXXXXXXXXXX

Date(s) of Hearing **Date(s) de l'audience**

December 12, 2011

Place of Hearing **Lieu de l'audience**

Montréal, Quebec

Date of Decision **Date de la décision**

February 20, 2012

Panel **Tribunal**

M^{e} Michelle Langelier

Claimant's Counsel **Conseil du demandeur d'asile**

M^{e} Luc R. Desmarais

Tribunal Officer **Agent du tribunal**

Anne Bardin
[Filing of documents]

Designated Representative **Représentant désigné**

N/A

Minister's Counsel **Conseil du ministre**

Saint-Pierre

APPLICATION TO VACATE - S. 109

[1] The Minister of Public Safety and Emergency Preparedness,[1] hereinafter referred to as the Minister, is applying, in accordance with section 109 of the *Immigration and Refugee Protection Act* (IRPA), for vacation of the refugee status granted on June 5, 1998, to **XXXXXXXXXXXXX XXXXXX**, hereinafter referred to as the respondent.

THE FACTS

[2] The respondent is originally from Côte d'Ivoire. He claimed refugee protection at Immigration Canada's office in Montréal on August 14, 1996,[2] alleging that he had arrived in Canada on XXXXXX, 1996, from Côte d'Ivoire after transiting through Ghana for four months.[3]

[3] In his Personal Information Form, hereinafter referred to as the PIF, the respondent alleged that he had been subjected to persecution in his country of origin—among other things, that he was detained four times in Côte d'Ivoire between XXXXXX 1990 and XXXX 1996.[4]

[4] The respondent's refugee protection claim was heard with those filed by his wife and children on June 5, 1998. His wife's refugee protection claim was rejected from the bench because she alleged no fear of persecution if she returned to her country of origin, Côte d'Ivoire. The refugee protection claims filed by the respondent's children were rejected from the bench for the same reasons. However, it must be specified that the respondent's children are French citizens and were born in France.[5] I note, upon reading the transcript of the hearing, that the respondent did not testify at his hearing.

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1 In the application to vacate, the applicant was identified as the "Minister of Public Safety and Emergency Preparedness"; the name of this department has since changed, but its name has not changed in the IRPA, which is why the panel has chosen to use this name in this decision.

2 As indicated by the date stamp on the first page of the Notification of Claim to be a Convention Refugee, form IMM 5249, submitted as Exhibit M-1.

3 See answer to question B 17 of form IMM 5249, above.

4 See the claimant's written narrative, in response to question 37 of his PIF, pages 16–17 of Exhibit M-3.

5 See the transcript of the hearing concerning the respondent and his family, which was disclosed to the parties, at pages 69 and 70.

[5] The respondent was recognized as a refugee[6] and became a permanent resident of Canada on April 7, 2000.[7]

[6] Subsequently, the Minister was notified that the respondent had lived in France with a legal resident status that was valid from XXXXX, 1989, to XXXXX, 1999, in XXXXX and then in Paris, according to email correspondence between the French embassy in Canada and an immigration officer.[8]

[7] After receiving this information, the Minister submitted this application to vacate on April 17, 2008. The Minister is asking the panel to vacate the respondent's refugee status, in accordance with section 109 of the IRPA. He alleges that if the panel that allowed the refugee claim had been aware of the facts that are set out in this application, the decision would have been different.

ANALYSIS

[8] The panel must first determine, under subsection 109(1) of the IRPA, whether the decision granting refugee status to the respondent was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

MINISTER'S ARGUMENTS

[9] The Minister submits that the respondent made misrepresentations and omissions relating to the following:

- his employment history since 1989, in response to question 18 of his PIF;[9]
- the fact that he was being sought in Côte d'Ivoire, in response to question 20 of the PIF;
- his places of residence in the 10 years preceding his refugee protection claim, in response to question 22 of the PIF;
- his itinerary in coming to Canada, in response to question 31 of the PIF;
- his resident status in France; and
- the periods he was supposedly detained in Côte d'Ivoire, as alleged in the narrative written in response to question 37 of the PIF.

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6 See positive decision submitted in Exhibit M-4.

7 See confirmation of permanent residence in Canada, submitted as Exhibit M-5.

8 See email from Lieutenant Patrice Bellard to Michel Geoffroy, dated November 14, 2007, submitted as Exhibit M-7.

9 The respondent's lawyer correctly pointed out that the Minister made a mistake in the application to vacate with respect to the numbers of the questions he was referring to; this decision indicates the correct question numbers.

I would like to add that according to the Minister's arguments, the respondent also made misrepresentations regarding his travel in the five years preceding his claim in response to question 23 of the PIF.

[10] Essentially, the Minister based his argument on two elements:

1. If the first panel had been aware of these facts, the respondent would have been excluded, under Article 1E of the Geneva Convention, from Canada's protection given that at the time of his refugee protection claim, he belonged to a category of people to whom the Convention does not apply under the *Immigration Act* (which was in force at the time of the decision under review[10]), that is, people who possess valid permanent resident status in a third country.

2. If the first panel had been aware of these facts, the respondent would have been found not credible with respect to all of his allegations of persecution.

RESPONDENT'S ARGUMENTS

[11] At the vacation hearing, the respondent strongly defended the version of the facts that he alleged in his PIF concerning the persecution to which he was allegedly subjected in Côte d'Ivoire at the time of his arrests and detentions.

[12] However, he admitted that he had had a resident status in France that was valid for 10 years, from 1989 to 1999, and that he had travelled regularly from Côte d'Ivoire to France to visit his family. When asked why he had not mentioned these important facts when he claimed refugee protection, the respondent answered that he had not thought of it.

[13] The respondent's lawyer submitted that the respondent's status in France was not permanent residence, and even if it had been, the Board almost never invoked exclusion clause 1E at the time of his refugee protection claim.

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[10] See the Convention refugee definition at subsection 2(1) of the *Immigration Act*, S.C.R. 1985, c. I-2, which reads as follows: "…but does not include any person to whom the Convention does not apply pursuant to section E or F … thereof…."

ANALYSIS

[14] The respondent's acknowledgements confirm that he misrepresented and withheld material facts relating to a relevant matter—namely, the possession of residence in France and his numerous trips to France—and I am of the opinion that if the first panel had been aware of these misrepresentations, it would have rendered a different decision, for the following reasons.

[15] First, it is irrelevant to my analysis that the Board did not usually render exclusion decisions under Article 1E of the Convention at the time that his refugee protection claim was heard.

[16] I will analyze the Minister's two arguments separately.

On exclusion 1E

[17] Article 1E of the Convention reads as follows:

> 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.

[18] The question of whether the respondent was recognized by the competent authorities of France as having the rights and obligations attached to the possession of the nationality of that country is a question of fact. According to the case law, the Minister has the burden of establishing the existence of "serious reasons for considering", which is a less stringent standard than the civil standard of a balance of probabilities. According to *Zeng*,[11] if the evidence established that the respondent had a status that was substantially similar to that of French nationals at the time of his refugee protection claim, he would have been excluded and his claim for protection would not have been considered.

[19] As I have already mentioned, the responded admitted that he had a resident status in France at the time of his refugee protection claim. I will now analyze his counsel's argument that this status was not permanent.

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[11] *Zeng v. Canada*, 2010 F.C.A. 118, paragraph 28.

[20] According to the case law,[12] the criteria setting out the rights attached to the possession of nationality are as follows:

a) the right to return to the country of residence;
b) the right to work freely without restrictions;
c) the right to study; and
d) full access to social services in the country of residence.

[21] The respondent testified that he obtained his resident status in France in 1986 when his son XXXXX was born; this status was valid for 10 years. He alleged that he renewed this status in 1989 for a reason that he did not recall, and that his status was extended until 1999. He testified that he did not reside in France, but that he travelled there at least twice a year for periods of four to six weeks. He alleged that he entered France on each visit using his resident card.

[22] The claimant confirmed that throughout all of these years, he could enter and leave France freely without restrictions; he confirmed that he had full access to social and medical services; and he confirmed that he had the right to work freely without restrictions. The claimant did not attempt to study in France, and so the question of the right to study was not addressed in his case.

[23] The respondent's counsel argued that the Minister's evidence regarding the possession of residence is not clear given that the French legislation submitted into evidence[13] sets out [translation] "restrictions" with respect to granting a resident card:

> [translation]
>
> Certain categories of persons may be entitled as of right, that is, automatically (subject to certain restrictions), to a residence card valid for 10 years.

[24] I do not accept this argument because in this case, it is clear and was admitted by the respondent that he had obtained a resident card in France; the question of what restrictions are being

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12 *Shamlou v. Canada*, FCA, 1537, paragraphs 35–36.
13 See Exhibit M-9: "Bénéficiaires de plein droit de la carte de résident" [beneficiaries entitled as of right to the residence card], at page 34.

referred to in the legislation is irrelevant in the respondent's case since he obtained his resident card—therefore, obviously, these restrictions did not apply to him.

[25] Based on the evidence in this file, it is clear that the respondent, at all times during his refugee protection claim and until he was recognized as a refugee (that is, from XXXX 1996 to XXXX 1998), had a status giving him the rights and obligations attached to the possession of French nationality.

[26] Consequently, I am of the opinion that if the panel that allowed the refugee claim had been aware of the facts that this panel knows, the decision would have been different, since it would have excluded the respondent from Canada's protection, in accordance with subsection 2(1) of the *Immigration Act* and Article 1E of the Convention. In fact, the first panel would have been unable to allow the respondent's claim for protection, whether or not there was other sufficient evidence before it to justify refugee protection, to use the language of subsection 109(2) of the IRPA. For this reason, I will not analyze the Minister's second argument, which states that the respondent's allegations are not credible.

CONCLUSION

[27] For the above-mentioned reasons, the panel vacates the refugee status granted on June 5, 1998, to **XXXXXXXXXXXXXXX**, in accordance with section 109 of the IRPA.

Michelle Langelier

M^{e} Michelle Langelier

February 20, 2012
Date

IRB translation

Original language: French