



RPD File / No. dossier SPR : MA9-09969

*Private Proceeding*

*Huis clos*

**APPLICATION TO CEASE REFUGEE PROTECTION - SEC.108**

**Applicant**

**Demandeur**

**Minister of Public Safety and Emergency Preparedness of Canada**

**Respondent**

**Intimé**

**XXXXXX XXXXX**

**Date(s) of Hearing**

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

May 6<sup>th</sup>, 2011  
July 22<sup>nd</sup>, 2011

**Place of Hearing**

**Lieu de l'audience**

Montréal, Québec

**Date of decision**

**Date de la décision**

September 15<sup>th</sup>, 2011

**Panel**

**Tribunal**

M<sup>e</sup> Michelle Langelier

**Claimant's Counsel**

**Conseil du demandeur d'asile**

Patrizia Ruscio

**Tribunal Officer**

**Agent du tribunal**

Annie Lemaine  
[deposit of documents]

**Designated representative**

**Représentant désigné**

N/A

**Minister's Counsel**

**Conseil du ministre**

Jean-Denis Saint-Pierre

## APPLICATION TO CEASE REFUGEE PROTECTION - SEC.108

[1] The *Minister of Public Safety and Emergency Preparedness of Canada* (hereafter called the Minister) applies to the Tribunal, under section 108 of the *Immigration and Refugee Protection Act (IRPA)* and rule 57 of the *RPD Rules*, to cease refugee protection granted to **XXXXX XXXXX** (hereafter called the respondent), a citizen of Sri Lanka.

### RELEVANT FACTS

[2] The respondent arrived in Canada on October 28<sup>th</sup>, 1994 and claimed refugee status at the border<sup>1</sup>; he was recognized as a “Convention refugee” on January 31<sup>st</sup>, 1996<sup>2</sup> and became a permanent resident of Canada on March 25<sup>th</sup>, 1999<sup>3</sup>.

[3] In 2002, the respondent returned to Sri Lanka for the **XXXXX XXXXX**; he used the passport that had been issued to him in 1999 by the Sri Lanka High Commission in Canada. He had a passport of his country because he had been requested, by the Canadian authorities, to produce a valid passport in order to finalize his application for permanent residence in Canada.

[4] In the following years, the respondent had problems related to a criminal offence he committed<sup>4</sup>; in **XXXXX** 2007, a deportation order was issued against him<sup>5</sup>. He appealed that order but his appeal was eventually rejected, in July 2010<sup>6</sup>.

[5] In the meantime, the respondent advised the Sri Lanka High Commission in Canada of the loss of his 1999 passport and asked for an emergency travel document; an emergency passport was issued on **XXXXX**, 2009 and was valid for a period of six months<sup>7</sup>. According to the stamps in the said passport<sup>8</sup>, the respondent entered Sri Lanka on **XXXXX**, 2009, exited on **XXXXX**, 2009, entered

---

<sup>1</sup> See exhibit M-1: FOSS print out - Record of Refugee Claim, page 1.

<sup>2</sup> See exhibit M-3 : Convention Refugee Determination Division – Notice of Decision dated January 31, 1996 - positive decision of the then CRDD.

<sup>3</sup> See exhibit M-4: Canadian Immigrant Visa – **XXXXX**.

<sup>4</sup> See exhibit M-5: FOSS print out – Report 44(1) and Canadian courts documents – en liasse.

<sup>5</sup> See exhibit M-6: Deportation Order issued on **XXXXX**, 2007.

<sup>6</sup> See exhibit M-11 : decision of the IAD dated July 12th, 2010.

<sup>7</sup> See exhibits M-8: Receipt issued by the Sri Lanka High Commission in Ottawa and M-9: Passport, Sri Lanka, # **XXXXX**, issued in Ottawa on **XXXXX**, 2009.

<sup>8</sup> See page 17 of exhibit M-9 : respondent’s passport.

Sri Lanka again three days after on **XXXXXX**, 2009, and exited on **XXXXXX**, 2009 to enter Canada on the same day<sup>9</sup>.

### **MINISTER'S ALLEGATIONS**

[6] Based on the above mentioned facts, the Minister is of the opinion that the respondent has voluntarily re-availed himself of the protection of his country, Sri Lanka, and asks me to cease his refugee status.

### **RESPONDENT'S ALLEGATIONS**

[7] The respondent argues that the criteria to determine whether the respondent has re-availed himself of the protection of his country of citizenship are not met, in that he had not intention whatsoever to re-establish in Sri Lanka. The two times he returned were for what he considers emergency situations, **XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX**.

### **ANALYSIS**

[8] The issue in the present case, according to section 108(1)(a) of the IRPA, is whether the respondent has re-availed himself of the protection of his country of nationality, Sri Lanka. The burden of proof is on the Minister.

[9] Although the respondent's counsel pleaded in her submissions that the respondent has not re-established in Sri Lanka, I will not retain her arguments because this was not the ground raised by the Minister in his application. In his application, the Minister clearly asked the Tribunal to cease the respondent's refugee status because of his re-availing of the protection of his country according to section 108 (1) (a) of the *IRPA*, and did not present evidence related to re-establishment according to section 108 (1)(d) of the *IRPA*.

#### The law

[10] Section 1 C(1) of the *1951 Convention relating to the status of refugees*, hereafter called the Convention, provides that a refugee who voluntarily re-avails himself of the protection of the country of his nationality ceases to be a refugee. This provision is based on the consideration that protection is no longer necessary or justified for that person.

---

<sup>9</sup> See exhibit M-10: CBSA = Declaration Card – E311 (08/04).

[11] The UNHCR *Handbook on procedures and criteria to determine refugee status under the 1951 Convention*, hereafter called the Handbook, has provided guidance in the analysis of the concept of voluntary re-availment of protection; section 119 of the Handbook provides that in order for the cessation clause to apply, the refugee:

- must have acted voluntarily;
- must have had the intention to re-avail himself of the protection of his country and;
- must have obtained such protection.

[12] The Handbook provides, at section 121, that:

“(...) If a refugee applies for and obtains a national passport or its renewal, it will, in the absence of proof to the contrary, **be presumed** that he intends to avail himself of the protection of the country of his nationality.”

[13] This provision is consistent with other sections of the Handbook as follows:

“49. (...) Once recognized, a refugee should not normally retain his national passport;

50. There may, however, be exceptional situations in which a person fulfilling the criteria of refugee status may retain his national passport – or be issued with a new one by the authorities of his country of origin under special arrangements. Particularly where such arrangements do not imply that the holder of the national passport is free to return to his country without prior permission, they may not be incompatible with refugee status;

122. **A refugee requesting protection from the authorities of the country of his nationality has only “re-availed” himself of that protection when his request has actually been granted.** The most frequent case of “re-availment of protection” will be where the refugee wishes to return to his country of nationality. He will not cease to be a refugee merely by applying for repatriation. On the other hand, **obtaining an entry permit or a national passport for the purposes of returning will, in the absence of proof to the contrary, be considered as terminating refugee status.**

123. A refugee may have voluntarily obtained a national passport, intending either to avail himself of the protection of his country of origin while staying outside that country, **or to return to that country.** As stated above, **with the receipt of such a document he normally ceases to be a refugee.”**

[14] When analysing these provisions as a whole, I am of the opinion that normally and except exceptional circumstances, a refugee should not obtain or retain a passport of his country of nationality and the reception of a valid passport with the intention to return to that country, terminates refugee status.

Applying the law to the respondent's particular circumstances

[15] In the present case, the respondent, a refugee, twice obtained a passport of his country, Sri Lanka. I will not consider the application for his first passport obtained in 1999 as a proof or re-availment because he was directed by the Immigration authorities to obtain a passport in order to finalize his application for permanent residence in Canada<sup>10</sup>. I will consider only the passport obtained in **XXXXX** 2009.

[16] There is a presumption, as I mentioned earlier, that by asking and obtaining a passport of his country, the respondent re-availed himself of the protection of Sri Lanka. The Canadian case-law has consistently adopted this position<sup>11</sup>. This presumption may be rebutted by the respondent, by providing proof to the contrary.

[17] The respondent's counsel argues that although the respondent, in the present case, acted voluntarily, he did not have the intention to re-avail himself of the protection of his country, and therefore the cessation clause does not apply to him.

[18] The respondent testified on the reasons why he asked and obtained a passport, and why he returned to Sri Lanka in 2009. Since he was getting old and was still single, his family members had arranged a marriage with a Sri Lankan lady since 2007. The claimant had been trying to delay this project because of his problems related to his criminal accusations and conviction<sup>12</sup>; he testified that many times he lied about the reasons why he was not ready to get married - his wife still does not know that he has a criminal record in Canada.

[19] But in 2009, the pressure on him was too much so he decided that he could not wait anymore. The respondent testified that the marriage was supposed to take place in Singapore, but he was denied entry in Singapore because his passport's validity was for less than six months after the date he

---

<sup>10</sup> Section 120 of the Handbook illustrates this exact situation.

<sup>11</sup> *Yada v. Canada*, [1998] FCJ No 37 (QL); *Chandrakumar v. Canada*, [1997] FCJ No 615 (QL); *Nsende v. Canada*, 2008 FC 531.

<sup>12</sup> See exhibit M-5, documents related to the respondent's criminal record, at pages 5-10.

travelled. Therefore, he entered Sri Lanka, in XXXXX 2009<sup>13</sup>. He got married in XXXXX 2009 in his region of origin, XXXXX, remained XXXXX months in Sri Lanka and returned to Canada in XXXXX 2009.

[20] Asked whether he had any problems in Sri Lanka, the respondent stated that he had none; he even obtained, from the Sri Lankan police, a permit to remain in the region and a pass permitting him to go from XXXXX to XXXXX. At that time, such a permit was requested as the country was still at war between the government forces and the LTTE. The respondent specified that he would not have been able to reside in XXXXX if he had not had the permit from the police.

[21] If I analyse the respondent's evidence in light of the three criteria provided in the Handbook, I can only conclude that:

1- The respondent acted voluntarily. In fact, he was not coerced to ask and obtain a passport and was not coerced to return to his country; with regards to his allegation that he had to go to Sri Lanka because he was denied entry in Singapore, I am of the opinion that his marriage was not such a compelling circumstance that it needed to be performed precisely at that time and in the country against which he had been granted refugee status. Moreover, he re-entered Sri Lanka in XXXXX after a brief stay in Singapore, and then he was not under the alleged obligation to get married. Consequently, twice the respondent voluntarily returned to Sri Lanka.

2- The respondent's behaviour, in asking for a passport of his country, and by returning to his country and contacting the Sri Lankan police in order to receive a permit to stay and a pass to travel in the country, is a clear indication for me that he had the intention to re-avail himself of the protection of his country. I find this a clear indication that the respondent was genuinely entrusting the protection of the State of Sri Lanka by doing so.

3- The respondent did obtain protection of his country of nationality: he obtained a passport, he was not prevented from entering Sri Lanka but to the contrary was free to return to Sri Lanka without permission, and was even granted police permission to stay in XXXXX and to travel within the country. He was in direct contact with the authorities of his country of nationality who permitted him to stay there.

---

<sup>13</sup> This is confirmed by the entry stamp in the respondent's passport, filed as exhibit M-9.

[22] Consequently, the respondent has not rebutted the presumption of re-availment of protection. To the contrary I am of the opinion that he has, by his behaviour, reinforced it.

### CONCLUSION

[23] For the above mentioned reasons, the Tribunal allows the application to cease refugee protection. The refugee protection granted to **XXXXXX XXXXXX** on January 29<sup>th</sup>, 1996, is terminated.

*Michelle Langelier*

---

**M<sup>e</sup> Michelle Langelier**

September 15<sup>th</sup>, 2011

---

**Date**

rc

**KEYWORDS – REFUGEE PROTECTION DIVISION – MALE – APPLICATION TO CEASE  
REFUGEE PROTECTION – CESSATION – PARAGRAPH 108(1)(a) – VOLUNTARY  
REAVAIEMENT OF PROTECTION – ALLOWED – SRI LANKA**