Federal Court Cour fédérale

**Date: 20150714**

**Docket: IMM-3126-14**

**Citation: 2015 FC 837**

**Ottawa, Ontario, July 14, 2015**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Applicant**

**and**

**MIODRAG ZARIC**

**Respondent**

**JUDGMENT AND REASONS**

## I. Introduction

[1] The Minister of Public Safety and Emergency Preparedness [the Minister] has brought an application for judicial review pursuant to s 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA]. The Minister challenges the refusal of the Refugee Protection Division of the Immigration and Refugee Board [the Board] to reconsider and vacate the

determination of the Convention Refugee Determination Division [the CRDD] that Miodrag Zaric was a Convention refugee.

[2] For the reasons that follow, I have concluded that Mr. Zaric automatically ceased to be a Convention refugee under international law when he acquired Canadian citizenship. However, this does not mean that he automatically ceased to be a protected person under Canadian domestic law, specifically s 95(2) of the IRPA. The Minister's application to the Board to vacate his refugee status was therefore not moot. The application for judicial review is allowed and the matter is remitted to a differently-constituted panel of the Board for consideration of the Minister's application to vacate on its merits.

## II. Background

[3] Mr. Zaric is a Bosnian Serb who entered Canada on October 23, 1996. He made a claim for refugee protection which was accepted by the CRDD on February 2, 1998. His refugee claim was based on the allegation that he was imprisoned and beaten by Bosnian Serbs as a deserter during the armed conflict in Bosnia and Herzegovina. He alleged that he escaped the prison camp where he was being held in December, 1994 while the area was being bombed. As part of his claim, Mr. Zaric represented that he was not wanted by the police or any other authority in any country, and that he had never committed or been convicted of any crime in any country. Mr. Zaric became a permanent resident of Canada on January 27, 1999 and a Canadian citizen on October 6, 2001.

[4] Contrary to Mr. Zaric's assertion before the CRDD, the Minister claims that Mr. Zaric was in custody in Bosnia and Herzegovina as a result of being charged with murder and manslaughter following an incident that occurred on May 30, 1993. Mr. Zaric and three accomplices allegedly shot and killed a man whom they believed to have assaulted one of their friends earlier that evening. The victim's minor son was also killed in the attack. The Minister claims that Mr. Zaric was held at the County Jail in Doboj between May 31, 1993 and December 15, 1994, at which point he escaped and became a fugitive.

[5] According to the Minister, Mr. Zaric was tried *in absentia* and convicted of murder and manslaughter on August 23, 1996. He was sentenced to 14 years in prison, and this was upheld on appeal by the County Court in Doboj on September 15, 1997. Mr. Zaric disputes the allegations that led to his conviction.

[6] The Minister says that Canadian authorities became aware of Mr. Zaric's criminal history after receiving notice of the conviction, together with his biographical information, photograph, and fingerprints, from Interpol in 2004. Pursuant to s 109(1) of the IRPA, the Minister filed an Application to Vacate the decision of the CRDD with the Board on September 27, 2010. The Application to Vacate was based on Mr. Zaric's alleged misrepresentation or withholding of material facts concerning his criminal history.

[7] On June 2, 2011, Mr. Zaric brought a motion to dismiss the Minister's Application to Vacate. Mr. Zaric took the position that the Application to Vacate was moot because he was no longer a Convention refugee. He argued that, by virtue of s 108(1)(c) of the IRPA, his refugee

status disappeared once he obtained Canadian citizenship, and the significant delay in bringing the Application to Vacate constituted an abuse of process. The Minister responded that the matter was not moot because s 108(1)(c) of the IRPA operates only upon the application of the Minister, as prescribed by s 108(2), and Mr. Zaric therefore continued to be a protected person under domestic Canadian law.

[8] The Board held an oral hearing on September 26, 2013. Following the hearing, the Board requested further written submissions regarding *Canada (Minister of Justice) v Villanueva-Vera*, 2012 ONCA 657 [*Villanueva-Vera*], a decision of the Ontario Court of Appeal issued in October 2012. The Board granted Mr. Zaric's motion to dismiss the Minister's Application to Vacate on March 24, 2014.

## III. Relevant Provisions

[9] This application for judicial review is primarily concerned with the interpretation and application of following provisions of the IRPA:

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| **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 themself of the protection of their country of nationality; | a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité; |
| (b) the person has voluntarily reacquired their nationality; | b) il recouvre volontairement sa nationalité; |
| (c) the person has acquired a new nationality and enjoys the protection of the country of that | c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle |

new nationality;

nationalité;

(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

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) the reasons for which the person sought refugee protection have ceased to exist.

e) les raisons qui lui ont fait demander l'asile n'existent plus.

(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).

(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).

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

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

(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.

109. (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

109. (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

(2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.

(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee

(3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

protection is nullified.

[10] The following provision of the United Nations *Convention Relating to the Status of Refugees* [the Convention] is also relevant to this proceeding:

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|---|---|
| Article 1 C. This Convention shall cease to apply to any person falling under the terms of section A if: | Article 1 C. Cette Convention cessera, dans les cas ci-après, d'être applicable à toute personne visée par les dispositions de la section A ci-dessus : |
| […] | […] |
| (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; | 3) Si elle a acquis une nouvelle nationalité et jouit de la protection du pays dont elle a acquis la nationalité ; |

IV. <u>The Board's Decision</u>

[11] The Board concluded that the Minister's Application to Vacate was moot and declined to exercise its discretion to hear the application, notwithstanding its finding of mootness. Relying on *Borowski v Canada (Attorney General),* [1989] 1 SCR 342 [*Borowski*], the Board held that s 108(2) of the IRPA provides one manner of terminating an individual's status as a Convention refugee; but it does not preclude the automatic operation of s 108(1)(c) when a Convention refugee acquires a new nationality. The Board noted that s 108(1) of the Act is worded differently from s 109(1), and the latter provision clearly operates only upon the application of the Minister.

[12] The Board reasoned that if Parliament had intended s 108(1) of the IRPA to apply only upon the application of the Minister, then it would have stated this explicitly in the same manner

as it did in s 109(1). The Board cited *Villanueva-Vera* for the proposition that a person who has been granted refugee status in Canada ceases to be a refugee when he or she becomes a Canadian citizen. The Board therefore concluded that Mr. Zaric ceased to be a Convention refugee when he became a Canadian citizen in 2001, and the refugee status which the Minister sought to vacate no longer existed. The Board found that, pursuant to *Borowski*, there was no longer a live controversy between the parties and the Minister's Application to Vacate was moot.

[13] The Board also considered, pursuant to *Borowski*, whether it should exercise its discretion to hear the matter notwithstanding its conclusion that it was moot. The Board held that the parties' practical rights would not be affected by deciding the matter, and the result would be "symbolic enforcement" only. The Board also expressed concern for judicial economy and its proper law-making function (*Borowski* at para 40), given that its decisions have no precedential value.

## V. Issues

[14] The following issues are raised by this application for judicial review:

A. What standard of review should be applied by this Court to the Board's decision?

B. Did Mr. Zaric automatically cease to have refugee status when he became a Canadian citizen?

C. Should a question be certified for appeal?

## VI. Analysis

### A. *What standard of review should be applied by this Court to the Board's decision?*

[15] There is a presumption that the standard of reasonableness applies to judicial review of a tribunal's interpretation and application of its home statute (*Alberta Teachers' Association v Alberta (Information and Privacy Commissioner),* 2011 SCC 61 at para 39). Here, the Board interpreted and applied provisions of the IRPA, including ss 108(1), 108(2), and 109, and also considered Article 1C(3) of the Convention. These provisions lie at the core of the Board's expertise, and there is nothing to rebut the presumption that their interpretation and application by the Board are reviewable by this Court against the standard of reasonableness. However, the range of reasonable outcomes may be narrow, given that the Board was engaged in statutory interpretation (*Canada (Attorney General) v Canadian Human Rights Commission,* 2013 FCA 75 at paras 13 and 14; *B010 v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 87 at para 72; *Abraham v Canada (Attorney General),* 2012 FCA 266 at paras 45 and 48).

### B. *Did Mr. Zaric automatically cease to have refugee status when he became a Canadian citizen?*

[16] According to the Minister, there is an important distinction between Convention refugee status as a matter of international law, and the granting and revocation of refugee status under Canadian domestic law. The Office of the United Nations High Commissioner for Refugees *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the*

*1951 Convention and the 1967 Protocol Relating to the Status of Refugees* [the UNHCR Handbook] states that "[t]ogether with its 1967 Protocol, the Convention provides a universal code for the treatment of refugees uprooted from their countries as a result of persecution, violent conflict, serious human rights violations or other forms of serious harm". However, international treaties and conventions entered into by the federal government on behalf of Canada are not self-executing. They must be enacted domestically through legislation in order to have the full force of law. The Supreme Court of Canada has confirmed that "international treaties and conventions are not part of Canadian law unless they have been implemented by statute" *(Baker v Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817 at para 69).

[17] The requirement that the Convention and Protocol be given effect through a signatory state's domestic legislation is recognised in the UNHCR Handbook, which explains that "the Convention does not indicate what type of procedures are to be adopted for the determination of refugee status. It is therefore left to each Contracting State to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure". Similarly, the UNHCR Handbook does "not deal with questions closely related to the determination of refugee status e.g. the granting of asylum to refugees or the legal treatment of refugees after they have been recognized as such".

[18] The Convention is not fully incorporated into Canadian legislation. While the terms of the Convention are largely reflected in the IRPA, there are some differences between the operation of the Convention and the operation of the IRPA. In the words of the UNHCR Handbook:

> […] a person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.

[19] By contrast, ss 95 and 97 of the IRPA describe four circumstances in which a person may be granted "refugee protection". To the extent that an individual is recognized as a protected person under s 95 in his or her capacity as a refugee under the IRPA, this status exists separately from any status conferred by the Convention under international law.

[20] In this case, the Board found Mr. Zaric to be a Convention refugee or a person in need of protection pursuant to s 95(1) of the IRPA. Mr. Zaric thereby obtained the status of "protected person" under s 95(2) of the IRPA. This conferred personal domestic rights on Mr. Zaric.

[21] The cessation clauses of the Convention, specifically Articles 1C(1) to (6), prescribe the circumstances in which a refugee ceases to be a refugee. The UNHCR Handbook states that an individual is no longer a refugee when one of the enumerated grounds for cessation is met, or at the time that international protection "is no longer necessary or justified". Given that one of these circumstances is when the individual acquires "a new nationality, and enjoys the protection of the country of his new nationality," it follows that Mr. Zaric automatically ceased to be a refugee for the purposes of the Convention the moment he acquired Canadian citizenship.

[22] However, this does not mean that Mr. Zaric automatically lost his status as a protected person under the IRPA when he ceased to be a refugee under the Convention. Section 108 of the

IRPA reproduces five of the six cessation grounds found in the Convention. Subsection 108(1) of the Act, which is titled "Rejection", states that "[a] claim for refugee protection shall be rejected" by the Board on the grounds for cessation listed (emphasis added). This provision can operate only before the Board has made a determination of refugee status, because its scope is limited to the "rejection" of a refugee claim. There is nothing in the provision that could reasonably be described as self-executing or automatic, particularly after the Board has made its determination. The provision simply compels the Board to reject a refugee claim that has not yet been determined if one of the enumerated grounds for cessation is established.

[23] In this case, the Board invoked s 108(1) of the IRPA in support of its conclusion that Mr. Zaric automatically ceased to be a refugee the moment he acquired Canadian citizenship. In my view, this interpretation was not reasonably open to the Board. As noted, s 108(1) deals only with the rejection of a claim before it has been determined by the Board. Subsection 108(1) is silent about the circumstances in which an individual's status as a refugee or protected person may be lost following the Board's determination. In this respect, the Board's decision was unreasonable and cannot be sustained.

[24] Once "protected person" status has been conferred by the Board it may be lost under the IRPA in only one of two ways: pursuant to s 108(2) or pursuant to s 109(1). According to the *Order Setting Out the Respective Responsibilities of the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness Under the Act*, SI/2005-120, the Minister of Citizenship and Immigration is responsible for applying for cessation under s 108(2),

while the Minister of Public Safety and Emergency Preparedness is responsible for applying to vacate a decision under s 109(1).

[25] Although not at issue in this case, s 108(2), which is titled "Cessation of Refugee Protection", provides that "on application by the Minister, the Board may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1)". This provision presupposes that the Board has previously made a determination of refugee status. It too is not self-executing or automatic, as it requires an application by the Minister of Citizenship and Immigration.

[26] Here, the Minister of Citizenship and Immigration did not proceed under s 108(2) of the IRPA on the ground that Mr. Zaric had ceased to be a protected person through his acquisition of Canadian citizenship. Such an application, if successful, would not have undermined the legitimacy of the CRDD's decision to confer refugee status on Mr. Zaric in the first place. Instead, the Minister of Public Safety and Emergency Preparedness brought an application under s 109(1) of the IRPA on the ground that Mr. Zaric had misrepresented or withheld his criminal history when he applied for status as a protected person within Canada.

[27] The UNHCR Handbook contemplates that there may be circumstances in which a person should never have been recognized as a refugee in the first place:

> 117. Article 1C does not deal with the cancellation of refugee status. Circumstances may, however, come to light that indicate that a person should never have been recognized as a refugee in the first place; *e.g.* if it subsequently appears that refugee status was obtained by a misrepresentation of material facts, or that the person concerned possesses another nationality, or that one of the

> exclusion clauses would have applied to him had all the relevant facts been known. In such cases, the decision by which he was determined to be a refugee will normally be cancelled.
>
> [Emphasis added.]

[28] The UNHCR Handbook anticipates that facts which would have rendered a claimant ineligible for refugee protection may be discovered only after the claimant has been recognized as a refugee:

> 141. Normally it will be during the process of determining a person's refugee status that the facts leading to exclusion under these clauses will emerge. It may, however, also happen that facts justifying exclusion will become known only after a person has been recognized as a refugee. In such cases, the exclusion clause will call for a cancellation of the decision previously taken.
>
> [Emphasis added.]

[29] Neither of the excerpts from the UNHCR Handbook reproduced above suggests that refugee status conferred upon an individual by a state automatically ceases by virtue of the discovery of facts justifying exclusion. Instead, the UNHCR Handbook refers to "cancellation" of the state's decision to grant refugee status.

[30] While the Convention does not prescribe a particular mechanism to cancel a grant of refugee protection, the IRPA does precisely this in s 109(1). This provision states that upon application by the Minister, the Board may vacate a successful claim for refugee protection where the decision "was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter". There is nothing in the language of s

109 to suggest that an application by the Minister to vacate refugee protection cannot be made if the claimant has subsequently become a citizen of Canada.

[31] As the UNHCR Handbook makes clear, it is not the refugee's status that is cancelled but rather the decision that the claimant should be granted refugee protection. Because Mr. Zaric still retained his status as a protected person, conferred on him by the decision of the CRDD in accordance with ss 95(1) and (2) of the IRPA, the Board in this case was faced with a controversy that was very much alive.

[32] It follows that the Board was wrong to conclude that its determination of the Minister's Application to Vacate would have no practical effect on the Minister's rights. While the Minister could also apply to revoke Mr. Zaric's status as a Canadian citizen without first seeking to vacate his status as a protected person under the IRPA, there may be reasons why the Minister would prefer to challenge Mr. Zaric's status as a protected person first. The Board has a specific expertise in matters of refugee determination. Its procedures, in particular its rules of evidence, are flexible. Mr. Zaric suggests that this potentially gives rise to an abuse of process, but this question is not before the Court in the present proceeding. I note that a motion respecting abuse of process was brought before the Board but was not decided, presumably because of the Board's determination that the Minister's Application to Vacate was moot.

[33] This case turns on a question of statutory interpretation. I have concluded that the Board was wrong to interpret s 108(1) of the IRPA, which deals only with the rejection of a claim before it has been determined, as causing Mr. Zaric's refugee status to disappear the moment he

became a Canadian citizen. This is sufficient to decide the Minister's application for judicial review.

[34] Although it is not strictly necessary to do so, I also find that the Board's reliance on the decision of the Ontario Court of Appeal in *Villanueva-Vera* was misplaced. *Villanueva-Vera* was concerned only with the cessation (not cancellation) of refugee protection where a person has become a citizen and is subsequently the subject of extradition proceedings.

[35] In *Villanueva-Vera*, the Ontario Court of Appeal was guided by the Supreme Court of Canada's decision in *Németh v. Canada (Justice)*, 2010 SCC 56 [*Németh*], and the decision of the Court of Appeal of England and Wales in *DL (DRC) and the Entry Clearance Officer, Pretoria v The Entry Clearance Officer, Karachi*, [2008] EWCA CIV 1420 [*DL (DRC)*], (overturned for other reasons in *ZN (Afghanistan) and others v Entry Clearance Officer*, [2010] UKSC 21). In *Villanueva-Vera* at para 12 the Ontario Court of Appeal said the following about *Németh*:

> [12] *Németh* addresses the Minister's decision concerning the surrender for extradition of an individual with refugee status, where that status has not ceased or been revoked at the time the surrender decision is made. The legal principles it sets out to guide the Minister's decision are confined to this circumstance.

[36] The Ontario Court of Appeal discussed *DL (DRC)* at para 20 of its decision, but it did not refer to the English Court's discussion of whether the cessation of refugee status is automatic, or effective only by force of a state's domestic procedure. This is found in para 32 of *DL (DRC)*:

> [32] There remains the question whether the cessation of refugee status is automatic, or effective only by force of a

> procedure such as the giving of notice contemplated in the Directives. I accept that it is open to the States Parties to prescribe the procedures under which cessation pursuant to Article 1C(3) will have effect within their individual jurisdictions. Paragraph 189 of the UNHCR Handbook states:
>
> > "It has been seen that the 1951 Convention and the 1967 Protocol define who is a refugee for the purposes of these instruments. It is obvious that, to enable States parties to the Convention and to the Protocol to implement their provisions, refugees have to be identified. Such identification, i.e. the determination of refugee status, although mentioned in the 1951 Convention (cf. Article 9), is not specifically regulated. In particular, the Convention does not indicate what type of procedures are to be adopted for the determination of refugee status. It is therefore left to each Contracting State to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure."
>
> If however a State Party has not established any such procedures, cessation of refugee status pursuant to Article 1C(3) will in my judgment take place automatically. If it were otherwise the absence of a domestic procedure would frustrate the operation of the Article
>
> [Emphasis added.]

[37] I acknowledge that in *Villanueva-Vera* the Ontario Court of Appeal made two passing references to the operation of s 108(1) of the IRPA, neither of which was central to its decision. At para 17 the Ontario Court referred to Article 1C(3) of the Convention and then noted at para 18 that s 108(1)(c) of the IRPA is to the same effect. For the reasons explained above, in my view this misses an important nuance. Cessation of refugee status under the Convention is automatic when one of the prescribed grounds is established, whereas status as a protected person under a state's domestic law is governed by that state's procedures (*DL (DRC)* at para 32).

[38] It follows that the Ontario Court of Appeal's observation at para 21 of *Villanueva-Vera* that "[f]rom Canada's perspective, both as a matter of international and domestic law, her refugee status ceased" is technically incorrect. This does not detract from the Ontario Court's finding in the same paragraph that "when Ms. Villaneuva-Vera acquired her Canadian citizenship, the justification for her being accorded refugee status disappeared". This was sufficient for the Ontario Court to resolve the question of extradition law before it, and its comments regarding the technical operation of s 108(1) of the IRPA may be regarded as *obiter*. In any event, *Villaneuva-Vera* is not binding upon me.

[39] Neither *Villanueva-Vera* nor *Németh* was concerned with the technical interpretation and application of s 108(1) of the IRPA, and it was unreasonable for the Board to rely upon those decisions in support of its conclusion that an individual's refugee status under Canadian domestic law ceases automatically under s 108(1) of the IRPA upon a grant of Canadian citizenship. The application for judicial review must therefore be allowed.

C. *Should a question be certified for appeal?*

[24] Both parties have proposed that a question be certified for appeal. In *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2013 FCA 168 at para 9, the Federal Court of Appeal confirmed the test for certifying questions:

> It is trite law that to be certified, a question must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance. As a corollary, the question

> must also have been raised and dealt with by the court below and it must arise from the case, not from the Judge's reasons (*Canada (Minister of Citizenship and Immigration) v Liyanagamage*, 176 NR 4 (FCA) at paragraph 4; *Zazai v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89 at paras 11-12; *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at paras 28-29, 32).

[25] I am satisfied that both preconditions are met in this case. I therefore certify the following question of general importance:

> Does refugee protection conferred pursuant to s 95(1) of the *Immigration and Refugee Protection Act* automatically cease by operation of s 108(1)(c) when a Convention refugee becomes a Canadian citizen, thereby preventing the Minister of Public Safety and Emergency Preparedness from applying to the Immigration and Refugee Board pursuant to s 109(1) to vacate the Board's previous decision to confer refugee protection?

## JUDGMENT

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed and the matter is remitted to a differently-constituted panel of the Board for consideration of the Minister's application to vacate on its merits. The following question is certified for appeal:

> Does refugee protection conferred pursuant to s 95(1) of the *Immigration and Refugee Protection Act* automatically cease by operation of s 108(1)(c) when a Convention refugee becomes a Canadian citizen, thereby preventing the Minister of Public Safety and Emergency Preparedness from applying to the Immigration and Refugee Board pursuant to s 109(1) to vacate the Board's previous decision to confer refugee protection?

"Simon Fothergill"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3126-14 |
| **STYLE OF CAUSE:** | MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS v MIODRAG ZARIC |
| **PLACE OF HEARING:** | TORONTO |
| **DATE OF HEARING:** | MAY 27, 2015 |
| **JUDGMENT AND REASONS:** | FOTHERGILL J. |
| **DATED:** | JULY 14, 2015 |

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