

Federal Court



Cour fédérale

**Date: 20191112**

**Docket: IMM-2157-19**

**Citation: 2019 FC 1413**

**Winnipeg, Manitoba, November 12, 2019**

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

**BETWEEN:**

**NELLY PETER PEREIRA**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Nelly Peter Pereira, seeks judicial review of the decision of the Refugee Protection Division [RPD] dated March 14, 2019 granting the application of the Respondent, the Minister of Citizenship and Immigration, for cessation of the Applicant's refugee status pursuant to section 108 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the following reasons, the application for judicial review is dismissed.

I. Background

[3] The Applicant is a citizen of Singapore. She made a refugee claim in Canada on the basis of her well-founded fear of persecution at the hands of a man who repeatedly sexually assaulted her. The Applicant was recognized as a Convention refugee or person in need of protection in 2006, and she was granted permanent residence in Canada in 2007.

[4] The Applicant acquired a passport from Singapore on March 29, 2008, which she renewed in April 2013 and March 2018.

[5] The Applicant used her Singaporean passport to travel to Australia in October 2008 and to Singapore in November 2010.

[6] With respect to her 2010 visit to Singapore, the Applicant claimed that she was visiting her sister and participating in the commemoration of the fifth anniversary of her mother's death. According to the Applicant, prior to going to Singapore, someone advised her that she could do so without risking her status in Canada. (This advice was correct based on the cessation provisions in force at that time.)

[7] During a visit to Singapore in April 2013 for the funeral of her brother, the Applicant applied for documentation related to her permanent residency. While doing so, she was advised by Canadian authorities that her travels to Singapore could jeopardize that permanent residency. (The cessation provisions had changed since she received the earlier advice.)

[8] The Applicant continued to use her Singaporean passport to travel to Cuba in March 2014 and the United States of America in August 2014.

[9] In September 2014, the Respondent brought an Application to Cease Refugee Protection before the RPD seeking a determination that the Applicant's refugee status had ceased because she voluntarily re-availed herself of Singapore's protection.

[10] The Applicant subsequently travelled to Singapore in May 2016 for the wedding of her nephew, the United States of America in October 2018 and Jamaica in December 2018 using her Singaporean passport.

A. *RPD Hearing and Decision*

[11] The cessation application was heard by the RPD on February 14, 2019.

[12] To establish that the Applicant re-availed herself of Singapore's protection, as defined in paragraph 108(1)(a) of the IRPA, the Respondent was required to satisfy three requirements: (1) the Applicant acted voluntarily, (2) the Applicant intended to re-avail herself of Singapore's protection, and (3) the Applicant actually obtained such protection.

[13] The fact that the Applicant obtained a Singaporean passport after acquiring refugee status created a rebuttable presumption that the Applicant intended to re-avail herself of Singapore's protection; and the fact that she used the Singaporean passport to travel created a presumption that she obtained the actual protection of that country: *Cerna v Canada (Minister of Citizenship*

*and Immigration*), 2015 FC 1074 at para 13; *Mayell v Canada (Minister of Citizenship and Immigration)*, 2018 FC 139 at para 12. The Applicant argued before the RPD that she rebutted the presumption of intention because there were extenuating circumstances for her visits to Singapore. She also testified that she did not re-avail herself of Singapore's protection and travelled to Singapore for personal reasons (the fifth anniversary of the death of her mother in 2010, the funeral of her brother in 2013 and the wedding of her nephew in 2016), taking steps to hide from the agent of harm.

[14] The RPD allowed the Respondent's application. It concluded that the Applicant's actions, seeking and acquiring Singaporean passports and using them to travel to Singapore and elsewhere, demonstrated (1) she sought the passport voluntarily, (2) she intended to re-avail herself of Singapore's protection, and (3) she actually re-availed herself of that protection. Her claim for refugee protection was deemed rejected in accordance with subsection 108(3) of the IRPA.

**B. *Removal of the Solicitors of Record***

[15] Bellissimo Law Group moved shortly before the hearing of the present application to be removed as the Applicant's solicitors of record. The motion was granted. The Applicant did not request an adjournment and failed to appear at the hearing. Therefore, the present decision is based upon the written record as furnished by the parties and the further arguments advanced by counsel for the Respondent.

II. Standard of Review

[16] The parties submit that the standard of review in this case is reasonableness, and I agree. This Court must consider whether the RPD's decision is justified, transparent and intelligible, and if it falls within the range of possible outcomes defensible in respect of the facts and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

III. Analysis

[17] The RPD determined the Applicant sought the passports voluntarily, as there was nothing in her testimony to indicate she was compelled to seek a Singapore passport or renewal. This was a reasonable finding.

[18] The primary issue in this case is whether the RPD erred in finding that the Applicant intended to re-avail herself of Singapore's protection (the second branch of the test). Given that the mere act of obtaining or renewing her Singaporean passport created a presumption that the Applicant intended to do so, the onus was on the Applicant to adduce evidence to rebut this presumption. This is not disputed by the Applicant.

[19] The Applicant argued she rebutted the presumption of intention and the RPD did not apply the proper test for assessing her intent to re-avail. I disagree. It was open to the RPD on the evidence before it to conclude that the Applicant's repeated travel on that passport to Singapore and elsewhere strengthened that presumption, particularly since some of this travel took place

after the Applicant was warned that this travel jeopardized her permanent residency and she received the Application to Cease Refugee Protection.

[20] The Applicant claimed that her lack of intent was especially clear for the 2010 and 2013 trips to Singapore, because she had received advice that she could travel to Singapore jeopardizing her refugee status or permanent residency. She noted that this advice was consistent with the law as it existed prior to the coming into force of the *Protecting Canada's Immigration System Act*, SC 2012, c 17 [PCISA] in June 2012, and that these points were ignored by the RPD. I disagree.

[21] The RPD may have failed to appreciate the effect of the changes brought about by the PCISA, but it remains that it was aware that granting a cessation application would strip an applicant of his or her refugee status and permanent residency. The RPD found that the Applicant's travels on her Singaporean passport continued after the amendments to the IRPA took effect. Furthermore, this travel continued after she was advised by a Canadian immigration official that she was risking her status by travelling to Singapore, after the Applicant received the cessation application and after the Applicant retained counsel. Therefore, the advice the Applicant obtained before the amendments to the IRPA came into effect did not rebut the presumption of intention.

[22] It was reasonable for the RPD to conclude that the Applicant did not rebut the presumption she intended Singaporean authorities to protect her and actually re-availed herself of

that protection while travelling to Singapore, Cuba, Jamaica and the United States with a Singaporean passport.

[23] The RPD's decision is certainly not a model of clarity. Some points of analysis may have fit better under different headings, and there is overlap between sections pertaining to different branches of the relevant test. Nevertheless, I can find no reviewable error in its findings. The RPD had a sufficiently strong understanding of the pertinent facts and applied the law to those facts appropriately.

#### IV. Conclusion

[24] For these reasons, the application for judicial review is dismissed.

[25] There are no questions for certification.

**JUDGMENT IN IMM-2157-19**

**THIS COURT'S JUDGMENT is that:**

This application for judicial review is dismissed.

"Roger R. Lafrenière"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2157-19

**STYLE OF CAUSE:** NELLY PETER PEREIRA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 5, 2019

**JUDGMENT AND REASONS:** LAFRENIÈRE J.

**DATED:** NOVEMBER 12, 2019

**APPEARANCES:**

NO APPEARANCE

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Daniel Engel

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT