

OPERATIONAL BULLETIN: PRG-2015-07

TITLE: Procedures for Filing a Cessation Application at the RPD

Date of Issue: 2015-02-05	Mode(s): Hearings	Target Audience: Hearings Officers	Area of Interest: Hearings
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Details:

This Operational Bulletin (OB) provides guidance to Hearings Officers in deciding when it is appropriate to file an application to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) to cease an individual’s refugee protection as referred to in subsection 95(1) of IRPA.

Note: This OB replaces the current version of ENF 24 – Section 8.6 Tool 6: Cessation of status until the ENF 24 is updated.

Note: When an investigation for possible cessation is ongoing, the information should be uploaded in the systems (FOSS, NCMS, GCMS) by writing the following: “Ongoing Cessation Investigation”.

Citizenship and Immigration Canada (CIC) is responsible for the development and oversight of policies with respect to the cessation of refugee protection under the *Immigration and Refugee Protection Act, S.C. 2001, c.27* (IRPA). The Canada Border Services Agency (CBSA) is responsible for administering the operational delivery of cessation policies; specifically, CBSA is responsible for filing and representing the Minister of CIC in cessation applications before the RPD¹.

Canada’s regime with respect to the cessation of refugee protection reflects the objectives delineated in subsection 3(2) IRPA with respect to refugees, including that refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted. When information comes to the attention of CIC or CBSA to the effect that an individual who was granted refugee protection may no longer need such protection for one of the reasons set out in section 108(1) of IRPA, the Minister may apply to the RPD for a determination that refugee protection has

¹ Paragraph (b) of 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* confirms that the Minister of CIC is the Minister responsible for applying for cessations under s. 108(2). Furthermore, in CIC’s Instrument of Designation and Delegation, the Minister of CIC delegated to CBSA Hearings Officers the authority to make an application to the RPD for a determination of cessation of refugee protection pursuant to s. 108(2) of the IRPA.



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ceased. **Cessation is not a punitive measure but rather recognition that refugee protection is no longer needed.**

Cessation applications (section 108 of IRPA) may be brought against protected persons or permanent residents regardless of the process under which refugee protection was conferred:

- Overseas selection process – subsection 95(1)(a) of IRPA;
- Determination of a refugee claim by the RPD – subsection 95(1)(b) of IRPA; and,
- When the Minister, with the exception of persons described in section 112(3), allows an application for protection (Pre-Removal Risk Assessment) – subsection 95(1)(c) of IRPA.

Cessation applications can be pursued in cases where an individual has filed an application for citizenship until a citizenship judge is seized with the file. Hearings Officers should consult with CIC with respect to subjects in the Citizenship process in order to determine whether or not the judge is seized with the file.

After reviewing the supporting evidence of a case, the Hearings Officer will assess whether prima facie evidence that one of the circumstances for cessation under section 108(1) IRPA exists. The Hearings Officer will assess whether the prima facie evidence is sufficient to submit, on behalf of the Minister of CIC, a written "Application to Cease Refugee Protection" pursuant to Rule 64 of the *Refugee Protection Division Rules* (RPDR) which specifies the content of the application, including the decision the Minister (or his delegate) wants the RPD to make and the reasons why the RPD should make that decision.

The Minister must provide a copy of the application to the protected person and provide to the Board's Registry a written statement indicating how and when it was provided to the protected person (RPDR 64(3)). If the Minister is unable to provide a copy of the application to the protected person as per RPDR 39, the Minister can bring an application under RPDR 40, for permission to provide the document in another way or to be excused from providing the document. The RPD must not allow the application unless the Minister has made reasonable efforts to provide the application to cease to the protected person (RPDR 40(3)).

In certain circumstances, it may be necessary for the Hearings Officer to gather additional information prior to making a decision to submit an Application to Cease Refugee Protection, including, as warranted, by interviewing the protected person concerned. The information to be collected has to be with respect to facts that are relevant to the grounds for cessation under section 108(1) IRPA.

In the assessment of the evidence and facts related to a case, the Hearings Officer has no discretion to consider factors beyond those related to s. 108(1)(a) to (d).



Humanitarian and compassionate factors are consequently not considered².

A cessation application is adversarial and the burden of proof rests on the Minister to show why an individual's refugee protection has ceased.

The standard of proof required for the Minister to discharge his burden is a balance of probabilities.

Cessation, as outlined in the *Convention relating to the Status of Refugees* (Convention), [UNHCR 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](#) (UNHCR Handbook) and IRPA does not require a forward looking assessment of risk since an alternative means of protection has been demonstrated by the individual's actions. Hearings Officers have no discretion to consider a forward looking assessment of risk. The reason for the original refugee claim is not a factor that should be considered by Hearings Officers in determining whether to file an application for cessation under ss. 108(a) to (d).

Actions Required by Hearings Officers:

When considering whether to file a cessation application with the RPD, a Hearings Officer shall consider the following.

Note: The UNHCR Handbook stipulates at paragraph 116 that "cessation clauses are negative in character and are exhaustively enumerated. They should therefore be interpreted restrictively, and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status"³.

Cessation Provisions

Note: The terms "nationality" and "citizenship" are synonymous for the purposes of the cessation provisions in section 108 IRPA.

Section 108(1)(a): The person has voluntarily reavailed themselves of the protection of their country of nationality

Hearings Officers should consider the following three requirements, as outlined in paragraph 119 of the UNHCR Handbook, when deciding whether to apply to cease refugee protection under s.108(1)(a) (also refer to [Cabrera Cadena v. Canada \(Public Safety and Emergency Preparedness\) 2012 FC 67](#)). Paragraphs 120-125 of the

² *Silvia Olvera Romero v. Minister of Citizenship and Immigration* 2014 FC 671, par. 106.

³ *Silvia Olvera Romero v. Minister of Citizenship and Immigration* 2014 FC 671, par. 39; UNCHR, [Note on the Cessation Clauses](#), EC/47/SC/CRP.30, Standing Committee, 30 May 1997, para. 8.



UNHCR Handbook elaborate on each of the following requirements:

- **Voluntariness:** the refugee must act voluntarily

If the protected person does not act voluntarily, he will not cease to be a protected person. For example, if a protected person is instructed by an authority to perform against his/her will an act that could be interpreted as reavailment he/she will not cease to be a protected person for obeying such instruction (UNHCR Handbook, paragraph 120). Voluntariness should be measured by whether or not the protected person was compelled to act by circumstances beyond his/her control. Circumstances should be exceptional to compel the protected person to act without regard for his/her own safety and well-being and disregard for potential consequences. In the absence of exceptional circumstances, beyond the protected person's control, that compel the protected person to act, the protected person's actions should be considered voluntary.

- **Intention:** the refugee must intend by his action to reavail himself of the protection of the country of his nationality

The intent of the protected person in contacting the authorities of his/her country of nationality must be considered in order to determine whether the act was undertaken for the purpose of obtaining protection. Consideration should be given to actual reavailment of protection compared to occasional and incidental contact with national authorities. Every case must be assessed on its own merits and on the basis of the particular action undertaken.

The UNHCR guidelines from 1999, "The Cessation Clauses: Guidelines on their Application" (UNHCR Guidelines), state that the protection obtained is the diplomatic protection by the country of nationality of the protected person. This protection relates to the actions that a State is entitled to undertake in relation to other States in order to obtain redress for its nationals. Diplomatic protection may also include consular assistance. However "most ordinary contacts with diplomatic missions for the purpose of certification of academic documents, or for the purpose of obtaining copies of birth, marital, and other records, are not considered as acts which carry the intention of re-availment of the protection of the country of origin" (UNHCR Guidelines, paragraph 10).

Minor children can be ceased along with their parents but intention must still be assessed. The parents' intention to reavail will form the requisite intent for a minor child to reavail as a minor child cannot form an intention that is different from his parents ([Cabrera Cadena v. Canada \(Public Safety and Emergency Preparedness\) 2012 FC 67](#) CanLII at paragraph 31). There must be further analysis undertaken to determine whether an older child is capable of forming an intention that is different from his or her parents. Such analysis



can occur in interviews or by examination in the hearing room.

- **Reavailment:** the refugee must actually obtain such protection

A protected person who has requested protection from his/her country of nationality has only “reavailed” when protection has been granted. Applications by refugees for the issuance or extension of national passports will normally imply an intention to entrust the protection of their interests to, or to re-establish normal relations with, their country of nationality. This implication may, however, be rebutted by the refugee. The key issue is the purpose or reason for which the passport was obtained or renewed (UNHCR Guidelines, paragraph 10).

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 (UNHCR Handbook, paragraph 122). The presumption applies to a refugee who is still outside his country⁴.

Case law on the interpretation of reavailment is limited, as noted in [Nsende v. Canada \(Minister of Citizenship and Immigration\) 2008 FC 531](#). In this decision the UNHCR Handbook was used to provide interpretive guidance as to the meaning of reavailment. This case outlined the three requirements (referred to above) for reavailment under the Convention. See also [Cabrera Cadena v. Canada \(Public Safety and Emergency Preparedness\) 2012 FC 67](#) for similar analysis with respect to reavailment.

[El Kaissi v. Canada \(MCI\) 2011 FC 1234](#), [Shanmugarajah v. Canada \(MEI\)](#), [1992] F.C.J. No 583 and [Ribeiro v. Canada \(MCI\) 2005 FC 1363](#), are decisions related to reavailment in the event of pressing need, such as taking care of a parent.

Section 108(1)(b): The person has voluntarily reacquired their nationality

The UNHCR Handbook (paragraph 126) instructs that this provision applies in situations where a protected person, having lost the nationality of the country in respect of which well-founded fear was recognized, voluntarily reacquires that nationality.

Officers should consider the following, as outlined in the UNHCR Handbook (paragraph 128), when deciding whether to apply to cease refugee protection under s.108(1)(b):

⁴ [Cabrera Cadena v. Canada \(Public Safety and Emergency Preparedness\)](#), 2012 FC 67, par. 24.



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- Reacquisition of nationality must be voluntary; and
- There is an act of reacquisition of citizenship that is truly indicative of a normalization of relations between the refugee and the state of origin. The refugee must have the desire to establish normal relations with their country of nationality or to benefit from the advantages of the nationality of their country.

The re-acquisition of nationality must be voluntary. The granting of nationality by operation of law or by decree does not imply voluntary reacquisition, unless the nationality has been expressly or impliedly accepted. The "mere possibility of re-acquiring the lost nationality by exercising a right of option [is not] sufficient to put an end to refugee status, unless this option has actually been exercised. However, where the laws give an option to reject the attribution of nationality and the refugee, with full knowledge of the option, does not exercise it, then the refugee could be deemed to have voluntarily re-acquired the former nationality" (UNHCR Guidelines, paragraph 14); unless he is able to invoke special reasons showing that it was not in fact his intention to re-acquire his former nationality (UNHCR Handbook, paragraph 128).

Section 108(1)(c): The person has acquired a new nationality and enjoys the protection of the country of that new nationality

This requirement, as outlined in paragraph 130 of the UNHCR Handbook, extends from the phrase "and enjoys the protection of the country of that new nationality." Nationality is restricted to citizenship and does not include permanent resident status.

Two conditions must be met when considering this ground:

- The person has acquired a new nationality (usually after being found to be a refugee in Canada against another country (e.g. Citizen of country A is found to be a refugee in Canada and subsequently obtains Citizenship from country B)); and
- The person enjoys the protection of the country of that new nationality (e.g. the person enjoys, in practice, fundamental rights as result of holding that nationality, including the right of non-refoulement).

The possession of a passport of another country is insufficient evidence if the bearer is not considered a national of that country. In assessing whether a protected person is a national of another country, the applicable law and actual administrative practice of that country must be taken into consideration.

Section 108(1)(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



A protected person must voluntarily return to become re-established in their country of origin or former habitual residence. A protected person voluntarily re-establishes him/herself in the country of origin or former habitual residence when the intent of the return is to permanently reside there (UNHCR Handbook, paragraph 134).

A temporary return may however constitute re-establishment under section 108(1)(d) if such visits are prolonged and frequent with evidence of attachment. It can be argued that a regular presence in the state of origin for a significant part of the year is *prima facie* inconsistent with a continued need for protection.

There are no defined criteria as to when a person could be considered "re-established". The length of stay is only one factor in determining "re-establishment." The protected person's sense of commitment in regard to the stay in the country of origin or former habitual residence should be considered. If the protected person remained and held a normal livelihood without issues and performed obligations of a normal citizen then cessation may be warranted regardless of the duration of the stay given that this is indicative of a normalization of relations with the country.

Re-establishment was addressed in the following decisions: [X \(Re\), 2011 CanLII 100748 \(CA IRB\)](#) and [X \(Re\), 2011 CanLII 100780 \(CA IRB\)](#).

If the protected person has returned to their country of origin or former habitual residence, a cessation application should be considered *in absentia* if evidence indicates the person left Canada to become re-established in their country of origin or former habitual residence.

Section 108(1)(e): The reasons for which the person sought refugee protection have ceased to exist

In order for section 108(1)(e) to be invoked:

- The change must be of substantial political significance;
- There must be reason to believe that the substantial political change is truly effective;
- The change of circumstances must be shown to be durable.

This test is outlined in [Winifred v. Canada \(MCI\), 2011 FC 827](#).

Unless major changes in circumstances exist, a protected person's status should not be subject to frequent reviews under paragraph 108(1)(e) since undermining the protected person's sense of security is counter to the intent of protection.

Cessation applications should not be pursued under 108(1)(e) for protected persons who have become permanent residents because there is no loss of permanent



resident status in those cases.

Section 108(4): Exception to 108(1)(e)

The Convention, in Article 1C (5) provides for an exception to this ground if a protected person is “able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality.” The UNHCR Handbook (paragraph 136) states that the exception reflects a general humanitarian principle that those who have “suffered under atrocious forms of persecution should not be expected to repatriate.” This concept is incorporated in IRPA at section 108(4). The Federal Court of Appeal noted the exceptional circumstances envisaged by subsection 2(3) *Immigration Act*, now subsection 108(4) IRPA, would apply to only a minority of persons⁵.

Consequences of Cessation

Loss of Permanent Residence and Inadmissibility

On June 28, 2012 Bill C-31, *Protecting Canada’s Immigration System Act* (PCISA), received Royal Assent. PCISA included legislative amendments to the *Balanced Refugee Reform Act* and IRPA that are intended to improve the asylum system by expediting decisions and removals, limiting recourses, and strengthening system integrity. PCISA did not make any amendments to the legislative criteria and process with respect to the cessation of refugee protection, as outlined in section 108 of IRPA, and which are substantially the same as those under the former *Immigration Act*.

PCISA amended subsection 46(1) of IRPA to provide for the loss of permanent resident status by operation of law when protected person status is lost as a result of a final determination by the RPD under subsection 108(2) that refugee protection has ceased for the reasons outlined in sections 108(1)(a) to (d) (paragraph 46(1)(c.1) of IRPA). The amendment applies retrospectively⁶.

PCISA also amended IRPA by making a foreign national inadmissible under subsection 40.1(1) of IRPA on a final determination by the RPD for any of the grounds cited in subsection 108(1) and by making a permanent resident inadmissible under subsection 40.1(2) of IRPA on a final determination by the RPD for any of the reasons described in paragraphs 108(1)(a) to (d) of IRPA.

⁵ *M.E.I. v. Obstoj*, [1992] 2 F.C. 739 (C.A.). The principles developed in the case law relating to subsection 2(3) of the former *Immigration Act* are applicable to section 108(4) IRPA.

⁶ In *Silvia Olvera Romero v. Minister of Citizenship and Immigration* 2014 FC 671, par. 130, the FC mentions that “[t]he fact that the Applicant was granted refugee protection and permanent residency status at a time when the disputed provisions [c.46(1)(c.1) IRPA] were not in effect does not mean that new legislation would not apply to her. Further, while the facts that may underlie the RPD’s determination occurred before the subject amendments came into force, this would not, in my view, change their effect”.



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Section 228 of the *Immigration and Refugee Protection Regulations* has been amended and includes the Minister's Delegated authority to issue a departure order against foreign nationals who are inadmissible under the circumstances described in paragraph 40.1(1) of IRPA.

Various Bars

As cessation is considered a "rejection" of protected person status, the one-year Humanitarian and Compassionate Considerations bar under 25(1.2)(c) of IRPA and the one or three-year Pre-Removal Risk Assessment bar, depending whether or not from a Designated Country of Origin, under 112(2)(b.1) of IRPA apply.

A decision of the RPD allowing or rejecting a cessation application by the Minister cannot be appealed at the Refugee Appeal Division under 110 (2)(e) of IRPA.

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Effective Date: 2015-02-05

Updated: N/A

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