



RPD File No. / N° de dossier de la SPR: TB5-03427  
TB5-03428  
TB5-03429  
TB5-03430

*Private Proceeding / Huis clos*

**Reasons and decision – Motifs et décision  
Application to vacate – Demande d'annulation**

2018 CanLII 147549 (CA IRB)

<b>Applicant(s)</b>	The Minister of Public Safety and Emergency Preparedness	<b>Demandeur(s)</b>
<b>Respondent(s)</b>	XXXX XXXX XXXX XXXX XXXX (a.k.a. XXXX XXXX) XXXX XXXX XXXX XXXX XXXX	<b>L'intimé(e)(s)</b>
<b>Date(s) of Hearing</b>	October 30, 2018 July 4, 2018	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of decision and reasons</b>	December 4, 2018	<b>Date de la décision et des motifs</b>
<b>Panel</b>	R. Bafaro	<b>Tribunal</b>
<b>Counsel for the Respondent</b>	Cheryl Robinson	<b>Conseil(s) de l'intimé (e)(s)</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e) désigné(e)</b>
<b>Counsel for the Minister</b>	Roger Wyse	<b>Conseil du (de la) ministre</b>

## REASONS FOR DECISION

### INTRODUCTION

[1] This is an application by the Minister, pursuant to s. 109 of the *Immigration and Refugee Protection Act (IRPA)*, to vacate the refugee status conferred on the Respondents.

[2] The Minister's Representative, Mr. XXXX XXXX, argues that the Respondents made material misrepresentations during their claim for refugee protection, such that s. 109 of the *IRPA* is engaged, the decision to grant protection should be vacated, the claim should be deemed to be rejected and the decision that led to protection should be nullified.

[3] The Principal Respondent, XXXX XXXX, did not attend the hearing. His ex-wife, XXXX XXXX and two daughters, XXXX XXXX and XXXX XXXX, attended the hearing.

[4] The Respondents, XXXX, XXXX and XXXX, all testified at the hearing. A witness called on behalf of the Respondents, XXXX XXXX, was excluded from the hearing room during the testimony of the Respondents. After they finished giving evidence, the witness, XXXX XXXX, was called and testified at the hearing.

### FACTS

[5] The Respondents approached Etobicoke Citizenship and Immigration Canada (CIC) in October 1999 and submitted refugee claims based on their lives being endangered from the Socialist government and Secret Service Police because of XXXX XXXX membership in the Democratic Party and his family's background in Albania. Their refugee claims highlighted XXXX XXXX detention on XXXX XXXX, 1997, him going into hiding, XXXX XXXX being assaulted on XXXX XXXX, 1998 and the police visiting their home in XXXX 1998, XXXX 1998 and XXXX 1999 in search of them.

[6] The Respondents identified themselves solely as citizens and residents of Albania and no other country, identified Albania as the only country of reference where they feared persecution because of their political opinion. The Respondents answered “no” to the question, “Before your present journey to Canada, did you travel, outside your country of citizenship or former habitual residence within the last five years?”

[7] The Respondents, XXXX and XXXX, signed declarations in their Personal Information Forms (PIFs) indicating that all the information they provided was complete, true and correct. The Respondents, XXXX and XXXX, were minors at the time their parents submitted their refugee claims. The Respondent, XXXX, signed the declarations in their PIFs indicating that all the information which had been provided was complete, true and correct. The Respondents, XXXX and XXXX, indicated in their PIFs that they travelled to Canada using a fraudulent Italian passport and were admitted to Canada on XXXX XXXX, 1999 at Pearson International Airport. The Respondent, XXXX, indicated that he had resided in Albania for the past 10 years, from XXXX 1988 to XXXX 1999 and was employed in Albania between XXXX 1987 and XXXX 1997. The Respondent, XXXX, indicated that she had resided in Albania from XXXX 1990 until XXXX 1999.

[8] The Refugee Protection Division (RPD) granted the Respondents Convention refugee status on December 20, 2000.

[9] On XXXX XXXX, 2001, the Respondents submitted applications for permanent residence status in Canada. In their applications, the Respondents indicated that their only country of citizenship and permanent residence was Albania and that they had no other nationalities. They indicated that all the information they provided was true and correct. In support of these applications, the Respondents produced their valid Albanian passports, which indicated that XXXX XXXX passport was issued on XXXX XXXX, 1999, expiring on XXXX XXXX, 2004 and that XXXX passport, which included her two daughters, was issued on XXXX XXXX, 1999 and expired on XXXX XXXX, 2004.

[10] The Respondents were landed and became Canadian permanent residents on XXXX XXXX, 2002.

[11] The Respondents' Israeli citizenship became known when XXXX sought admission to Canada as a visitor by presenting her Israeli passport in the name of XXXX XXXX at Pearson International Airport on XXXX XXXX, 2005, for the purpose of visiting some friends for twelve days. XXXX told the border officer that she had visited Canada in 2002, would be returning to Albania, where she had been living for the past four and a half to five years and then she would return to Israel where she worked on a Kibutz.

[12] XXXX Israeli passport confirms that she was admitted into Canada in 2002. It contains an entry stamp from Canada Customs from the Vancouver International Airport dated XXXX XXXX, 2002. Her Israeli passport issued on XXXX XXXX, 1999 shows that it was renewed at the Israeli consulate in Toronto on XXXX XXXX, 2000. It contains the Canada Customs entry stamp from Pearson International Airport dated XXXX XXXX, 1999, which confirms the date of her entry into Canada using a genuine Israeli passport under a different identity that had not been provided or declared to Canada Immigration or the Refugee Board. A customs search discovered XXXX airline ticket indicating that she had travelled from Toronto to Vienna to Tirana on XXXX XXXX, 2005 and was in possession of her father's death certificate in the name of XXXX XXXX indicating that he was an Israeli and Albanian citizen.

[13] During her examination by a border officer at Pearson International Airport on December 17, 2005, XXXX admitted that the only thing she kept secret was that she was an Israeli citizen and had been residing with her family in Israel from 1992 until 1998, thereafter travelling to Albania before coming to Canada in 1999 and claiming refugee status. She admitted that they did not disclose their Israeli citizenship in their refugee applications because they thought that that if they did they would not have been accepted as refugees. XXXX indicated that she obtained Israeli citizenship in 1992 because her father comes from Israel. She indicated that she used her maiden name and her Hebrew given name to establish her identity. XXXX said that XXXX obtained his Israeli citizenship in 1992 and that all of her children were holders of Israeli passports. Family photographs with the date of "1998" written on the back further establish the Respondent's residency in Israel.

[14] The original panel hearing the refugee claims of the Respondents were unaware of the following material facts: 1) XXXX XXXX is also known as XXXX XXXX, an Israeli citizen; 2) XXXX XXXX travelled to Canada and was admitted after she presented her Israeli passport; 3) XXXX XXXX was in possession of her own valid Israeli passport of the day of her refugee hearing; 4) XXXX XXXX obtained Israeli citizenship in 1992 and is an Israeli citizen; 5) XXXX and XXXX XXXX are holders of Israeli passports and are Israeli citizens, 6) The Respondents lived in Israeli from 1992 until 1998, placing them outside of Albania at a time, when an accumulation of events in Albania had caused them to flee Albania because of their alleged fear of politically motivated persecution.

### APPLICABLE LAW

[15] Section 109 of the *IRPA* provides as follows:

- (i) The RPD 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;
- (ii) The RPD 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;
- (iii) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of protection is nullified.

[16] The leading principle is from the case of *Canada (Minister of Manpower and Immigration) v. Brooks*, [1974] S.C.R. 850, where Laskin CJ states:

The panel finds persuasive the argument that by failing to disclose the important information to the C.R.D.D., by suppressing that information, the respondents effectively prevented the C.R.D.D. hearing their case from making a full-informed decision in their claim. It finds moreover that there is no other sufficient evidence on which a positive determination could have been based.

[17] In *Canada (Public Safety and Emergency Preparedness) v. Gunasingam*, 2008 FC 181 per Harrington J., it was decided that there are three elements to the claim for vacation of refugee protection. First of all, there must be a misrepresentation or withholding of material facts. Secondly, the facts must relate to a relevant matter. And thirdly, there must be a causal connection between the misrepresentation or withholding of material facts and the favourable result.

[18] As was noted by Justice Laskin, Chief Justice of the Supreme Court in *Canada (Minister of Manpower and Immigration) v. Brooks*, [1974] S.C.R. 850, if the panel is foreclosed from making an inquiry that affects the result, then that would be sufficient.

[19] In *Canada (Minister of Citizenship and Immigration) v. Pearce*, 2006 FC 492 it was decided that section 109 does not require that any misrepresentation be intentional. The respondent's motives, intention, negligence or *mens rea* are not relevant. In other words, why the claimant made the misrepresentation or the withholding of material facts is not relevant. The only issue is whether there was a withholding or misrepresentation of material facts.

[20] In *Singh Chahil v. Canada (Citizenship and Immigration)*, 2007 FC 1214, it was decided that a Board may only consider at a vacation hearing material that was before the original panel, except for evidence to establish that a claimant did or did not make the misrepresentations at the determination hearing.

## ANALYSIS

[21] The Minister's counsel questioned XXXX and her two daughters, XXXX and XXXX, extensively about their refugee and immigration history in Canada. I find that it is abundantly clear, based on their responses, that the Respondents misrepresented and withheld material facts regarding their Israeli citizenship, residency and passports at the time of making their refugee claims. Moreover, the Respondent, XXXX, misrepresented her Hebrew name from Israel, XXXX XXXX and instead adopted a Canadian name, XXXX XXXX, in her refugee application. The Minister's evidence also establishes that the material facts misrepresented and withheld in the Respondents' refugee applications and hearing were also misrepresented and withheld in their Canadian permanent resident and citizenship applications.

[22] The Minister asked XXXX for her legal name. She said her legal name was XXXX XXXX. XXXX said that the name she used on her refugee application was XXXX XXXX. The Minister asked her if she failed to disclose her other name on her refugee application. She admitted that her other name, XXXX XXXX, was not indicated on her refugee application. However, she blamed her ex-husband, XXXX and said that he was responsible for the omission of her other name on her refugee application. She added that XXXX didn't tell her anything and that he filled in all the papers.

[23] I find XXXX explanation is not credible. It is clear from her PIF that XXXX signed her own application, declared that its contents were truthful and correct and that it had been translated to her in the Albanian language. The Minister asked XXXX what name she used when she applied for permanent residence in Canada. XXXX admitted that she used the name, XXXX XXXX.

[24] The Minister asked XXXX why she indicated on her application that the question asking her about whether she had used another name or alias was not applicable. She said that no one explained that to her. Again, I find XXXX explanation is not credible. She was the one who signed her own application and declared that its contents were truthful and correct. The Minister asked XXXX if she had indicated on her refugee application that her only country of citizenship was Albania. XXXX said that she couldn't recall. She said that her ex-husband, XXXX, filled in all the applications. The Minister then asked XXXX if she was an Israeli citizen when she made her refugee claim. She admitted that she was an Israeli citizen.

[25] I find that it is clear that XXXX knew that she was an Israeli citizen at the time she made her refugee claim. I do not find it credible that XXXX, who signed her own PIF, declared its contents to be truthful and correct and had it translated to her in the Albanian language, wouldn't be able to recall that the only country of citizenship mentioned in the PIF was Albania and that there was no reference to her Israeli citizenship. The Minister asked XXXX why she signed these applications. She said that her ex-husband, XXXX, made her sign them.

[26] The Minister asked XXXX whether she had listed her daughters on her application for permanent residence as citizens of Israel. She denied having any knowledge. She said that XXXX did everything and she didn't know what he wrote. The Minister asked her if she signed her own application for permanent residence. She said that she did because her ex-husband made her sign it. I find it hard to believe that XXXX would have had no knowledge as to what information had been provided in her own application for permanent residence regarding the citizenship of her daughters. She signed it and declared that the information in the application was truthful and correct.

[27] The Minister asked XXXX whether she failed to disclose in her refugee application that her daughters were citizens of Israel. She said that her ex-husband filled out that application but admitted that the Israeli citizenship of daughters was not disclosed. Again, I find that it is clear from XXXX own PIF, which she signed and was translated to her in the Albanian language, that the Israeli citizenship of her daughters was not disclosed.

[28] The Minister asked XXXX during what period of time she resided in Israel. She said that she lived in Israel with her family from 1990 until 1999. The Minister asked XXXX if she was aware that her refugee claim was based on events that happened during the late 1990s which were narrated by her ex-husband in his PIF. She said that she didn't know what he had written in his narrative. I do not find it credible that XXXX would have no knowledge as to the basis of her claim which was entirely dependent on that of her ex-husband. XXXX was present at her ex-husband's hearing. She signed her own PIF, indicating that she feared persecution in Albania and was relying entirely on the incidents as narrated by her ex-husband in his PIF and the contents of her PIF were translated to her into Albanian language. The Minister asked XXXX if she and her family were living in Israel during the time period of the late 1990's. She admitted that they were.

[29] The Minister asked XXXX what passport she used when she arrived in Canada on October 8, 1999. She said that she used her Israeli passport. The Minister asked XXXX what passport she used when she came to Canada in 2002. She said that she travelled on an Israeli passport. The Minister asked XXXX if she disclosed this information at her refugee hearing. XXXX said that she had no knowledge of this. I do not find it credible that XXXX would have had no knowledge



of what evidence was presented at her refugee hearing. XXXX indicated that she was in attendance at her refugee hearing and that an Albanian interpreter was provided. The Minister brought to XXXX attention that according to her own PIF and that of her ex-husband, XXXX, they had entered Canada to make a refugee claim using a smuggler who had provided them with a fraudulent Italian passport. The Minister pointed out that page 28 of her PIF, which indicated that she used an Italian passport to enter Canada in 1999, gave the impression that she didn't have any passport and entered Canada using a fraudulent passport. The Minister asked her if that was correct. XXXX said that she couldn't remember this, because it was written in English, that nobody told her anything and that nobody translated anything to her. The Minister asked her again if that information was correct. She said that it was not correct. She repeated that she didn't do that, that nobody explained that to her and that her ex-husband did that. I do not find it credible that XXXX would have had no knowledge that it was written in her PIF, which she herself signed and which was translated to her into the Albanian language, that she had entered Canada in 1999 with the assistance of a smuggler using a fraudulent Italian passport.

[30] Alternatively, I find, even if it were true that XXXX was the mastermind behind this scheme to defraud the Refugee Board and Canada Immigration and Citizenship, by concealing their true identities and Israeli citizenship, it is reasonable to expect that XXXX would have had to provide XXXX with detailed information about everything he was doing in order to avoid detection and ensure that his scheme would not be detected or foiled by immigration authorities in Canada. Therefore, I don't find it credible, as claimed by XXXX, that she was kept totally in the dark about the details surrounding her ex-husband's plan to defraud the immigration and refugee system by misrepresenting their true identities and concealing their Israeli citizenship.

[31] The Minister asked XXXX why she lied to the immigration officer when she arrived in Canada on XXXX XXXX, 2005 and was asked if she had used any other names besides XXXX XXXX and she said she hadn't. XXXX answer was that she was stressed because she had been to her father's funeral in Albania and during that time had discovered that her daughter, XXXX, who was staying with the superintendent, XXXX XXXX, in Canada was very sick and her ex-husband didn't show up to take her to the doctor. She said that when she arrived in Canada after her father's funeral she was only interested in seeing her children.

[32] Despite the stressful circumstances that XXXX was facing upon her return to Canada on XXXX XXXX, 2005 after her father's funeral in Albania, I find it is clear that XXXX misrepresented her true identity by failing to disclose that she was living in Canada as a permanent resident under another name, XXXX XXXX, with her two daughters, XXXX and XXXX. According to the officer's notes dated XXXX XXXX, 2005, XXXX told the officer that she was not a permanent resident of Canada and was only in Canada to visit a friend for six months and was in fact a permanent resident of Albania where she had been living with her husband and children for the past four and half to five years. She also told the officer that the only passport she had in her possession was an Israeli passport. Later, during her examination by the same officer, on February 17, 2005, she told the officer that when she came to Canada in 2005 she had an Albanian passport but did not travel on it because it had expired in 2004 and instead used her Israeli passport and her Canadian permanent resident card. The Minister asked XXXX if she had an Albanian passport and she confirmed that she did have one.

[33] XXXX was examined again by an immigration officer on February 17, 2005. The officer's notes make it abundantly clear that once again XXXX made material misrepresentations and withheld material facts. When asked about her full name she said it was XXXX XXXX. When the officer asked her if she had ever used another name, she said that she had not used another name, despite having told the same officer on the previous day, February 16, 2005, that her full name was XXXX XXXX.

[34] During her examination on February 17, 2005, XXXX was asked questions about the circumstances surrounding the making of her refugee claim in 1999. The officer asked her which country she claimed refugee status against and she said Albania. The officer asked her if she claimed to be persecuted in any other country. She said "no". The officer asked her about where she had been living before coming to Canada. She told the officer that she had been living in Israel between 1992 and 1998.

[35] The officer asked XXXX if she mentioned her Israeli citizenship and residency in her refugee application and she said, “no”. When the officer initially asked her why she didn’t mention these details, she shrugged her shoulders. Later, when the officer asked XXXX whether anyone helped her to fill in the refugee forms, she said that when they went to apply for refugee status, they were given forms to fill out and that they completed the forms on the spot. The officer asked XXXX why she didn’t tell the truth on the refugee forms that she was an Israeli citizen and had lived in Israeli from 1992 to 1998. In response to this question, XXXX told the officer that they believed that if they told the truth on the refugee forms that they might get refused and they would not be accepted.

[36] I find, based on the Minister’s evidence from the two examinations conducted by an immigration officer in February 2005, that it is clear that XXXX knew what she was doing when she withheld and misrepresented material facts, namely her Israeli citizenship and residency, in her refugee application, because she realized that if she told the truth and had disclosed these details in her refugee claim that it might get refused and would not be accepted.

[37] XXXX was also questioned extensively by her counsel about the circumstances surrounding her arrival in Canada in 1999 and the making of their refugee claims. XXXX indicated that her ex-husband controlled every aspect of their refugee applications. XXXX said that she thought initially that she was coming to Canada for a visit and learned two to three days after her arrival in Canada that they were making refugee claims. She said that it was her ex-husband’s decision to make refugee claims. She said her ex-husband made her enter Canada in 1999 using her Israeli passport. She said she did not ask her ex-husband any questions because he would tell her that she was crazy and that she should just do as she was told. She said her ex-husband made arrangements to obtain an Albanian passport for her in the name of XXXX XXXX. She said she didn’t know why the Albanian passport was not in her birth name. She said that she was in possession of this Albanian passport at the time she entered Canada in 1999.

[38] XXXX said that her ex-husband prepared all of their refugee forms. She said that he made her sign her name but that she didn't know what was written in the forms. She said that although her ex-husband had prepared a detailed PIF and narrative that she never read it. I do not find it credible that XXXX didn't know what was written in her own PIF form, which was translated to her into the Albanian language, which she personally signed and in which she personally declared that all the information in her form was truthful and correct. In her own PIF form, there is a statement from XXXX acknowledging that she was relying on her ex-husband's story of persecution in Albania to ground her own refugee claim. I find it implausible that having signed her PIF, which was translated to her, that she wouldn't know that she was relying on her husband's PIF narrative and story to ground her own refugee claim. I also find it implausible that XXXX would have made a statement in her PIF indicating that she was relying entirely on the claim of her ex-husband to ground her claim without having read the contents of her ex-husband's PIF and narrative.

[39] I find that there is no persuasive evidence before me to establish that XXXX ex-husband, XXXX, controlled every aspect of their refugee, permanent resident and citizenship applications, forcing them to make refugee claims in Canada in 1999, filling in all of their refugee applications and other immigration and citizenship applications, forcing them to enter Canada on Israeli passports in 1999 and obtaining an Albanian passport for XXXX in the name of XXXX XXXX, instead of her birth name, XXXX XXXX.

[40] In the alternative, I find, if it is true that her ex-husband controlled every aspect of their refugee, permanent resident and citizenship applications, that in order to ensure that everything went smoothly and that the fraudulent scam was not detected by Canadian immigration authorities, that her ex-husband would have had to provide her with extensive details about every step in his plan to defraud the system, including the contents of all the documents that were being provided to the Refugee Board and Citizenship and Immigration Canada. XXXX was present, the whole time, at her ex-husband's refugee hearing. She heard his evidence. I don't find it credible that XXXX was so naïve and gullible that she was kept totally in the dark and was so extensively manipulated and controlled by her ex-husband that she had no way of knowing what was really going on in the context of her refugee application and other immigration applications.

[41] Counsel for XXXX asked her when she found out that her Israeli citizenship was not declared. She admitted that she knew that her Israeli citizenship was missing from her PIF at the time that she signed it. Counsel asked her why she signed it if she knew that her Israeli citizenship was missing from her PIF. XXXX said that she had to do what she was told by her ex-husband. XXXX said that she was afraid of her ex-husband and that he would tell her to shut up. She said that every time she asked her ex-husband a question, he would shout at her and pull her hair.

[42] Counsel asked XXXX what she thought would happen if she refused to sign her PIF. She said that she feared that her ex-husband would take away her children or might leave her in the middle of the street. Counsel asked XXXX why she thought her ex-husband might do this to her. XXXX said that every time she asked for some information from him he wouldn't explain anything and he would get rough with her. Counsel asked XXXX why she thought that her ex-husband would take her children from her and leave her in the middle of the street. XXXX said she believed this because her ex-husband threatened that if she didn't do as she was told that he would take the children away from her. I find that it is clear based on her testimony that XXXX misrepresented or withheld critically important material facts, going to the heart of her refugee claim, namely her identity as an Israeli citizen and long-time resident of Israel during the 1990's when she and her ex-husband and family were allegedly being politically persecuted in Albania.

[43] Even if it is true that XXXX ex-husband forced to go along with his plan to defraud refugee and immigration authorities by advancing a bogus refugee claim against Albania and concealing their Israeli citizenship, I find that this is not a valid excuse in response to the Minister's application to vacate their refugee status pursuant to s. 109(1) of the *IRPA*.

[44] The Minister does not have to show that XXXX actions in misrepresenting and withholding material facts regarding central aspects of her refugee claim, namely her identity, residential history and citizenship, had to be intentional or deliberate or that she had to have been directly responsible for the material misrepresentations.

[45] It is now settled law that there is no “*mens rea*” requirement under s. 109(1) of the *IRPA*. The misrepresentation could have been made directly, indirectly, negligently, innocently or without any knowledge. This section of the *IRPA* is without a doubt very broad in scope and should not be restrictively interpreted. The legislative purpose of this provision is to protect the integrity of Canada refugee determination system. Narrowing the scope of this provision would defeat the legislative purpose for which this provision was designed by Parliament and would bring the administration of justice and the refugee determination system into disrepute.

[46] XXXX counsel asked her if Mr. XXXX XXXX was her lawyer at the time she signed her PIF. She admitted that he was her lawyer but that she only met with him at his office once. She said that her ex-husband attended all of the other meetings with him. She said that her ex-husband was the one who retained his services. She said that she didn’t recall the lawyer going over the contents of her PIF when she was at his office. She said that she never had a meeting with the lawyer before her actual refugee hearing. Counsel asked XXXX where her lawyer got all of the information in her PIF about her family, where she was born, where she went to school and the personal details about her life. She said that her ex-husband provided all this information.

[47] Mr. XXXX XXXX is an experienced lawyer who has worked in the private bar as an immigration and refugee specialist and advocate. I find it implausible that Mr. XXXX would have only had one meeting with XXXX and her daughters and would have kept them completely in the dark about everything else concerning their refugee claims and hearing. I do not find it credible that Mr. XXXX would not have reviewed the complete contents of her PIF when XXXX was at his office. I also do not find it credible that Mr. XXXX would not have met with XXXX before her refugee hearing to get her prepared. XXXX has provided no persuasive evidence to show that her ex-husband controlled their lawyer, Mr. XXXX, to such a degree that he was able to manipulate him into excluding the rest of the family from the entire process of preparing refugee documents and getting ready and prepared to attend the refugee hearing to give testimony and evidence.

[48] **Was there a misrepresentation or withholding of material facts?** Yes. The principal Respondent, XXXX, conceded that she misrepresented her identity and relied on her ex-husband's PIF narrative, alleging that they had endured political persecution in Albania in the late 1990's, during which time they had in fact been residing and living together as a family in Israel. XXXX conceded that she misrepresented a material fact, her birth name, which was XXXX XXXX and used instead the name, XXXX XXXX, after arriving in Canada and making her refugee claim in 1999. XXXX conceded that she misrepresented a material fact when she indicated in her PIF that she had never used any other name besides "XXXX XXXX". XXXX conceded that she misrepresented and withheld a material fact, her Israeli citizenship, at the time of completing her PIF and at her refugee hearing. XXXX conceded that she misrepresented a material fact by indicating in her PIF that she had travelled to Canada on a fraudulent Italian passport provided by a smuggler when in fact she had travelled to Canada in 1999 and was admitted after presenting a valid Israeli passport. XXXX conceded that she misrepresented a material fact when she indicated in her PIF that her only country of citizenship was Albania when in fact she was also an Israeli citizen and had in her possession an Israeli passport. XXXX conceded that she misrepresented a material fact when she indicated in her PIF that Albania was the only country of reference and that they were only claiming against Albania. XXXX conceded that she misrepresented a material fact when she indicated in her PIF that the only country in which she had resided before coming to Canada was Albania, during the time period of February 1990 until October 1999.

[49] **Did the facts relate to a relevant matter?** Yes. The Respondents' misrepresentations go to the heart of their claims.

[50] Section 106 of the *IRPA* states:

**106.** The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

[51] Similarly, *Rule 7* of the *Refugee Protection Division Rules* requires:

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to provide them.

[52] A claim for refugee protection must be rejected as soon as the Board determines that the claimant's identity has not been established.<sup>1</sup> The Respondents' misrepresentation of their true identities certainly relates to a relevant matter.

[53] However, the Respondents' other misrepresentations also relate to relevant matters. Virtually their entire claim was based on falsehoods; that they were victims of political persecution in Albania because of XXXX XXXX participation in the Democratic Party of Albania. In short, I find that the Respondents' misrepresentations relate to the following relevant matters, credibility, identity and country of reference.

[54] **Was there a causal connection between the Respondents' misrepresentations and withholding of information and the panel's positive determination in their refugee claims?**

Yes. I find that the Respondents' misrepresentations led directly to the positive determination. I find, had the original panel known that the Respondents were long-time residents of Israel, during a time period when allegedly they were being persecuted in Albania because of XXXX XXXX participation in the Democratic Party of Albania, that it is more likely than not the original panel would have found the basis for their refugee claims be entirely lacking in credibility. I also find, had the original panel known that the Respondents were all citizens of Israeli when they made their refugee claims against only Albania and were not alleging persecution in Israel that it is more likely than not that the original panel would have rejected their refugee claims for failing to establish a well-founded fear of persecution in all countries of nationality, namely Albania and Israel. I also find, had the original panel known that the Respondents were in possession of both Israeli and Albanian passports at the time they entered Canada in 1999 that it is more likely than not that the original panel would have had serious credibility concerns about the alleged identities of the Respondents as Albanian nationals, which more likely than not would have led to the

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<sup>1</sup> *Ipala, Nkum-Ilub v. M.C.I.* (F.C., no. IMM-3932-04), Blanchard, April 8, 2005; 2005 FC 472.



intervention of the Minister's office for the purpose of verifying the authenticity of their Albanian passports.

[55] **Aside from the misrepresentations, was there sufficient other evidence before the panel at the time of the first determination to justify conferring refugee protection, as contemplated by Section 109(2) of the IRPA?** No. A claim for refugee protection must be rejected as soon as the Board determines that the claimant's identity has not been established.<sup>2</sup> If the misrepresentations are removed from the evidence before that decision-maker, he or she would have been left with four Albanian nationals without identities and with little or no information about their reasons for leaving Albania. Without knowing the identities of those claimants, the original panel would have had no choice but to reject their claims for lack of identity.

[56] The decision conferring refugee protection on the respondents was obtained as a result of their direct misrepresentations and withholding of material facts relating to relevant matters. Aside from the misrepresentations, there was not sufficient other evidence upon which to justify the granting of refugee protection. The Minister's application is allowed, the refugee claims of the respondents are rejected and the decision granting them refugee protection is nullified.

### **Other Arguments Raised by Counsel for the Respondents Have No Merit**

#### *Abuse of Process*

[57] In her submissions, counsel argued that the Minister's delay of 10 years in bringing his application to vacate the refugee status of the Respondents on March 31, 2015 constitutes an abuse of process. She relied on the leading case of *Blencoe v. B.C. (Human Rights Commission)*.<sup>3</sup>

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<sup>2</sup> *Ipala, Nkum-Ilub v. M.C.I.* (F.C., no. IMM-3932-04), Blanchard, April 8, 2005; 2005 FC 472.

<sup>3</sup> *Blencoe v. B.C. (Human Rights Commission)* [2000] 2 S.C.R. 30 at 375-376.

[58] In *Blencoe*, Bastarache J. set out the relevant principles applicable to abuse of process in an administrative law setting. He noted that in order to find an abuse of process, the court must be satisfied that:

The damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted. The proceedings must be unfair to the point that they are contrary to the interests of justice or will undermine the integrity of the judicial process.

[59] The onus is on the claimant to establish that there has been an abuse of process. The Supreme Court of Canada also held that abuse of process must amount to “one of the clearest of cases” to merit a stay and that such cases would be extremely rare. Given the finality of the stay of proceedings, it must remain a remedy of last resort.<sup>4</sup>

[60] A stay of proceedings is a prospective remedy. It is not designed to redress a wrong that has already been done. It aims to prevent the perpetuation of a wrong that, if left alone, will continue to trouble the parties and the community as a whole in the future. A compelling societal interest in having a full hearing could tip the scales in favour of proceeding.<sup>5</sup>

[61] I note that at no time did counsel request a remedy of any kind to cure the prejudice which she alleges her clients suffered as a result of the inordinate and unreasonable delay. Counsel did not ask for a stay of these proceedings either. The abuse of process argument was only raised by counsel as an after-thought at the conclusion of the vacation hearing. Since counsel has not made any arguments or submissions with regard to what remedy would be appropriate in these circumstances and has not requested a stay of these proceedings, I need not address a declaration or grant any kind of relief.

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<sup>4</sup> *Blencoe*, supra at 307 at 375-376; and *Charkaoui v. Canada (M.C.I.)* [2008] 2 S.C.R. 326 at para. 76 [*Charkaoui (2)*’].

<sup>5</sup> *Canada (M.C.I.) v. Tobiass*, [1997] 3 SCR 391, 1997 CanLII 322 (SCC); *R. v. Regan*, 2002 SCC 12 [*“Regan”*]; and *R. v. O’Connor*, [1995] 4 S.C.R. 411 [*“O’Connor”*].

*Misrepresentations by XXXX daughters, XXXX and XXXX, were innocent*

[62] Counsel argued that XXXX daughters, XXXX and XXXX, did not understand or appreciate the nature of the proceedings when their parents made refugee claims on their behalf, completed their PIFs and required them to attend at their refugee hearing on December 20, 2000.

[63] XXXX testified that she was only nine years old when her parents brought her to Canada in 1990. She said that she thought she was going to be living with her aunt and uncle in the U.S.A. She said that she had no idea under which program she had come to Canada. She said that she thought that she already had permanent resident status in Canada and that her parents had all the proper paperwork. XXXX said that when she went to her refugee hearing, she had no idea what was going on and that all she remembers is that she was colouring at a table. She said that she couldn't remember if she or her parents were asked any questions at the hearing. She said she couldn't remember if she and her parents met with a lawyer before their hearing. She said that since coming to Canada her parents had never discussed any immigration matters with her. She said that only found out that she came to Canada as a refugee and had failed to declare her Israeli citizenship after her parents were served with the Minister's application to vacate their refugee status in 2015. She said that she only found out 4 years after her mother's detention in 2005 that her mother had been arrested at the airport because she failed to declare her Israeli citizenship. She said that after attending her refugee hearing, right up until the time her parents received the Minister's application to vacate their refugee status in 2015, she did not receive any call-in notices or letters from immigration, nor was she required to attend any immigration interviews or meetings. She said that life continued as normal until 2015 when they received the Minister's application.

[64] Ester testified that she was seven years old when she arrived in Canada in 1999. She said she didn't know under which immigration program she came to Canada because she was too young to understand. She said that she recalls being in a hearing room but can't call what happened there. She said she didn't know the purpose of the hearing but only knew that she had to be there. She said that she never asked any questions about the purpose of the hearing because she was too young and didn't understand what was going on. She said that she only found out that she

was accepted as a refugee when her parents received the Minister's application to vacate their refugee status in 2015. She said that she knew that her mother was detained by immigration in 2005 but she didn't know why. She said that after her mother's detention in 2005 she never received any letters or call-in notices from immigration, nor was she ever required to attend any immigration meetings or interviews.

[65] Counsel argued that since both XXXX and XXXX honestly and reasonably believed that they were not misrepresenting any material facts when their parents made their refugee claims in 1999 and they attended their refugee hearing in December 2000, they are innocent parties and should not be held responsible for the actions of their parents.

[66] Counsel argued that because the misrepresentations made by XXXX and XXXX were completely innocent s. 109(1) of the *IRPA* does not apply. She argued that their circumstances fall into a very limited exception to the general rule indicating that there is no "*mens rea*" requirement to support a finding of material misrepresentation under s. 109(1). Counsel relied on the case of *Osisanwo*<sup>6</sup> as the leading authority for this proposition. I find that this case is not relevant nor does it apply in this instance because it is distinguishable based on its facts and the law.

[67] *Osisanwo* is a federal court case in which a decision refusing a parental sponsorship application on the grounds of inadmissibility under s. 40(1)(a) of the *IRPA* was judicially reviewed. The court examined the issue of the proper interpretation of s. 40(1)(a). It held that because the word "knowingly" was not used in s. 40(1)(a), it followed that knowledge or *mens rea* is not a pre-requisite to a finding of misrepresenting or withholding material facts. However, the court found that there was a limited exception, where an applicant can show that they honestly and reasonably believed that they were not withholding material information.

[68] I find that this case does not apply in this instance because it deals with the proper interpretation of section 40(1)(a) of the *IRPA*. The case which is before me is a Minister's application under s. 109(1) of the *IRPA* and not section 40(1)(a). Counsel argues that because the wording of the provision under section 40(1)(a) is very similar to the wording under s. 109(1) that

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<sup>6</sup> *Osisanwo v. (M.C.I.)* [2011] FC 1126.

I should give the provision under s. 109(1) the identical interpretation which applies to the provision under s. 40(1)(a). I respectfully disagree with counsel's argument.

[69] Sections 40(1)(a) and 109(1) are found in different sections of the *IRPA*. They have different purposes and involve different processes. They come under different legislative frameworks. Parliament had different intentions at the time of the drafting of these two different provisions.

[70] Section 40(1)(a) deals with the issue of material misrepresentation as a ground of inadmissibility to Canada. Its purpose is to determine whether a person, against whom an allegation of material misrepresentation has been made, should be allowed to remain in Canada or should be removed from Canada. The Minister's delegate has the authority to decide whether or not such a case should be referred to an admissibility hearing to determine whether the allegation is well-founded and if the person concerned is in fact inadmissible to Canada.

[71] Section 109(1), although it also concerns material misrepresentation and withholding of material facts, involves a completely different process and purpose. It involves the refugee determination system in Canada. The purpose of this provision is to defend and maintain the integrity of the refugee system so that persons deserving of international protection can access the system and have their claims decided in a fair, expeditious and meritorious fashion. It is a provision which exists in order to discourage fraud by persons seeking to take advantage of the refugee determination system who are not genuinely in need of international protection.

[72] The vacation of a decision conferring refugee protection is not punishment for a misdeed, though it may certainly appear that way to the Respondents or a finding of guilt or improper intentions. Instead, the vacation process protects the integrity of Canada's refugee protection system<sup>7</sup> by rectifying a decision that rested on incorrect information. The misrepresentation involved need not be deliberate or intentional<sup>8</sup> and the respondents' motives, intention, negligence or *mens rea* are not relevant.<sup>9</sup> While the children may have had little or no role in the

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<sup>7</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 3(2)(e).

<sup>8</sup> *Zheng, Yi Hui v. M.C.I.* (F.C., no. IMM-2739-04), Russell, May 4, 2005, 2005 FC 619.

<sup>9</sup> *M.C.I. v. Pearce, Jennifer Juliet* (F.C.T.D., no. IMM-3826-05), Blanchard, April 18, 2006, 2006 FC 492.

misrepresentations, they did obtain refugee protection as a result of those falsehoods and the decision conferring that protection must therefore be nullified.

### *Duress*

[73] Counsel conceded that XXXX misrepresented or withheld material facts, namely her personal identity, her Israeli citizenship and her Israeli residency. However, counsel argued that because XXXX was acting under duress when she made the material misrepresentations, her actions were morally involuntary and therefore I could not find, pursuant to s. 109(1) of the *IRPA*, that XXXX had obtained refugee status by misrepresenting or withholding material facts. Counsel relied on the case of *Ryan*<sup>10</sup> and *Ruzic*<sup>11</sup> where the Supreme Court of Canada set out the legal test and requirements for making out the common law and statutory defences of duress. These decisions from the Supreme Court of Canada are criminal law cases dealing with criminal trials and criminal culpability for crimes committed under the *Criminal Code of Canada*.

[74] The case which is before me is an administrative law matter. XXXX was not charged criminally nor has she had to go through a criminal trial. A refugee hearing is a quasi-judicial administrative law proceeding in which no findings are made with respect to a claimant's guilt or innocence. XXXX is not facing criminal law sanctions or punishment for the commission of a crime. Counsel has not provided any legal authority for the proposition she is advancing which is that the common law and statutory defences of duress apply to s. 109(1) of the *IRPA* which vacates a refugee's status where it has been acquired by misrepresenting or withholding material facts.

[75] In the alternative, if the common law defence of duress does apply to s.109(1) of the *IRPA*, I find that XXXX has not met the legal test and requirements for the defence set out in the *Ryan*<sup>12</sup> and *Ruzic*<sup>13</sup> cases.

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<sup>10</sup> *R. v. Ryan*, 2013, SCC 3.

<sup>11</sup> *R. v. Ruzic*, 2001 SCC 24.

<sup>12</sup> *R. v. Ryan*, supra.

<sup>13</sup> *R. v. Ruzic*, supra.

[76] In *Ryan*, the Supreme Court of Canada said that in order for an accused to be able to rely on the common law defence of duress, there must have been a threat of death or bodily harm. It said that traditionally, the courts have qualified this bodily harm as needing to be “grievous” or “serious”. However, the Court said that this higher threshold is not necessary in light of the existence of a proportionality requirement, inherent in the principle of moral involuntariness, which acts as the ultimate barrier for those who seek to rely on the defence.

[77] XXXX testified that she was a victim of domestic violence and had endured a lot of mistreatment from her ex-husband over the years. She said that he would tell her to shut up and he would say that she was crazy. She said that he shouted at her. She said that he pulled her hair and hit her. She said that she was afraid of him. She said that he would threaten to take the children away forever if she didn’t do as she was told.

[78] XXXX said that she believed if she didn’t go along with her ex-husband’s decision to advance a fraudulent refugee claim that her ex-husband would take her children away from her and that she would never see them again. She also said that if she had not gone along with her ex-husband’s scheme, that he would have left her in the middle of the street. She said that every time she tried to get her ex-husband to explain something he wouldn’t give her an answer and instead he would get rough with her.

[79] I find that there is no persuasive evidence before me to establish that XXXX was facing an imminent threat of death or bodily harm at the time that she decided to go along with her ex-husband’s scheme to advance a fraudulent refugee claim. Additionally, I find that there is no persuasive evidence to establish that there was a close temporal connection between any threat that her ex-husband made against her and her decision to act on the threat and go along with his scheme by misrepresenting and withholding material facts on her refugee application and at her refugee hearing.

[80] XXXX PIF indicates that she was married to her ex-husband on XXXX XXXX, 1989. She testified that she divorced her ex-husband, XXXX XXXX, in XXXX 2005. Court documents confirm that she was divorced on XXXX XXXX, 2005. XXXX daughter, XXXX, testified that the last time she saw her father was in 2006 and that since then she and her mother have had no contact with him whatsoever. XXXX got remarried in Canada on XXXX XXXX, 2014.

[81] XXXX testified that despite the many years of abuse that she suffered at the hands of her ex-husband in Albania and Canada, she did not approach the police for help in either Albania or Canada. In 2005, after entering Canada, she was caught in a lie about her true identity and Israeli citizenship at the airport. She was arrested and detained. She testified that she told her daughters that the reason she was arrested and detained in 2005 at the airport was because she had been untruthful by concealing her Israeli citizenship.

[82] XXXX has now been separated from her ex-husband, XXXX XXXX, for over 13 years. She has had no further contact with her ex-husband since then. It is only now that she raises the common law defence of duress in response to the Minister's application to vacate her refugee status. At no time during the past 13 years, despite having opportunity to do so, did she bring any details forward to immigration authorities indicating that she had been acting under compulsion or coercion or duress at the time she went along with her ex-husband's scheme to advance a fraudulent refugee claim by misrepresenting and withholding material facts relating to her true identity, Israeli citizenship and Israeli residency. I find that XXXX had an obligation to bring these circumstances to the attention of immigration authorities in Canada at the very first reasonably available opportunity. However, she did not raise this defence of duress until the 11<sup>th</sup> hour, after responding to the Minister's application at her hearing. I find that her efforts to raise this defence of duress are not bona fide. Accordingly, I find that this defence has no merit.

## CONCLUSION

[83] I find that the Respondents obtained refugee protection by misrepresenting and withholding material facts relating to relevant matters. I find further that there was no other sufficient evidence considered at the time of the first determination to justify the granting of refugee protection.



[84] The Minister's application is allowed. The Respondents' refugee claims are deemed rejected and the decision granting them refugee status is null and void.

*(signed)*

**“Robert Bafaro”**

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**Robert Bafaro**

**December 4, 2018**

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**Date**