

Federal Court



Cour fédérale

Date: 20150113

Docket: T-1166-14

Citation: 2015 FC 41

Ottawa, Ontario, January 13, 2015

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

VADIM VOLKOV

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks to set aside the April 9, 2014 decision made by the Chief Investigator in the Passport Program at Citizenship and Immigration Canada (Passport Program). The Chief Investigator refused to issue a limited-validity travel document (LVTD) to the applicant to visit his father in Russia on the basis of urgent, compelling and compassionate considerations (UCCC). For the reasons that follow the application is dismissed.

[2] The applicant is Vadim Volkov, a 45 year old Canadian citizen. He submitted an application for a temporary passport, also known as an LVTD, on April 1, 2014. He was required to apply for an LVTD because of a troubled history with the Passport Program (formerly known as Passport Canada), a consequence of which was a decision to impose a period of refusal of passport services until June 3, 2018. The refusal of passport services, while part of the background, is not the subject of this judicial review – the only decision that is before the Court is the Chief Investigator’s decision on April 9, 2014 to refuse to issue a LVTD on UCCC to the applicant.

I. Decision

[3] In her decision, the Chief Investigator reviewed the general policy regarding LVTD on UCCC grounds, as well as the documents provided by the applicant. The Chief Investigator concluded that as the applicant did not intend to travel to visit his father until May 28, 2014, nearly two months following his application, it had not been demonstrated that the circumstances conveyed a sense of urgency.

[4] Additionally, the applicant did not submit any documentation to support the circumstances described in his application, such as medical records or doctors’ notes. Based on these factors, the Chief Investigator concluded that the applicant failed to demonstrate that his request was urgent, compelling and compassionate in nature. Therefore, an LVTD under UCCC grounds was not issued.

[5] The applicant submits that his father is critically ill and it is his wish to travel to visit his father. As his father's condition fluctuates, it is difficult to know how much time he has left; however, there will likely not be a strong indication that his passing is imminent. Therefore, his request for a LVTD under UCCC is difficult to justify with firm evidence, as it is difficult to predict with certainty, that the need is urgent.

[6] The applicant argues that citizens of Canada have rights guaranteed to them by the *Canadian Charter of Rights and Freedoms (Part I of the Constitution Act, 1982) (Charter)* and among these rights is the right to move freely in and out of Canada (section 6). Further, if the Government of Canada denies his wish to see his father one last time before he dies, it amounts to cruel and disproportionate punishment for his minor passport application infractions.

II. Analysis

A. *The Style of Cause Should be Amended*

[7] Rule 303(1) of the *Federal Courts Rules* requires that only persons directly affected by the order sought in the application shall be named as respondents. In this case, as there are no persons "directly affected", the appropriate respondent pursuant to Rule 303(2) is the Attorney General of Canada. As such, the style of cause should be amended to name only the Attorney General of Canada as a respondent.

B. *The Appropriate Standard of Review*

[8] Decisions of the Passport Program to refuse, revoke or withhold passport services are to be reviewed on the reasonableness standard: *Villamil v Canada (Attorney General)*, 2013 FC 686

at para 30; *Sathasivam v Canada (Attorney General)*, 2013 FC 419 at para 13; *Slaeman v Canada (Attorney General)*, 2012 FC 641 at para 44; *Okhionkpanmwonyi v Canada (Attorney General)*, 2011 FC 1129 at para 8. When reviewing a decision on the standard of reasonableness the analysis is concerned with “the existence of justification, transparency and intelligibility within the decision-making process”: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

C. *The Refusal to Issue a LVTD under UCCC was Reasonable*

[9] In special circumstances, the Passport Program considers issuing a LVTD to an individual who is subject to investigation or a period of refusal of passport services. An LVTD may be issued to an applicant provided the Passport Program is satisfied that the reason for the request is urgent, compelling and compassionate. All three of the urgent, compelling and compassionate criteria must be met. The Passport Program defines these criteria as:

Urgent: the situation conveys a sense of urgency and requires immediate action from the applicant;

Compelling: the applicant must be the person to resolve the situation; and

Compassionate: the situation elicits a sympathetic reaction following unusual or distressing circumstances that lead to the LVTD request.

[10] In addition, the applicant must submit a detailed written statement describing the circumstances that precipitated the request as well as sufficient verifiable documentary evidence supporting the request.

[11] The applicant applied for an LVTD on April 1, 2014. His itinerary indicated that he would travel from Toronto to Russia departing on May 28, 2014, returning on June 11, 2014. This date of departure was two months after the application was made, suggesting that “immediate action from the applicant” was not required. It was therefore reasonable for the Passport Program to conclude that the circumstances did not convey a sense of urgency.

[12] The Officer found that the applicant failed to establish the circumstances were urgent, and failed to provide verifiable documentation to support his claim.

[13] In my view it is determinative of this application that the applicant did not submit any documentation to support the claim that the circumstances were compelling or compassionate. This is contrary to the instructions laid out on the Passport Program’s website, which state that an applicant “must provide verifiable documentation with his or her request”. As such the decision to refuse to issue a LVTD was reasonable.

D. *The Applicant’s Charter Claims*

[14] The applicant advanced two *Charter* arguments; however, they may be dealt with quickly.

[15] Section 6(1) of the *Charter* provides:

6(1) Every citizen of Canada has the right to enter, remain in and leave Canada.	6. (1) Tout citoyen canadien a le droit de demeurer au Canada, d’y entrer ou d’en sortir.
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[16] The jurisprudence has established section 6 rights are limited by a refusal to issue a passport: *Kamel v Canada (Attorney General) (FCA)*, 2009 FCA 21; *Abdelrazik v Canada (Minister of Foreign Affairs)*, 2009 FC 580. However, section 6 is not engaged here. The *Charter* argument does not crystallize, as the applicant has not met the pre-conditions. The issue at hand is the applicant's failure to meet the requisite conditions for a LVTD under UCCC. If the applicant had met the conditions but the Passport Program still refused to issue a LVTD then, in that instance, the applicant's section 6 rights would have been engaged; *Brar v Canada (Attorney General)*, 2014 FC 763. It must be recalled that in the cases noted above, the applicant otherwise met the criteria for a passport, but the Minister refused to issue it for reasons related to a national security.

[17] It is not necessary to consider section 1 justification, but if engaged, I would have found the UCCC program satisfies the section 1 criteria established in *Dore v AG (Quebec)* 2012 SCR 395.

[18] I turn to the applicant's section 12 argument, section 12 of the *Charter* states:

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.	12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.
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[19] The threshold for establishing a breach of section 12 is high: *Charkaoui v. Canada (Minister of Citizenship and Immigration)*, 2007 SCC 9 at para. 95. An inquiry into the constitutionality of state action under section 12 requires consideration both of whether the applicant was subjected to "treatment or punishment" and whether the treatment or punishment

was “cruel and unusual”. Two types of treatment or punishment have been identified as cruel and unusual: (1) those that are “barbaric in themselves,” such as corporal punishment, and (2) those that are grossly disproportionate...” (*Peter Hogg, Constitutional Law of Canada* (Toronto: Carswell, 2011) at 53.3). In the present case, the refusal to issue a LVTD based on UCCC grounds given the applicant’s incomplete application falls far short of engaging the interests protected by section 12 as defined by the jurisprudence. Importantly, the applicant is free to reapply for a LVTD at any time on a more complete application.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1166-14

STYLE OF CAUSE: VADIM VOLKOV v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 25, 2014

JUDGMENT AND REASONS: RENNIE J.

DATED: JANUARY 13, 2015

APPEARANCES:

Mr. Vadim Volkov APPLICANT

Ms. Leanne Briscoe FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario