

Federal Court



Cour fédérale

**Date: 20160405**

**Docket: T-841-15**

**Citation: 2016 FC 376**

**Ottawa, Ontario, April 5, 2016**

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

**BETWEEN:**

**MARCO FONTAINE**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act* (RSC, 1985, c F-7) challenging a decision made by an officer of the Passport Program Integrity Branch of Citizenship and Immigration Canada [the Passport Program Branch or Agency] revoking the Applicant's passport and refusing him passport services until March 19, 2018. The Applicant is seeking an order quashing the decision and having the matter returned for redetermination.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] On October 8, 2010, the Applicant surrendered his passport issued in February 2010 [the 2010 Passport] to the Sûreté du Québec [SQ] authorities as a condition of his October 1, 2010 recognizance. The SQ provided the Applicant with a receipt in return for his 2010 Passport.

[4] On February 21, 2013, the Applicant submitted an application to the Montréal Passport Office with a declaration indicating that he last saw his 2010 Passport on July 1, 2012 and thus believed it was lost. As a result of this application and declaration, the Montréal Passport Office issued the Applicant a new passport on March 19, 2013 [the 2013 Passport].

[5] On February 28, 2014, the SQ returned the Applicant's 2010 Passport to the Passport Program Branch and on October 9, 2014 the Passport Program Branch was informed that the Applicant had surrendered this passport due to a condition.

[6] On October 22, 2014, the Passport Program Branch wrote a letter to the Applicant advising that he was being investigated in relation to his 2013 Passport. The letter was returned to the sender on October 28, 2014.

[7] A second letter, addressed to the Applicant, was sent to the Applicant's brother's address on October 30, 2014 following a conversation between a Passport Program investigator and the Applicant's brother indicating that they were living together. The letter served to inform the

Applicant that the Agency was investigating him regarding information that led them to believe that he provided false or misleading information to obtain his 2013 Passport. In this same letter, the Applicant was encouraged to provide the Agency with countervailing information by December 14, 2014, if any existed.

[8] On January 19, 2015, the Applicant and an investigator had a phone conversation at which point the Applicant acknowledged having received the October 30, 2014 letter. He also indicated that he would return the 2013 Passport, which he did on January 21, 2015.

[9] On February 5, 2015, the Passport Program Branch sent the Applicant a second letter noting that it had not received a response to the October 30, 2014 letter and that a decision would be rendered shortly. The final decision was issued on April 22, 2015.

## II. Impugned Decision

[10] The Passport Program Branch ultimately found that on a balance of probabilities there was sufficient information to conclude that the Applicant obtained his 2013 Passport by means of false or misleading information. Consequently, the Agency revoked the Applicant's 2013 Passport pursuant to paragraph 10(2)(d) of the *Canadian Passport Order*, SI/81-86 [the Passport Order]. The officer also imposed a five year period of refusal of passport services beginning March 19, 2013 pursuant to section 10.2 of the Passport Order.

III. Legislative Framework

[11] The following provisions of the Passport Order are applicable in these proceedings:

**10 (1)** Without limiting the generality of subsections 4(3) and (4) and for the greater certainty, the Minister may revoke a passport on the same grounds on which he or she may refuse to issue a passport.

**(2)** In addition, the Minister may revoke the passport of a person who

**(d)** has obtained the passport by means of false or misleading information; or

**10.2 (1)** If the Minister refuses to issue or revokes a passport, on any grounds other than the one set out in paragraph 9(1)(g), he or she may refuse on those same grounds to deliver passport services for a maximum period of 10 years.

**10 (1)** Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que le ministre peut révoquer un passeport pour les mêmes motifs que ceux qu'il invoque pour refuser d'en délivrer un.

**(2)** Il peut en outre révoquer le passeport de la personne :

**d)** qui a obtenu le passeport au moyen de renseignements faux ou trompeurs;

**10.2 (1)** Dans le cas où le ministre refuse de délivrer un passeport ou en révoque un pour un motif autre que celui visé à l'alinéa 9(1)g), il peut refuser, pour le même motif, de fournir des services de passeport pendant une période d'au plus dix ans.

IV. Issues

[12] The following issues arise in this application:

1. Were the requirements for procedural fairness breached?

2. Was the decision to revoke the Applicant's 2013 Passport and impose a five year ban on passport services reasonable?

V. Standard of Review

[13] Decisions rendered by the Passport Program Branch are reviewed on the reasonableness standard: *Dunsmuir v New Brunswick*, 2008 SCC 9, para 47; *Villamil v Canada (Attorney General)*, 2013 FC 686, para 30. The appropriate standard of review for procedural fairness questions is correctness: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, para 43.

VI. Analysis

- A. *Were the requirements for procedural fairness breached?*

[14] The threshold for procedural fairness is not high as indicated by Justice Noël in *Kamel v Canada (Attorney General)*, 2008 FC 338 at paragraph 72:

It is sufficient if the investigation includes disclosure to the individual affected of the facts alleged against him and the information collected in the course of the investigation and gives the applicant an opportunity to respond to it fully and informs him of the investigator's objectives; as well, the decision maker must have all of the facts in order to make an informed decision. Did the CPO adhere to those principles in conducting the investigation?

[My emphasis.]

[15] I find there is no breach of procedural fairness. The Applicant acknowledged having received the October 30, 2014 letter. Any suggestion that he did not receive the letter is contradicted by the fact that he returned his 2013 Passport thereafter. Furthermore, he was advised after returning the 2013 Passport that he should respond to the letter and did nothing before the decision was issued two months later.

[16] In addition, his submission that he forgot that the 2010 Passport was turned in to the police as a condition of his recognizance when he made his declaration on February 21, 2013 is entirely lacking in plausibility to the point that it undermines any credibility that he could offer to support his claim of lack of knowledge of the complaint against him. Similarly, it is equally implausible that if his brother had received the letter that he would not have advised the Applicant. I also find the submissions of objectionable hearsay in the Minister's affidavit are without merit in these administrative proceedings, particularly against the background of the Applicant's conduct.

[17] In any event, even if there were some concerns about the failure of procedural justice, I agree with the Respondent's submission that the Applicant's explanation of forgetting he turned in the previous passport to the police would not affect the outcome, inasmuch as sections 10 and 10.2 of the Passport Order do not require proof of the intention to defraud or mislead: *Mbala v Canada (Attorney General)*, 2014 FC 107, para 20.

B. *Was the decision to revoke the Applicant's 2013 Passport and impose a five year ban on passport services reasonable?*

[18] Similarly, there is no issue that the Applicant provided false or misleading information when he declared that his 2010 Passport was lost, and thus the decision was reasonable given the evidence before the officer, which included the following:

- A declaration dated February 21, 2013 signed by the Applicant indicating that he had lost his 2010 Passport;
- An SQ email dated October 9, 2013 indicating that the Applicant had surrendered his 2010 Passport to the SQ as a condition of his recognizance;
- A copy of the Applicant's recognizance dated February 26, 2010 which included the requirement to turn in his passport to ensure that he did not leave the country; and
- The physical 2010 Passport provided by the SQ.

[19] I also find the imposition of a five year refusal of passport services to the Applicant more than reasonable in the circumstances as an exercise of the Passport Program decision-maker's discretion. It is to be noted that in fixing the time to run from when the misstatement was made, the actual period of suspension of services is only three years, when it could have been from the date the falsely obtained passport was returned to the Passport Program Branch.

VII. Conclusion

[20] Accordingly, the application for judicial review is dismissed.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed.

"Peter Annis"

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Judge

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

**DOCKET:** T-841-15

**STYLE OF CAUSE:** MARCO FONTAINE v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 9, 2016

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** APRIL 5, 2016

**APPEARANCES:**

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