

Federal Court



Cour fédérale

**Date: 20211118**

**Docket: T-1529-20**

**Citation: 2021 FC 1261**

**Ottawa, Ontario, November 18, 2021**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**KHALED IBRAHIM**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Mr. Khaled Ibrahim, seeks judicial review of the November 18, 2020 decision of Alexandre Picard, Director of Industrial Personnel Security Services at Public Services and Procurement Canada [PSPC], which administratively closed Mr. Ibrahim's application for a secret security clearance and revoked Mr. Ibrahim's reliability status.

[2] Mr. Ibrahim argued that PSPC breached the duty of procedural fairness owed to him in several ways, in particular by not following its own policy as set out in the Standard on Security Screening [the Standard]. Mr. Ibrahim also argued that the decision was unreasonable.

[3] For the more detailed reasons that follow, the Application is allowed due to the breach of procedural fairness, as acknowledged by the Respondent.

#### I. Background

[4] Mr. Ibrahim's professional background is in international peacebuilding and conflict resolution. He began his career as a diplomat for the Egyptian Ministry of Foreign Affairs [MFA] in 1994, working in that capacity on postings in Italy, Serbia, and Ethiopia. From 2009 to 2017, Mr. Ibrahim served as a senior program officer on United Nations peacekeeping missions in various countries, including Sudan, South Sudan, Côte d'Ivoire, Mali, and Central African Republic.

[5] Mr. Ibrahim was granted permanent residence status in Canada in 2010 and became a Canadian citizen in September 2019.

[6] In 2017, Mr. Ibrahim began work as a consultant and advisor at Global Affairs Canada [GAC]. He was required to undergo a security screening assessment and was granted reliability status in April 2017. In July 2017, the consulting firm with whom Mr. Ibrahim worked on GAC projects submitted a request on his behalf for secret security clearance. Mr. Ibrahim completed the required forms and provided information about his employment history over the preceding

ten years, with contact information for each employer. He also noted his past position as a diplomatic officer for the Egyptian MFA.

[7] In response to a request by PSPC, Mr. Ibrahim provided additional information about his time spent in other countries where he had lived or worked, and a police clearance certificate from each country.

[8] In July 2019, a Senior Security Screening Investigator [the Investigator] at PSPC advised Mr. Ibrahim by email that PSPC had been “unable to conduct meaningful security screening assessments and validation” for the time Mr. Ibrahim spent in Sudan, Central African Republic, Côte d’Ivoire, and Egypt. A telephone interview was held on July 4, 2019, following which Mr. Ibrahim provided his CV and professional references.

[9] In January 2020, the Investigator advised Mr. Ibrahim by email that PSPC had still been unable to conduct meaningful screening with respect to the time Mr. Ibrahim spent in Sudan, Central African Republic, and Côte d’Ivoire. The Investigator requested that Mr. Ibrahim attend an in-person interview to “provide a detailed account of [his] biographical history to mitigate any security concerns related to [his] out of country time” and to provide additional documentation.

[10] Mr. Ibrahim recounts that the focus of the January 30, 2020 interview was on his employment and contacts at the Egyptian MFA.

[11] Mr. Ibrahim also recounts that one of the interviewers advised him that it would be a “challenge” to grant Mr. Ibrahim a secret level clearance and that in cases where the loyalty and

reliability of an individual cannot be verified, it is common for PSPC to revoke the reliability status. The Investigator indicated, however, that “unless something pops up at the end,” Mr. Ibrahim’s reliability status was not called into question at the time.

[12] The Investigation Report, dated July 8, 2020, stated that PSPC was unable to effectively verify Mr. Ibrahim’s background and biographical history abroad, and noted several security concerns regarding his foreign employment, contacts, and associations. The report recommended that Mr. Ibrahim’s reliability status be revoked, rendering him ineligible to hold security clearance.

## II. The Decision under Review

[13] On November 18, 2020, Alexandre Picard, Director of Industrial Personnel Security Services at PSPC, informed Mr. Ibrahim by letter that his reliability status had been revoked, rendering him ineligible for a secret clearance, and that his request for a secret clearance had been “administratively closed.”

[14] The letter stated that the information provided by Mr. Ibrahim had not allowed PSPC to verify the required ten years’ worth of background information, primarily due to the inability to conduct security screening investigations and validation in Egypt, Sudan, Central African Republic, and Côte d’Ivoire. The letter also set out additional reasons, including that Mr. Ibrahim had not been forthright in revealing the full scope of his training and associations while employed in Egypt and his contact with embassy personnel, which called into question his reliability, honesty, and trustworthiness.

III. The Applicant's Position

[15] In his written submissions, Mr. Ibrahim argued that PSPC had breached the duty of procedural fairness owed to him in several ways: by failing to provide adequate notice of the questions he would be asked at the security interview; by focussing on his extensive travel, none of which exceeded six months away from Canada; by focussing on his work in Egypt, which preceded the ten-year period applicable for a secret security clearance; by not advising him that his reliability status would be reviewed and could be revoked; and, by failing to afford him an opportunity to respond to those issues. More generally, he argues that PSPC did not follow its own policy as set out in the Standard.

[16] Mr. Ibrahim noted that in *Plummer-Grolway v Canada (Attorney General)*, 2021 FC 444 [*Plummer-Grolway*], the Court found that the Standard requires that, between the investigation report and before the final decision, the person affected should be given a written statement of the adverse information as well as an opportunity to respond.

[17] Mr. Ibrahim also argued that the decision is unreasonable, including because PSPC did little or nothing to verify the information he provided or contact his references and because PSPC misunderstood his explanation of his contacts with embassy personnel and social contact with a former colleague. He disputed the finding that he failed to disclose information.

[18] At the hearing of the Application—which proceeded despite the Respondent's agreement that there had been a breach of procedural fairness, due to Mr. Ibrahim's insistence that other

issues remained to be argued—Mr. Ibrahim argued that there remained a live controversy between the parties regarding how the security screening was conducted and that the Court’s guidance was required to prevent errors on the redetermination.

[19] Among other things, Mr. Ibrahim argued that the tenor of the interview and the Investigation Report demonstrates that it would be impossible for him to be granted a secret security clearance due to the need to verify information with other countries who are not part of the “Five Eyes”. Mr. Ibrahim also alleges that the Investigator and the Investigation Report “lied” in stating that PSPC was unable to complete appropriate inquiries, verifications and assessments. He submitted that despite the passage of time, PSPC did little or nothing to verify his information and that none of his references were contacted.

[20] More generally, Mr. Ibrahim suggests that given his extensive background and the high-level positions he has held in international organizations, it is not logical that he would not be eligible for a security clearance in Canada.

#### IV. The Respondent’s Submissions

[21] The Respondent initially argued that the decision-making process was procedurally fair and that the decision was reasonable.

[22] Ten days before the hearing of the Application, the Respondent advised the Court and Mr. Ibrahim that the Respondent now agreed that there had been a breach of procedural fairness and that the decision should be set aside and reconsidered in light of the Court’s guidance in

*Plummer-Grolway* and in accordance with PSPC's procedures, which had been updated in light of that decision.

[23] The Respondent noted that in the circumstances a hearing was not necessary.

[24] At the Case Management Conference held prior to the hearing of this Application to determine whether there were any remaining issues to be determined, the Respondent reiterated that a hearing was indeed unnecessary given that Mr. Ibrahim's request for a security clearance would be redetermined.

[25] At the hearing of the Application, the Respondent again confirmed that the matter would be redetermined in accordance with the Standard by a different investigator and that a new investigation report would be provided. The Respondent noted that there would be an incentive for the investigator to pursue contact with Mr. Ibrahim's references. The Respondent also confirmed that Mr. Ibrahim would be provided with a statement of adverse information, if any, and would have an opportunity to respond prior to any decision being rendered. The Respondent advised the Court that, in accordance with the Standard, PSPC aimed to conduct the process within 120 days.

[26] The Respondent reiterated that the Court should not consider the reasonableness of the decision, citing jurisprudence on mootness, including *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 57 DLR (4th) 231, *Canadian Union of Public Employees (Air Canada Component) v Air Canada*, 2021 FCA 67 and *Public Service Alliance of Canada v Canada (Attorney General)*, 2021 FCA 90, and emphasizing that there was no live dispute between the

parties given the Respondent's concession and that it would not be an effective use of judicial resources to address the other arguments.

V. The Application Is Allowed due to the Breach of Procedural Fairness

[27] In my view, there is no point at this stage to engage in an analysis of whether the *Borowski* factors that guide a determination of mootness support such a finding.

[28] As I noted at both the Case Management Conference that preceded the hearing and at the hearing of this Application, if the Application had proceeded without the Respondent advising the Court and Mr. Ibrahim that it agreed that a breach of procedural fairness had occurred, the Court would have made its determination. If the Court had found that a breach of procedural fairness had occurred and was the dispositive issue, the Court would not have needed to also consider the reasonableness of the decision. Although Mr. Ibrahim directed the Court to jurisprudence where the Court found a breach of procedural fairness and also addressed the reasonableness of the decision, this jurisprudence does not establish any principle that where reasonableness arguments are made, they must be addressed. On the contrary, the Court is not required to address every argument made, particularly where one or more issues are dispositive.

[29] The arguments now made by Mr. Ibrahim, including that the interviewer and Investigator did not follow their own Security Standard, did not follow-up on his references as required, and unreasonably found that he did not disclose details of his employment in Egypt, are related to the breach of the duty of procedural fairness. Had Mr. Ibrahim been advised that his employment beyond the ten-year period would be explored or that the investigators had been unable to make



contact with his references, he could have addressed these concerns before a decision was made. As the Respondent confirmed, in the redetermination, Mr. Ibrahim will have an opportunity to respond to any adverse information.

[30] As noted at the hearing, it is not the role of the Court to suggest the outcome of a security clearance or to micromanage how PSPC should conduct its investigations. The Standard is comprehensive and detailed and applies to all government departments and agencies. The Standard addresses, among other things, the roles and responsibilities of departments and agencies, the criteria for the various levels of security clearance, the conduct of a security screening, and the evaluation and analysis of information gathered. The Standard requires that individuals be provided with a statement summarizing adverse information to permit them to be reasonably informed and that a security interview be conducted to resolve doubt or address adverse information. The Standard includes guidance with respect to verifying biographical information and out-of-country checks. The Court's determination that Mr. Ibrahim's request for a security clearance be determined in accordance with the Standard should ensure that the issues he has raised are not overlooked in the redetermination.

[31] With respect to costs, the Respondent offered \$3000 in costs to Mr. Ibrahim at the time it conceded that there was a breach of procedural fairness. Mr. Ibrahim argued that costs in accordance with the Tariff should be awarded, including additional costs for the hearing. I find that the Respondent's offer is reasonable and order that amount.

**JUDGMENT in file T-1529-20**

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

1. The Application for Judicial Review is allowed.
2. The Applicant's request for a security clearance will be redetermined by a different decision-maker in accordance with the Standard on Security Screening; this includes a new investigation report prepared by a different investigator and requires that the Applicant be provided with a statement of any adverse information and an opportunity to respond to that information prior to a decision being made.
3. The Respondent shall pay costs to the Applicant in the amount of \$3000.

"Catherine M. Kane"

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Judge

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

**DOCKET:** T-1529-20

**STYLE OF CAUSE:** KHALED IBRAHIM v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 9, 2021

**JUDGMENT AND REASONS:** KANE J.

**DATED:** NOVEMBER 18, 2021

**APPEARANCES:**

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FOR THE APPLICANT

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