

Date: 20060413

Docket: T-100-06

Citation: 2006 FC 490

Montréal, Quebec, April 13, 2006

Present: Richard Morneau, Prothonotary

BETWEEN:

FATEH KAMEL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion by the applicant under sections 317 and 318 of the *Federal Courts Rules* (the Rules) to have the federal board, commission or other tribunal at issue, namely Passport Canada, send him the entire file regarding him that Passport Canada has in its possession.

Background

[2] This is a motion in an application for judicial review by the applicant on January 19, 2006, against a decision by Passport Canada dated December 14, 2005, denying the passport application submitted by the applicant on June 13, 2005.

[3] In its letter dated December 14, 2005, Passport Canada informed the applicant that Affairs in the interest of national security his passport application had been denied by the Minister of Foreign. This same letter points out to the applicant that:

[TRANSLATION]

Some of the information that concerned us included your convictions in France for terrorism-related offences and for passport frauds used to support terrorist activities. Further, your record of past passports indicates many replacements of valid passports.

[4] The purpose of the applicant's application for judicial review is therefore to have this decision set aside and to have it declared that the provisions of sections 4 and 10.1 of the *Canadian Passport Order* (SI/81-86) as amended by the *Order Amending the Canadian Passport Order* (SI/2004-113) breach the rights provided under sections 6 and 7 of the *Canadian Charter of Rights and Freedoms* (R.S.C. 1985, App. II, No. 44) and are inoperative.

[5] The applicant submits that the impugned decision or the above-mentioned Order, as the case may be:

- (a) does not respect the principles of procedural fairness and natural justice;

- (b) amounts to an excess of jurisdiction;
- (c) is wrong in law;
- (d) is based on erroneous findings of facts made in a perverse or capricious manner and/or without taking into account the evidence before it;
- (e) breaches sections 6, 7 and 15 of the *Canadian Charter of Rights and Freedoms* (R.S.C. 1985, App. II, No. 44) and is inoperative.

[6] On February 9, 2006, this Court ratified, on consent, a schedule to ready the applicant's application for judicial review to be heard on the merits.

[7] This schedule provided that the applicant's substantive affidavits would be filed by April 3, 2006. The applicant did in fact file such an affidavit on April 3, 2006.

[8] However, that same April 3, 2006, the applicant filed the motion at bar, namely the motion under sections 317 and 318. These sections read:

317 (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

317 (1) Une partie peut demander que des documents ou éléments matériels pertinents à la demande qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande lui soient transmis en signifiant à l'office fédéral et en déposant une demande de transmission de documents qui indique de façon précise les documents ou éléments matériels

demandés.

(2) An applicant may include a request under subsection (1) in its notice of application.

(2) Un demandeur peut inclure sa demande de transmission de documents dans son avis de demande.

(3) If an applicant does not include a request under subsection (1) in its notice of application, the applicant shall serve the request on the other parties.

(3) Si le demandeur n'inclut pas sa demande de transmission de documents dans son avis de demande, il est tenu de signifier cette demande aux autres parties.

318. (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

318. (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

(a) a certified copy of the requested material to the Registry and to the party making the request; or

a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

(b) where the material cannot be reproduced, the original material to the Registry.

b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

(2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).

(3) La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des observations au sujet d'une opposition à la demande de transmission.

(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

(4) La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

[Emphasis added.]

[9] In his motion, the applicant alleges that the material that Passport Canada sent to him on February 2, 2006, was not complete.

Analysis

[10] From the outset, we are surprised by this position taken by the applicant on April 3, 2006, regarding the incomplete disclosure of material when it was sent on February 2, 2006, and when on February 9, 2006, the applicant consented to a schedule which did not provide for a motion under sections 317 and 318. Further, on April 3, 2006, the applicant indeed filed an affidavit in support of his application for judicial review attacking essentially the institutional process as provided in the Order and followed in this matter.

[11] Nevertheless, on April 3, 2006, the applicant alleged that the transmission of February 2, 2006, was incomplete, beginning with the fact that two letters that Passport Canada sent to him when his passport application was being reviewed, namely letters dated August 5, 2005 and October 28, 2005, were not included in the documents of February 2, 2006.

[12] I do not think that this argument stands up to scrutiny.

[13] On February 2, 2006, Passport Canada could not have known that the applicant would not have kept copies of his letters. Hence, in accordance with the English version of section 317 at least, Passport Canada was not bound to resend the documents that the applicant was supposed to have in his possession. Note that prior to April 3, 2006, the applicant was able to obtain a copy of these letters from the respondent's counsel and that the applicant was able to refer to them in his affidavit dated April 3, 2006, filed for substantive purposes.

[14] In support of his position that the transmission of February 2, 2006, was incomplete, the applicant relied on the fact that this package sent by the federal board, commission or other tribunal at issue contained nothing more than, as stated in paragraph 19 of his written submissions:

. . . the notes, documents and recommendations of the Investigations Division regarding the identification of grounds justifying the refusal of the passport and the referral to the Minister, nor the recommendations of the Public Safety and Emergency Preparedness and the reasons or the other documents considered by the Minister. This file also does not include any notes or documents relating to the decision to refer the decision on the passport application to the Minister instead of an adjudicator.

[15] Even though the Federal Court of Appeal in *McFadyen v. Canada (Attorney General)*, 2005 FCA 360, November 2, 2005, acknowledges that when an application for judicial review raises issues of procedural fairness and excess of jurisdiction, additional evidence regarding strictly what was before the decision-maker may be admitted by affidavit before this Court (see also *Tremblay v. Canada (Attorney General)*, 2005 FC 339, March 8, 2005), I do not consider that the wording repeated in the preceding paragraph should prompt us to change our finding.

[16] I agree with the respondent that the applicant's approach in this case is hit or miss, a fishing expedition.

[17] Aside from not being quite consistent with the requirements of subsection 317(1) with regard to identifying the material sought, I think that this approach by the applicant must be tempered by the following remarks made by Blais J. of this Court in paragraph 24 of his decision in *Bradley-Sharpe v. Royal Bank of Canada*, 2001 FCT 1130:

. . . The applicant's purpose . . . is to scour for any information within the file or files of the Commission because she is dissatisfied or displeased with the decision of the Commission.

(See also *Beno v. Canada (Commission of Inquiry into the Deployment of Canadian Forces in Somalia – Létourneau Commission)*, [1997] F.C.J. No. 535 (F.C.T.D. (QL), paragraphs 23 and 24.)

[18] Finally, the applicant's motion record does not really establish the relevance of any material sought vis-à-vis the substantive reasons set out in the notice of application for judicial review and the affidavit filed by the applicant on April 3. In these documents, the applicant challenged first and foremost the institutional process followed by Passport Canada – which he is familiar with – rather than the prejudicial content of the information that may or may not have been brought to the attention of the decision-maker (See *Beno, supra*, at paragraph 15).

ORDER

ACCORDINGLY, THE COURT ORDERS THAT, for the above-mentioned reasons, this motion by the applicant is dismissed, with costs in the cause.

“Richard Morneau”

Prothonotary

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-100-06

STYLE OF CAUSE: FATEH KAMEL

and

ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING : April 10, 2006

REASONS FOR ORDER: PROTHONOTARY MORNEAU

DATED: April 13, 2006

APPEARED :

Johanne Doyon FOR THE APPLICANT

Nathalie Benoit FOR THE RESPONDENT

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