

Federal Court



Cour fédérale

Date: 20231128

Docket: T-2391-22

Citation: 2023 FC 1577

Ottawa, Ontario, November 28, 2023

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

OLEG BRYZZHEV

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Oleg Bryzzhev, seeks judicial review of the decision of Service Canada – Passport Delivery Operations Centre [Passport Canada] to close his passport application.

[2] A passport officer found that Mr. Bryzzhev's guarantor was ineligible to be a guarantor for the passport application after Mr. Bryzzhev had attempted to impersonate his own guarantor.

[3] Passport Canada requested that Mr. Bryzzhev provide a new guarantor. When Mr. Bryzzhev failed to do so, Passport Canada closed his application. Mr. Bryzzhev now seeks judicial review of that decision and alleges that Passport Canada violated his rights.

[4] Mr. Bryzzhev also filed a Notice of Constitutional Question (NCQ) with the Court. The NCQ seeks to challenge the validity of section 6 of the *Charter of Rights and Freedoms*, subsection 6(1), Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Charter*], with respect to his mobility rights. Mr. Bryzzhev did not serve the NCQ on provincial Attorneys General as required by subsections 57(1) and (2) of the *Federal Courts Act*, RSC 1985, c F-7. As a result, the NCQ has not been considered.

[5] For the reasons that follow, the Application is dismissed. The decision of Passport Canada to close Mr. Bryzzhev's passport application is reasonable.

I. Background

[6] On March 15, 2022, Mr. Bryzzhev mailed his passport application to Passport Canada.

[7] Mr. Bryzzhev named his family doctor, who had known him for several years, as his guarantor for his application [Guarantor].

[8] The certified tribunal record [CTR] indicates that Passport Canada attempted to contact the Guarantor on two occasions at the phone number provided and the Guarantor's voice mailbox was full. Mr. Bryzzhev alleges that his Guarantor made 20 unsuccessful attempts to

contact Passport Canada by phone between 4:00 a.m. and 6:00 a.m. Pacific time. Mr. Bryzzhev submits that due to this inconvenience, his Guarantor permitted Mr. Bryzzhev to act as his representative.

[9] Mr. Bryzzhev claims that after several attempts and almost three hours waiting on the phone, he ultimately made contact with Passport Canada on August 25, 2022.

[10] The passport officer receiving the call recognized Mr. Bryzzhev's voice and became concerned. The officer's notes state:

Applicant called trying to impersonate the Guarantor. His voice has a russian [*sic*] accent and his voice is very particular, therefore it was clear for me, who has answered his calls in the past for regular updates, that he was the applicant and not the G.

I started the G-Check and he answered [*sic*] basic questions like home address, occupation, and name, however he was not able to answer G's MMN or POB.

When he was confronted about what he was doing (impersonating someone else), he changed his version and he stated that he was calling on behalf of the G, however he did not want to provide his name.

I advised him that I knew that he was the applicant because I recognized his voice, but he insisted that he was not.

[11] On September 8, 2022, Mr. Bryzzhev's Guarantor successfully contacted a passport officer in order to confirm Mr. Bryzzhev's identity.

[12] The passport officer referred the application to colleagues at Immigration Refugees and Citizenship Canada [IRCC] for advice given Mr. Bryzzhev's impersonation of his Guarantor.

The notes in the CTR dated September 13, 2022 indicate:

TO BE DONE PRIOR TO ISSUANCE:

NEW G and NEW Application, photos to be certified by new G (photos on file can be used or new photos). Mandatory G check to be completed with new G.

...

ERA has decided not to refuse this file as there are not enough inconsistencies/evidence to warrant a refusal... File may proceed as long as PENDING is completed successfully and all other requirements have been met.

[13] Passport Canada then contacted Mr. Bryzzhev and advised him that he must provide a new guarantor and additional information. Mr. Bryzzhev objected and asked Passport Canada to continue processing his application with his family doctor as his Guarantor. Mr. Bryzzhev declined to provide a new guarantor.

[14] Passport Canada again requested that Mr. Bryzzhev submit a new guarantor and Mr. Bryzzhev again refused. On September 28, 2022, Passport Canada sent a letter advising Mr. Bryzzhev that a new guarantor was necessary to process his application. On October 7, 2022, Passport Canada followed up by email and advised Mr. Bryzzhev that he was required to submit additional documents and, if he did not do so, his passport application would be closed.

[15] Mr. Bryzzhev replied on October 7, 2022, reiterating that he would not provide additional documentation and that he would be pursuing an application for judicial review.

[16] On October 28, 2022, Passport Canada closed Mr. Bryzzhev's passport application without issuing his passport. Passport Canada processed the \$160 passport application fee from Mr. Bryzzhev.

II. The Issues

[17] The primary issue is whether the decision of Passport Canada to close Mr. Bryzzhev's passport application was reasonable.

[18] Secondary issues arising from Mr. Bryzzhev's written submissions are whether Passport Canada breached Mr. Bryzzhev's mobility rights under section 6 of the *Charter*; whether Passport Canada violated Mr. Bryzzhev's human rights; and, whether Mr. Bryzzhev should receive a refund of his passport application fee. Mr. Bryzzhev did not pursue these issues in his oral submissions.

[19] The Respondent also raised a preliminary issue regarding the admissibility of the affidavit of the Guarantor. In the affidavit, the Guarantor attests that he attempted to contact Passport Canada on multiple occasions on behalf of Mr. Bryzzhev.

III. The Standard of Review

[20] The standard of review for decisions to revoke or withhold a passport is reasonableness (*Alsaloussi v Canada (Attorney General)*, 2020 FC 364 at para 24 [*Alsaloussi*], *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

IV. Preliminary Issue – New Evidence

[21] As a general rule, new evidence (i.e. evidence that was not before the decision-maker) is only permitted on judicial review on an exceptional basis (*Association of Universities and*

Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22 at paras 19-20 [*Access Copyright*). The recognized exceptions to the rule are when the evidence: provides general background information that may assist in understanding the relevant issues but does not add new evidence on the merits; draws the attention of the reviewing court to procedural defects that cannot be found in the decision-maker's evidentiary record; and highlights the absence of evidence before the decision-maker on a particular finding (*Access Copyright* at para 20). None of the exceptions apply in this case.

[22] Mr. Bryzzhev included Exhibit A, which is his Guarantor's attestation that he attempted to contact Passport Canada on behalf of the Applicant several times in the early morning hours to account for the time zone differences. Mr. Bryzzhev relies on the Guarantor's affidavit in support of his submissions that Passport Canada subjected his Guarantor to extreme inconvenience (in his words, "cruel and unusual treatment"). This is not relevant to the issue on judicial review.

[23] The issue before the Court is the reasonableness of Passport Canada's decision to close Mr. Bryzzhev's passport application; it is not whether or how quickly Passport Canada should be able to respond to a high volume of inquiries from passport applicants. The Guarantor's affidavit does not assist the Court in any way in determining the reasonableness of the passport officer's decision.

V. The Relevant Statutory Provisions

[24] The issuance of passports in Canada is guided by the *Canadian Passport Order*, SI/81-86 [CPO]. Relevant provisions in the CPO are set out below:

Issuance of Passports

...

4 (1) Subject to this Order, any person who is a Canadian citizen under the Act may be issued a passport.

(2) No passport shall be issued to a person who is not a Canadian citizen under the Act.

(3) Nothing in this Order in any manner limits or affects Her Majesty in right of Canada's royal prerogative over passports.

(4) The royal prerogative over passports can be exercised on behalf of Her Majesty in right of Canada by

(a) the Governor in Council;

(b) the Minister; or

(c) the Minister of Public Safety and Emergency Preparedness for the purposes of section 10.1, subsections 10.2(2), 10.3(2) and 10.4(2), section 10.5, subsection 11.1(2) and sections 11.3 and 11.31.

...

8 (1) In addition to the information and material that an applicant is required to provide in the application for a passport or in respect of the delivery of passport services, the Minister may request an applicant and any representative of the applicant to provide further information, material, or declarations respecting any matter relating to the

Délivrance des passeports

...

4 (1) Sous réserve du présent décret, un passeport peut être délivré à toute personne qui est citoyen canadien en vertu de la Loi.

(2) Aucun passeport n'est délivré à une personne qui n'est pas citoyen canadien en vertu de la Loi.

(3) Le présent décret n'a pas pour effet de limiter, de quelque manière, la prérogative royale que possède Sa Majesté du chef du Canada en matière de passeport.

(4) La prérogative royale en matière de passeport peut être exercée au nom de Sa Majesté du chef du Canada par :

a) le gouverneur en conseil;

b) le ministre;

c) le ministre de la Sécurité publique et de la Protection civile pour l'application de l'article 10.1, des paragraphes 10.2(2), 10.3(2) et 10.4(2), de l'article 10.5, du paragraphe 11.1(2) et des articles 11.3 et 11.31.

...

8 (1) En plus des renseignements et des documents à fournir avec une demande de passeport ou à l'égard de la prestation de services de passeport, le ministre peut demander au requérant ou à son représentant de fournir des renseignements, des documents ou des déclarations supplémentaires à l'égard de toute question se rapportant à la

issue of the passport or the delivery of passport services.

délivrance du passeport ou à la prestation des services.

(2) The further information, material and declarations referred to in subsection (1) and the circumstances in which they may be requested include the information, material, declarations and circumstances set out in the schedule.

(2) Les renseignements, les documents et les déclarations supplémentaires visés au paragraphe (1) et les circonstances qui justifient leur demande comprennent ceux mentionnés à l'annexe.

...

...

Refusal of Passports and Revocation

Refus de délivrance et révocation

9 (1) Without limiting the generality of subsections 4(3) and (4) and for greater certainty, the Minister may refuse to issue a passport to an applicant who

9 (1) Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que le ministre peut refuser de délivrer un passeport au requérant qui :

(a) fails to provide the Minister with a duly completed application for a passport or with the information and material that is required or requested

a) ne lui présente pas une demande de passeport dûment remplie ou ne lui fournit pas les renseignements et les documents exigés ou demandés

(i) in the application for a passport, or

(i) dans la demande de passeport, ou

(ii) pursuant to section 8;

(ii) selon l'article 8;

...

...

[25] As noted, pursuant to subparagraphs 9(1)(a)(i)-(ii) of the CPO, the Minister may decide to refuse a passport to an applicant who fails to provide a duly completed passport application, including material that may be required or requested in the application for a passport, including information pursuant to section 8 (above).

[26] The Minister responsible for the CPO (the Minister of Citizenship and Immigration) has jurisdiction over passport applications, including the authority to specify the form and manner of the passport application and the information, materials, and declarations that applicants must submit. The Minister's powers are delegated to Passport Canada.

[27] The Government of Canada website and the passport application itself clearly set out what is required in order to obtain a Canadian Passport. The passport application process requires that all applicants provide a guarantor and two references. To qualify as a guarantor, they must have known the applicant for at least two years, be a Canadian citizen aged 18 or older, be available for Passport Canada to contact them, provide contact information, and provide information regarding their own passport.

VI. The Applicant's Submissions

[28] Mr. Bryzzhev argues that Passport Canada's decision to close his passport is not reasonable.

[29] In addition to challenging the decision, in his written submissions, Mr. Bryzzhev argues that the decision violated several international human rights instruments and his rights under subsection 6(1) of the "Constitution Act" (assumed to mean the *Charter*).

[30] Mr. Bryzzhev alleges that passport applicants and their guarantors are subject to "cruel and unusual treatment" by Passport Canada because they are subjected to long wait times on the phone for assistance and processing. He recounts his own experience in seeking to contact the offices of Passport Canada and his attempts to visit a local office. He contends that his personal

attendance subjected him to physical and psychological danger due to its location in a dangerous area.

[31] Mr. Bryzzhev also argues that the requirement to name a guarantor and two references is onerous, particularly for the guarantor given the impossibility of contacting Passport Canada. He submits that the requirement for a guarantor does not fulfil its stated purpose. He adds that Passport Canada should consider that a guarantor – and in particular his Guarantor, who is a busy family doctor – may not be available during Passport Canada’s office hours.

[32] With respect to his application, Mr. Bryzzhev argues that the passport officer’s accusations that he impersonated his Guarantor, were “insulting and unfounded” to him and to the reputation of his Guarantor. He argues that he did not impersonate his Guarantor because he had the permission of the Guarantor to act as his “legal representative”.

[33] Mr. Bryzzhev further argues that Passport Canada failed to explain why his Guarantor is ineligible; he submits that his Guarantor meets all of the eligibility requirements.

[34] Mr. Bryzzhev submits that the Court should direct Passport Canada to re-open and process his previous application with the same Guarantor.

VII. The Respondent’s Submissions

[35] The Respondent submits that it was reasonable for Passport Canada to close Mr. Bryzzhev’s application because he had impersonated his Guarantor and refused to provide the additional documents requested by Passport Canada.

[36] The Respondent points to the record that clearly establishes that Mr. Bryzzhev attempted to impersonate his Guarantor, and only after being confronted by the passport officer did Mr. Bryzzhev then assert he was the Guarantor's representative.

[37] The Respondent notes that the purpose of a guarantor is to ensure that an applicant is the person whom they attest to be, which aligns with the objectives of the CPO.

[38] The Respondent submits that under subsection 8(1) of the CPO, Passport Canada was entitled to request additional documents because Mr. Bryzzhev's impersonation of his Guarantor raised concerns over his identity. The Respondent submits that Passport Canada has an obligation to uphold the integrity of the Canadian passport system. The Respondent also submits that Passport Canada reasonably requested additional documentation and that Mr. Bryzzhev's disagreement with the process does not make the requirement to submit a new guarantor unreasonable.

[39] The Respondent notes the jurisprudence establishing that where there are concerns about a guarantor or where an applicant fails to submit all requested and verifiable documentation, the decision to refuse a passport is reasonable, citing *Saibu v Canada (AG)*, 2015 FC 255 at para 31; *Volkov v Canada (AG)*, 2015 FC 41 at para 13. The Respondent submits that Mr. Bryzzhev's conduct in purporting to be his own Guarantor raised concerns for the passport officer, which led to the reasonable request for Mr. Bryzzhev to provide a new guarantor.

[40] With respect to Mr. Bryzzhev's allegations that his mobility rights under subsection 6(1) of the *Charter* were violated, the Respondent explains that Mr. Bryzzhev's mobility rights were

not yet engaged because he failed to meet the requirements for the issuance of a passport. The Respondent notes that Mr. Bryzzhev can submit a new passport application upon providing a new guarantor.

[41] The Respondent also disputes Mr. Bryzzhev's allegations of other human rights violations.

VIII. The Decision is Reasonable

[42] In order to be eligible for a passport, the statutory and other requirements must be met. Canadian passports are not provided simply upon an applicant's payment of the application fee. The integrity of the passport process must be maintained.

[43] Mr. Bryzzhev's suggestion that it was appropriate for him to impersonate his own Guarantor in order to expedite his application or alleviate the requirement for his Guarantor to fulfill his role as vouching for Mr. Bryzzhev borders on the absurd.

[44] A guarantor attests to an applicant's identity, and therefore must have personal knowledge of whom the applicant is. The purpose of the guarantor is to verify the identity of the applicant. It is not logical to permit a passport applicant to either pretend to be their own guarantor by impersonation or, as Mr. Bryzzhev contends, with their guarantor's permission. This would completely defeat the purpose of providing a guarantor to confirm the identity of an applicant.

[45] When the officer became aware that Mr. Bryzzhev was attempting to impersonate his own Guarantor, the officer reasonably had concerns about the application. Under subsection 8(1) of the CPO, Passport Canada had the authority to request that Mr. Bryzzhev provide a new guarantor. The officer provided Mr. Bryzzhev with several opportunities to have his passport application continue to be processed, but he repeatedly refused to provide a new guarantor.

[46] Mr. Bryzzhev created the situation in which he now finds himself. His passport application was not refused; rather, it was closed because of his lack of compliance with the requirements and his lack of cooperation. His impersonation of his own guarantor could have had far more serious consequences, but it appears that Passport Canada was open to processing his application if he provided the requested documents. However, he did not.

[47] Mr. Bryzzhev's views regarding who should qualify as a guarantor or how Passport Canada should process passport applications are not issues for this judicial review. Mr. Bryzzhev's criticisms and suggestions regarding government policy and the passport process should be directed to his Member of Parliament.

[48] While Mr. Bryzzhev will no doubt be unhappy with the Court's decision, it is important to note that a judicial review is not a "do over", but rather, considers whether the decision-maker (in this case, Passport Canada) made a reasonable decision. Passport Canada's decision to close Mr. Bryzzhev's passport application bears all the hallmarks of a fair process and a reasonable decision.

[49] Mr. Bryzzhev did not pursue his allegations that his *Charter* rights and other human rights were violated. In any event, there is no merit to these allegations. Requirements to obtain a passport, waiting hours in a phone cue, being disconnected from phone calls, and unsatisfactory customer service are inconveniences, and do not constitute human rights violations.

JUDGMENT in file T-2391-22

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. There is no order for costs.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2391-22

STYLE OF CAUSE: OLEG BRYZZHEV. v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: NOVEMBER 22, 2023

JUDGMENT AND REASONS: KANE J.

DATED: NOVEMBER 28, 2023

APPEARANCES:

Oleg Bryzzhev ON HIS OWN BEHALF

Erica Louie FOR THE RESPONDENT

SOLICITORS OF RECORD:

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