

Federal Court



Cour fédérale

Date: 20101220

Docket: T-2151-09

Citation: 2010 FC 1309

[UNREVISED CERTIFIED TRANSLATION]

Ottawa, Ontario, December 20, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

FATEH KAMEL

Applicant

and

**THE ATTORNEY GENERAL OF CANADA
PASSPORT CANADA**

Respondents

REASONS FOR ORDER

(filed in accordance with section 51 of the *Federal Courts Act*)

[1] During the hearing of December 15, 2010, two motions were before the Court. The first motion, brought by Fateh Kamel (applicant) in accordance with Rule 51 of the *Federal Courts Rules*, SOR/98-106, was an appeal of an order issued by Prothonotary Richard Morneau on June 30, 2010. The second motion, brought by the respondents in accordance with Rule 350, sought

the dismissal of the underlying application for judicial review on the grounds that it had become moot.

[2] At the end of the hearing, I granted the motion of the respondents and, consequently, dismissed that of the applicant, without costs, as I was of the opinion that the applicant's underlying application for judicial review had become unnecessary and improper. I therefore indicated that more detailed reasons would be filed in accordance with section 51 of the *Federal Courts Act*, R.S.C. (1985), c. F-7. I also specified that the appeal period in this case would not begin to run until the filing of these reasons.

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[3] The applicant filed a passport application on February 10, 2009. On July 27, 2009, Passport Canada authorities informed him that they were reviewing the passport services eligibility rules with reference to national security pursuant to section 10.1 of the *Canadian Passport Order*, SI/81-86. After that, the applicant did not hear anything for several months.

[4] On December 22, 2009, the applicant filed the underlying application for judicial review of Passport Canada's failure to issue him the requested passport. In this proceeding, the applicant sought a declaration that the federal board, commission or other tribunal had infringed upon his rights guaranteed under sections 6, 7 and 8 of the *Canadian Charter of Rights and Freedoms* (Charter) and an order that Passport Canada was required to issue him a passport as remedy in accordance with subsection 24(1) of the Charter.

[5] The respondents, in reply, submitted the affidavit of Sébastien Roy, Deputy Director of Employment in the Investigation Division, Security Bureau at Passport Canada. An oral examination of Mr. Roy took place on May 4, 2010. During this examination, the respondents raised nine objections to the questions asked by the applicant.

[6] Mr. Roy answered many questions “subject to”, as set out in Rule 95. On June 30, 2010, following the applicant’s motion for rulings on the objections raised, Prothonotary Morneau issued an order dismissing the questions and further cross-examination. One of the motions in this case concerned the appeal of this order by the applicant.

[7] Subsequently, in a letter sent to the applicant on July 15, 2010, the Minister of Foreign Affairs informed him that a decision had been made refusing him a passport in accordance with section 10.1 of the *Canadian Passport Order* with reference to national security, the effect of which was expected to last for a period of five years. Considering the underlying application for judicial review had become “moot”, the respondents filed their motion to have it dismissed.

[8] Finally, on August 25, 2010, the applicant filed, in Docket T-1366-10 of this Court, a new application for judicial review of the July 15 refusal to issue him a passport.

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[9] In Prothonotary Morneau's impugned order, he found that the underlying application for judicial review was in the nature of *mandamus* to force the respondents to issue a passport to the applicant. The prothonotary also overruled the applicant's objections to the questions referred to in the motion before him.

[10] It is therefore important to consider the respondents' motion for the dismissal of the applicant's underlying application for judicial review on the grounds that it had become "moot".

[11] The jurisdiction of the Federal Court over extraordinary remedies against federal boards, commissions or other tribunals, and the authority of the Federal Court on an application for judicial review, are defined in subsections 18(1) and 18.1(3) respectively of the *Federal Courts Act*:

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

18.1 (3) On an application for judicial review, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has

18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

18.1 (3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a

unreasonably delayed in doing; or

retardé l'exécution de manière déraisonnable;

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

[12] In this case, the applicant's underlying application for judicial review sought, for all practical purposes, to obtain an order directing Passport Canada to issue him a passport. A decision was eventually made by Passport Canada refusing the requested passport. This last decision is presently the subject of a new application for judicial review in T-1366-10.

[13] The applicant is claiming that his first application for judicial review was not an application for *mandamus*, but rather a claim for Charter relief. The respondents maintain that the fact that this first application for judicial review was based on reasons related to the Charter has no bearing on the ordinary rules of judicial review or on the jurisdiction of the Federal Court in accordance with section 18.1 of the *Federal Courts Act*. I agree.

[14] In fact, irrespective of semantics or wording, it is clear that with his underlying application for judicial review, the applicant sought, by order of the Court, to force Passport Canada to issue him a passport on the grounds that his rights were violated under the Charter. The circumstances have since changed and there is now a decision to review, that of Passport Canada to refuse to issue a passport to the applicant. As he has since filed an application for judicial review of this last decision, he can always rely on the same grounds as those essentially relied on in his first

application for judicial review, including those based on the Charter, with the aim of having the decision set aside and, ultimately, to obtain a passport from Passport Canada.

[15] Therefore, the applicant's underlying application for judicial review, that is, his first one, clearly seems to have become improper and unnecessary to the objectives of the proper administration of justice. It is now bereft of any possibility of success and must therefore be dismissed.

[16] It follows that the appeal of the prothonotary's decision included in the other motion before me, a motion incidental to the applicant's first application for judicial review, must suffer the same fate as this motion.

[17] It is for all of these reasons that at the hearing of December 15, 2010, I granted the respondents' motion to dismiss the applicant's underlying application for judicial review and dismissed the motion by the applicant appealing Prothonotary Richard Morneau's decision dated June 30, 2010.

[18] Given the particular circumstances of this case, I have decided not to award costs. I have also indicated that the period to appeal my order will not begin to run until the filing of these reasons.

“Yvon Pinard”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2151-09

STYLE OF CAUSE: FATEH KAMEL v. THE ATTORNEY GENERAL OF CANADA, PASSPORT CANADA

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 15, 2010

REASONS FOR ORDER: PINARD J.

DATED: December 20, 2010

APPEARANCES:

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