

Federal Court



Cour fédérale

Date: 20130619

Docket: T-563-12

Citation: 2013 FC 686

Ottawa, Ontario, June 19, 2013

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

MANUEL BERLANGA VILLAMIL

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of an adjudicator at Passport Canada, dated February 14, 2012, to impose a period of refusal of passport services to the applicant, on the basis of paragraphs 9(a) and 9(b), subsection 10(1) and section 10.3 of the *Canadian Passport Order*, SI/81-86 [the Order].

[2] The respondent requests that the style of cause be amended to substitute the Attorney General of Canada as the respondent in light of the requirements of Rule 303 of the *Federal Courts Rules*, SOR/98-106. The style of cause is amended accordingly.

FACTS

[3] On November 23, 2010, the applicant submitted a passport application to Passport Canada for his son [the child]. The application indicated that the applicant and the child's mother resided at the same address and that they were in a common law relationship. A negative response was provided to a question asking whether there were any separation agreements, court orders or legal proceedings pertaining to the custody of, mobility of, or access to the child. Both parents appeared to have signed the application.

[4] Upon entering the child's personal information into Passport Canada's computerized database, a passport officer noted that the child's name had been placed on Passport Canada's System Lookout List. The child's mother had requested that her son be added to the System Lookout List in August 2010 and that no passport be provided to him without her being advised. In support of this request, she submitted a "Consent to Judgment" signed by her and the applicant on June 18, 2008, wherein the parents consented to the child's mother having custody of her son and the applicant having specific access rights.

[5] When the passport officer contacted the child's mother on November 25, 2010, she stated that she was still separated from the applicant, that they did not live at the same address, that she never signed the child's passport application and that there were more recent legal documents she would send the officer.

[6] On November 26, 2010, Passport Canada was informed that the child's mother had filed a complaint with the Royal Canadian Mounted Police concerning the child's passport application. On

November 29, 2010, the *Service de la Police de la Ville de Montréal* [SPVM] contacted Passport Canada requesting information regarding the child's passport application.

[7] Also on November 29, 2010, the Security Bureau of Passport Canada [the Security Bureau] began investigating the passport application the applicant had submitted for the child. During the course of its investigation, the Security Bureau obtained updated legal documentation stating that the child's mother had custody of the child and the applicant had specific access rights.

[8] On December 1, 2010, the child's mother provided Passport Canada with a sworn written statement that she had not signed the child's passport application and that she objected to the issuance of a passport in her son's name.

[9] On December 14, 2010, the Québec Superior Court granted a motion by the child's mother that the applicant be forbidden from leaving Québec with the child and from applying for either a Canadian or a Mexican passport for the child.

[10] On February 1, 2011, the applicant was arrested for the offence described in subsection 368(1) of the *Criminal Code*, RSC 1985, c C-46 [Criminal Code] and released from custody on the undertaking that he would not leave Canada with his minor son without authorization of the Superior Court.

[11] On February 14, 2011, the applicant was charged with the offence of making a statement that he knew to be false or misleading for the purpose of procuring a passport, as described in

paragraph 57(2)(b) of the Criminal Code. He pleaded not guilty to this charge the following day.

The applicant was never charged under subsection 368(1).

[12] On May 20, 2011, the Security Bureau sent the applicant a letter advising him that he was the subject of an investigation, as the Investigations Division had reason to believe that the applicant provided false or misleading information in the passport application for his son.

[13] On December 8, 2011, the passport issued in the name of the applicant expired.

[14] The adjudicator rendered his decision on February 14, 2012.

THE IMPUGNED DECISION

[15] First, the adjudicator found that given the uncontested fact that the applicant was charged under subsection 368(1) of the Criminal Code, the revocation of the applicant's passport was justified under paragraph 9(b) and subsection 10(1) of the Order.

[16] Second, the adjudicator determined that the revocation of the applicant's passport was also justified under paragraph 9(a) and subsection 10(1) of the Order, as the applicant had not provided Passport Canada with a duly completed passport application. He provided the following reasons for why he rejected the applicant's explanations and justifications for providing false information in the passport application:

- It was difficult to believe the applicant had only limited knowledge of French, as he alleged being able to make a semantic distinction between the "Consent to Judgment" he and the

child's mother had signed and the question regarding separation agreements, court orders or legal proceedings pertaining to the custody, mobility or access of the child;

- The applicant's explanation that he wanted the passport delivered to his address was not helpful, as it did not demonstrate that the child's mother had consented to the issuance of a passport in the child's name;
- The email from the child's mother dated December 6, 2010, subsequent to the applicant submitting the child's passport application, did not demonstrate that the mother had consented to the issuance of a passport in the child's name; and
- The need for dissuasion and the principle of proportionality justified imposing a penalty on the applicant.

[17] Given that at the time of rendering his decision the applicant's passport had expired, the adjudicator maintained the recommendation to refuse passport services for five years, pursuant to section 10.3 of the Order.

ISSUES

[18] This application for judicial review raises the following issues:

1. Is the issue of the refusal of passport services imposed upon the applicant on the basis that he was charged under subsection 368(1) of the Criminal Code moot?
2. Did the adjudicator err by imposing a refusal of passport services upon the applicant for five years on the basis that he had failed to provide a duly completed passport application?

ANALYSIS

1. Is the issue of the refusal of passport services imposed upon the applicant on the basis that he was charged under subsection 368(1) of the Criminal Code moot?

[19] The applicant submits Passport Canada erred by relying on the assumption that he had been charged with the indictable offence described in subsection 368(1) of the Criminal Code, as he was in fact charged with an offence punishable on summary conviction under paragraph 57(2)(b) of the Criminal Code.

[20] For the respondent, since the applicant was never charged with the offence described in subsection 368(1) of the Criminal Code, the decision that passport services should be refused to the applicant until a court pronounces itself on the criminal accusations made pursuant to the provision or until a subsequent date, depending on the outcome of the criminal proceedings, is of no consequence.

[21] I agree with the respondent for the following reasons.

[22] The adjudicator premised his decision to refuse the applicant passport services for a certain period on two distinct grounds: first, that the applicant had been charged under subsection 368(1) of the Criminal Code, and second, that the applicant had not provided Passport Canada with a duly completed passport application. The adjudicator worded the combined effect of his decision to be as follows:

Effet combiné des conclusions sur les 2 motifs de révocation
rétrospective

Tel qu'indiqué dans la lettre de proposition comme celle de clôture d'enquête, la période de refus (suspension) de services de passeport est donc la plus longue de

- 5 ans à compter de la date où la demande "incomplète" aux termes du paragraphe 9(a) du Décret aurait été soumise, soit jusqu'au 23 novembre 2015 ou,
- la date à laquelle se prononcera un tribunal sur les accusations portées contre le sujet ou une date ultérieure, selon l'issue de la procédure criminelle (qui s'entend de la date où il sera disposé des accusations criminelles pendantes à l'endroit du sujet et pour lesquelles sentence, si imposée, serait éventuellement servie).

[23] In my view, as the applicant was never charged under subsection 368(1) of the Criminal Code, the second bullet point of this conclusion has no consequence on the period for which passport services have been refused. As such, the issue that remains to be determined is whether it was reasonable for the adjudicator to impose a five year period of refusal of passport services on the basis that the applicant had failed to provide a duly completed passport application.

2. Did the adjudicator err by imposing a five year period of refusal of passport services upon the applicant on the basis that he had failed to provide a duly completed passport application?

[24] The applicant argues that the decision to refuse passport services for five years be set aside and replaced with a refusal period of two years.

[25] The applicant does not deny that there are errors in the passport application, but maintains that he had no intention to mislead Passport Canada.

[26] The applicant further submits the adjudicator's subjective analysis of the recommendation to refuse passport services to him was tainted by the error of relying on the assumption that the applicant had been charged under subsection 368(1) of the Criminal Code.

[27] The respondent argues the imposition of the penalty in such a case is a highly discretionary element of the decision and should therefore be afforded significant deference from this Court.

[28] With respect to the applicant's argument that he did not intend to mislead Passport Canada, the adjudicator explained that the grounds for refusal or revocation of passports under sections 9 and 10 of the *Passport Order* do not require proof of the intention to defraud or mislead.

[29] For the respondent the adjudicator reasonably exercised his discretion to impose a period of refusal of passport services to the applicant for five years. I agree.

[30] This Court has repeatedly held that decisions of Passport Canada to refuse, revoke or withhold passport services are to be reviewed on the reasonableness standard (*Kamel v Canada (Attorney General)*, 2008 FC 338 at paras 58-59; *Okhionkpanmwonyi v Canada (Attorney General)*, 2011 FC 1129 at para 8 [*Okhionkpanmwonyi*]; *Slaeman v Canada (Attorney General)*, 2012 FC 641 at para 44 [*Slaeman*]; and *Sathasivam v Canada (Attorney General)*, 2013 FC 419 at para 13).

[31] In my view, it is clear from the decision that the adjudicator's analysis of whether the passport application for his son Estevan had been duly completed was in no way dependent on the analysis of the pending criminal charge. As the adjudicator stated on page 4 of the decision:

Question 2 : Révocation en lien avec la demande au nom de l'enfant

J'ai choisi d'aborder cette recommandation en second lieu pour bien marquer que la question de déterminer si la demande est dûment complétée n'est pas dépendante de la conclusion sur la recommandation précédente (révocation liée à la présence de l'accusation de faux au criminel).

[32] The applicant admits to giving erroneous information on the passport application he submitted on behalf of his son and the adjudicator reasonably rejected his explanations for doing so.

[33] As for the applicant's argument that the adjudicator erred by not taking into account the applicant's need to travel to Mexico to visit his family in analyzing the period for which passport services would be refused, I note that at the end of the decision the adjudicator stated that during the period of refusal of passport services, the applicant would still be able to apply for a limited passport based on urgent, compelling and compassionate reasons.

[34] Therefore, I am satisfied that the adjudicator's decision was reasonable and rationally supported by the evidence before him. The Court's intervention with the penalty imposed is not warranted.

[35] For these reasons, the application for judicial review is dismissed. There is no order as to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;
2. The style of cause is amended to substitute the Attorney General of Canada as the respondent; and
3. There is no order as to costs.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-563-12

STYLE OF CAUSE: *Manuel Berlanga Villamil v The Attorney General of Canada*

PLACE OF HEARING: Montréal, Québec

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**REASONS FOR JUDGMENT
AND JUDGMENT:** TREMBLAY-LAMER J.

DATED: June 19, 2013

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