

Federal Court



Cour fédérale

Date: 20131210

Docket: T-1921-12

Citation: 2013 FC 1236

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, this 10th day of December 2013

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

Nathalie KRIVICKY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] **CONSIDERING** a decision of Passport Canada, rendered on August 15, 2012, through which a passport application made in the applicant's name and a passport application made in the name of one Cindy Bauwens were refused and, further, a period of refusal of services of four years

was imposed, retroactive to October 5, 2010, the date on which the applicant attempted to obtain a passport under misrepresentation;

[2] **CONSIDERING** that these refusals were issued under paragraph 9(a) of the *Canadian Passport Order*, SI/81-86 (the Order);

[3] **CONSIDERING** the application for judicial review submitted by the applicant, which is intended only to remove the period of refusal of services;

[4] **CONSIDERING** that the application for judicial review is submitted under paragraph 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7 and that the applicant alleges that the evidence was assessed in an unjust and arbitrary manner in coming to the conclusion that a period of refusal of services of four years is clearly unreasonable;

[5] **AND UPON** the Court reading the record and hearing the parties;

[6] For the following reasons set out below, the application for judicial review is dismissed.

[7] All that is disputed before this Court is the length of the period of refusal of passport services. Section 10.2 of the Order allows for its imposition. Its text reads as follows:

10.2 The authority to make a decision to refuse to issue or to revoke a passport under this Order, except for the grounds set out in paragraph 9(g), includes the authority to impose a period of refusal of passport services.

10.2 Le pouvoir de prendre la décision de refuser la délivrance d'un passeport ou d'en révoquer un en vertu du présent décret, pour tout motif autre que celui prévu à l'alinéa 9g), comprend le pouvoir d'imposer une période de refus de services de passeport..

[8] Essentially, the applicant claims concepts found in sentencing matters to plead that the period of four years that was imposed and that would expire next October is unreasonable. Thus, the applicant argues that the duration is only based on principles of deterrence and exemplification not taking into account the particular situation of the applicant who, we are told, was asked to travel for work purposes. The applicant added that the principles of proportionality and individualization of sentences should have ensured that the period of refusal of passport services was shorter.

[9] The appropriate standard of review in these matters is reasonableness. Indeed, although the application for judicial review is made under the *Federal Courts Act*, the principles of common law as to the standard of review apply (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339). This standard of reasonableness is a deferential one in view of the administrative tribunal's decision. Thus, in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, (*Dunsmuir*) the Court described what this reasonableness consists of in a now well-known passage:

[47] . . . In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[10] It is the burden of the applicant to show that the decision made was not reasonable. The Court must not attempt to substitute its own views to those of the decision-maker.

[11] The applicant did not show that the decision made falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law. Faced with a decision that merits great deference, more is required than raising principles used in criminal law relating to sentencing (*Slaeman v Attorney General of Canada*, 2012 FC 641).

[12] The applicant notes in passing that she was acquitted of the criminal charges brought against her. These acquittals post-dated the decision rendered by Passport Canada. They are not relevant in this case. In any event, I cannot see how the acquittals have any incidence on the decision of imposing a period of refusal of passport services. In my view, the decisions to refuse to issue passports were fully defensible; the evidence is sufficient to find that the applicant participated in a sham relating to the issuance of a passport. The enforcement of criminal law by prosecution is governed by rules and a burden that are very different from those that apply in administrative matters.

[13] If the applicant were to need a passport in the next 10 months, she could take the opportunity to obtain a limited-time passport that is issued for humanitarian and compelling reasons. The decision letter also states this very clearly.

[14] I asked at the hearing why the applicant would have needed a passport for her work. It is enough to say that the need for a passport is not for the applicant's principal use. The decision for which judicial review is requested is perfectly reasonable in the *Dunsmuir* sense.

[15] In conclusion, the application for judicial review is dismissed. The respondent requested that the application be dismissed with costs. I consider that, in this case, nominal costs of \$200 should be imposed on the applicant.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. In this case, nominal costs of \$200 are imposed on the applicant.

"Yvan Roy"

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1921-12

STYLE OF CAUSE: Nathalie KRIVICKY v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 4, 2013

REASONS FOR JUDGMENT AND JUDGMENT: ROY J.

DATED: DECEMBER 10, 2013

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