

Federal Court



Cour fédérale

Date: 20140731

Docket: T-1332-13

Citation: 2014 FC 763

Ottawa, Ontario, July 31, 2014

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

AZADBIR SINGH BRAR

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This case relates to passport fraud. This is the judicial review of a decision by Passport Canada refusing to issue the Applicant (formerly known as Parminder Singh Sidhu) a passport and imposing a five-year withdrawal of passport services effective November 2010.

[2] The style of cause is also to be amended to list only the Attorney General of Canada as Respondent.

II. Background

[3] The decision at issue was made pursuant to s 9(a) and 10.2 of the *Canadian Passport Order*, SI/81-86:

9. 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

(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

(i) in the application for a passport, or

(ii) pursuant to section 8;

...

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.

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

(i) dans la demande de passeport, ou

(ii) selon l'article 8;

...

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.

[4] The Applicant emigrated from India in 1992 and became a Canadian citizen in 1998. He was issued a Canadian passport under the name of Parminder Singh Sidhu [Sidhu] in November 2004, which was renewed in August 2010.

[5] On November 18, 2010, a passport application [the November 2010 application] in the name of Azad Singh Brar [Azad Brar] was submitted accompanied by photographs which resembled the Applicant. In addition, the November 2010 application was accompanied by a letter from Brar authorizing Monique Raymond (identified as Brar's common law wife) to act on his behalf. That application was also accompanied by a health card and certificate of Canadian citizenship in the name of Brar.

[6] When Raymond submitted this application, the certificate of Canadian citizenship was identified by an officer as fraudulent. The photos were later determined to be photos of the Applicant.

The crux of this case is that the Applicant denies having made this November 2010 application.

[7] On January 24, 2011, the Applicant's passport in the name of Sidhu was damaged. He applied for and was issued a replacement passport two days later.

[8] The RCMP opened an investigation into the November 2010 application.

[9] In 2012 the Applicant travelled to India where, he claims, he was advised by an astrologer to change his name to Azadbir Singh Brar (not “Azad”) [Court underlining] and referred here as Azadbir Brar. On November 2, 2012, the Applicant received a change of name certificate under the *Change of Name Act* in the name of Azadbir Brar.

[10] The Applicant then filed for a passport in the name of Azadbir Singh Brar and returned his Sidhu passport.

[11] Criminal charges were laid by the RCMP against the Applicant but these were withdrawn.

[12] On January 22, 2013, an investigator from Passport Canada advised the Applicant of information in its possession that indicated that he had, in filing a passport application, provided false and misleading information supported by fraudulent documentation. The details of the information in the hands of Passport Canada were:

- On August 12, 2010, the Applicant attended the Brampton office to submit a passport renewal application for a passport in the name of Parminder Singh Sidhu. The passport was issued on August 13, 2010;
- On November 18, 2010, a passport application in the name of Azad Singh Brar was submitted to the Mississauga office on his behalf. This application was supported by a fraudulent certificate of Canadian citizenship. As a result of the fraudulent certificate, no passport was issued in the name of Azad Singh Brar;

- On January 24, 2011, the Applicant submitted a replacement passport application in the name of Parminder Singh Sidhu. As a result of this application, a new passport was issued in the name of Parminder Singh Sidhu on January 26, 2011;
- On December 31, 2012, the Applicant submitted an application for a passport in the name of Azadbir Singh Brar, accompanied by his previous passport and Canadian citizenship card (both in the name of Parminder Singh Sidhu) and a legal change of name certificate attesting that his previous name, Parminder Singh Sidhu, had been changed to his new name, Azadbir Singh Brar; and
- Photo comparison technology confirmed that the photographs submitted in the Parminder Singh Sidhu and Azadbir Singh Brar passport applications and the November 2010 application were of the same person.

[13] That letter of January 22, 2013 from the investigator provided the Applicant with an opportunity to respond and warned of the consequences of submitting false and misleading information.

[14] Following this letter, the investigator was in contact with a RCMP officer who informed her that the Applicant had admitted to “doing a wrong thing”.

[15] In the Applicant’s response to the investigator, he claims that the astrologer, who was aware that the Applicant’s name had been changed, had told him to change his name again. The Applicant did not deny filing the November 2010 application but stated that he was not a bad person.

The investigator noted the obvious – the November 2010 application in the name Azad Brar was submitted before the meeting with the astrologer.

[16] In March 2013 the investigator wrote to the Applicant to inform him that Ontario Vital Statistics records showed that the November 2, 2012 name change application involved more than a simple name change; that the name change application included a different date of birth, different place of birth, different residential address, different occupation and different spousal information. The investigator concluded that the Applicant attempted to obtain a passport under an entirely new identity.

[17] This time the Applicant responded to the investigator claiming that he did not apply for the November 2010 passport and was not aware of it until the RCMP notified him.

[18] Later the Applicant wrote denying that he had committed an offence and claiming that the RCMP misconstrued his statements and denied any involvement in the November 2010 application.

[19] On July 10, 2013, the Director of Passport Programs issued the decision to refuse issuing a passport on the grounds that the Applicant had provided false and misleading information.

[20] The Director outlined the factors taken into account in reaching the decision:

- Passport Canada records indicate that on August 12, 2010 the Applicant submitted an application form in the name of Parminder Singh Sidhu. As a result, Canadian passport WG207393 was issued;
- On November 18, 2010, a passport application was submitted in the name of Azad Singh Brar. This application listed a different date of birth, place of birth, residential address and occupation from the application submitted in the name of Parminder Singh Sidhu. The November 2010 application stated no passport had been issued to the Applicant in the past five years. It was accompanied by a certificate of Canadian citizenship with a photograph of the Applicant, along with two passport photographs;
- Passport Canada verified the November 2010 application with Citizenship and Immigration Canada. The discussions revealed that the certificate of Canadian citizenship submitted in support of the application was fraudulent;
- On January 24, 2011, the Applicant submitted an application in the name of Parminder Singh Sidhu. The information provided on this application matched that provided on the previous Sidhu applications. As a result of this application, Canadian passport WG265258 was issued;
- On December 31, 2012 the Applicant submitted a passport application, complete with two photographs, in the name of Azadbir Singh Brar. The application was accompanied by a written statement explaining that the Applicant has changed his name, as well as a Legal Change of Name certificate;
- Verifications with Passport Canada's photo comparison technology revealed that the photographs submitted for the application for Canadian passport WG207393

in the name of Parminder Singh Sidhu were of the same person as that appearing in the photographs submitted with the November 2010 application;

- An email from the Applicant on February 21, 2013 explained that he had changed his name following a trip to India in 2012 when he was advised by an astrologer to change his name to Azadbir Singh Brar. This trip to India is after the date of the November 2010 application;
- An email from the Applicant on March 25, 2013 expressed confusion at the continuation of the Passport Canada investigation following the criminal charges being dropped; and
- The Director summarized the content of the Applicant's email dated May 8, 2013.

[21] The Director further noted that the November 2010 application was accompanied by photographs confirmed to be the same person as those in the Sidhu identity documents, along with a fraudulent citizenship certificate in the name of Azad Brar. The Director also noted that although denying any knowledge of the November 2010 application, the Applicant changed his name to one very similar.

[22] In addition to denying passport issuance, the Director withdrew passport services subject to urgent, compelling and compassionate considerations.

III. Analysis

[23] Despite the complexity of the facts, the issues and their resolution are reasonably straightforward.

[24] The issues are:

1. was the Director's decision reasonable?
2. was there a breach of procedural fairness?
3. did the decision violate s 6 or s 7 *Charter* rights?

A. *Reasonableness of Decision*

[25] The decisions of Passport Canada to refuse, revoke or withhold passport services are reviewable on a standard of reasonableness (*Villamil v Canada (Attorney General)*, 2013 FC 686 at para 30).

[26] In my view, there was sufficient evidence in the investigation file to support a conclusion based on a balance of probabilities, that the Applicant was involved in the fraudulent November 2010 application. The critical components supporting the reasonableness of the Director's conclusion are:

- The November 2010 application was submitted by a woman in support of her male partner's application;
- The November 2010 application was supported by photographs which were determined by a computer program to be of the Applicant;
- The November 2010 application was supported by a fraudulent certificate of Canadian citizenship with a photo which was determined by a computer program to be of the Applicant;
- The Applicant was charged by the RCMP in relation to the November 2010 application. These charges were ultimately dropped;

- An RCMP officer involved in the criminal charges gave evidence that after the charges were dropped, the Applicant had not denied his criminality and had told the officer that he had “done a bad thing”;
- The Applicant legally changed his name to a name strikingly similar to that of the November 2010 application;
- The Applicant’s denial of any involvement in the November 2010 application;
and
- The Applicant’s story of the suggestion by an astrologer to change his name post-dates the November 2010 application.

[27] The choice of a five-year suspension of passport services is likewise reasonable. It is a standard penalty for passport misconduct and since it came into effect retroactively to November 2010, in reality it was a two-year suspension from the decision date in July 2013.

B. *Procedural Fairness*

[28] The procedural fairness issue is focused on bias on the part of the investigator. This issue is to be decided on a correctness standard of review.

[29] I note that in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 174 DLR (4th) 193, at para 45, a claim of bias could be validly made against subordinates of the decision-maker.

Procedural fairness also requires that decisions be made free from a reasonable apprehension of bias by an impartial decision-maker.
The respondent argues that Simpson J. was correct to find that the

notes of Officer Lorenz cannot be considered to give rise to a reasonable apprehension of bias because it was Officer Caden who was the actual decision-maker, who was simply reviewing the recommendation prepared by his subordinate. In my opinion, the duty to act fairly and therefore in a manner that does not give rise to a reasonable apprehension of bias applies to all immigration officers who play a significant role in the making of decisions, whether they are subordinate reviewing officers, or those who make the final decision. The subordinate officer plays an important part in the process, and if a person with such a central role does not act impartially, the decision itself cannot be said to have been made in an impartial manner. In addition, as discussed in the previous section, the notes of Officer Lorenz constitute the reasons for the decision, and if they give rise to a reasonable apprehension of bias, this taints the decision itself.

(emphasis by Court)

[30] However, the test for bias is a high one as stated in *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 SCR 369.

[31] The role of an investigator is different from that of the Director – the investigator searches for facts, probes evidence and inconsistencies if any. Challenging a party's responses is not necessarily bias but simply the required probing which is properly part of the role of an investigator. In this case, the investigator was obligated to forward the file to the Director where there was evidence to support a claim that a passport should be denied. (See Passport Policy Manual, sections 5 and 6)

[32] The investigator is obliged to go beyond fact finding to reach a conclusion on whether there is supportable evidence. Neither this nor outlining of the allegations and providing an opportunity to respond could be classed as a basis for a bias claim.

[33] The fact that an article about another similarly named Sidhu being extradited to the U.S. was considered by the investigator was not bias – it was a natural follow-up in an investigation. The article played no role in the decision to refer the matter to the Director nor, more importantly, any role in the final decision.

[34] There is no basis for suggesting that the Director can only impose sanctions on a person in the name used in the passport application. Such an interpretation of jurisdiction (a matter to be decided on a correctness standard of review) would frustrate the whole passport process and limit enforcement against those using aliases or false names (see *Mikhail v Canada (Attorney General)*, 2013 FC 724).

C. Charter Rights

[35] The matter of *Charter* rights is a “red herring”. The Applicant claims the sanctions for a fraudulent passport application infringes his mobility rights as if he was entitled to exercise those rights on the basis of a fraudulent document.

[36] As a truck driver, there is no doubt that his mobility rights are impacted and he is prevented from travelling out of the country. In a modern world a passport is a critical document. However, the Applicant’s argument against the sanctions is analogous to a person convicted of a serious offence claiming that incarceration is impermissible because it impacts his mobility rights.

[37] Section 6 *Charter* rights are limited by a refusal to issue a passport as Justice Décaré found in *Kamel v Canada (Attorney General) (FCA)*, 2009 FCA 21, [2009] 4 FCR 449, and Justice Zinn did in *Abdelrazik v Canada (Minister of Foreign Affairs)*, 2009 FC 580, [2010] 1 FCR 267.

[38] In respect of a claim of violation of s 7 rights, I have previously commented on the possible tension or overlap between s 6 and s 7 rights in *Khadr v Canada (Attorney General)*, 2006 FC 727, [2007] 2 FCR 218, at paragraphs 74 and 75:

74 However, *Godbout*, above, makes clear that the section 7 right to liberty encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.

75 The ability to travel where and when one wants outside Canada does not strike at that basic value of individual dignity and independence. I say this because the matter of choice to leave Canada is enshrined in s. 6 of the *Charter*. If one provision of the *Charter* covers a specific freedom, other sections of the *Charter* should not be presumed to cover the same freedom. There is a presumption against redundancies in legislation. The denial of a passport, while limiting the right to leave Canada, is not tantamount to making one a prisoner in one's own country. As such, I would not consider that the right to leave Canada constitutes a s. 7 right to liberty.

[39] In my view, while s 6 rights are engaged in this case, absent a complete ban of passport services, s 7 rights are not engaged or if engaged are otherwise subsumed in the s 6 issue.

[40] To the extent that there has been a violation of *Charter* rights by the imposition of the Director's sanctions, I find that they are saved by s 1.

[41] In keeping with Justice Abella's reasoning in *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 2 SCR 395 [*Doré*], at paragraphs 55-56, a full *Oakes* s 1 analysis may be replaced by a pared down "proportionality" analysis in the administrative context.

[42] Having found the decision and sanctions to be reasonable, the severity of any interference with *Charter* rights is mitigated by the availability of passport services in special circumstances.

This conclusion is buttressed by the finding in *Kamel v Canada (Attorney General)*, 2011 FC 1061, 397 FTR 42 (decided before *Doré*) that these types of sanctions pass the full *Oakes* test.

[43] Therefore, there is no *Charter* violation not otherwise saved by s 1.

IV. Conclusion

[44] For these reasons, this judicial review will be dismissed with costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed
with costs.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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