

Federal Court



Cour fédérale

Date: 20160510

Docket: T-881-15

Citation: 2016 FC 526

Ottawa, Ontario, May 10, 2016

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

JASON JANE LIPSKAIA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision by the Director, Investigations Division, Passport Program Integrity Branch of Citizenship and Immigration Canada [Passport Program], dated April 28, 2015, which revoked the Applicant's passport and denied him access to passport services until October 11, 2018. The Director concluded that there was sufficient information to determine, based on a balance of probabilities, that the Applicant had obtained his passport by providing false or misleading information and that he stood charged with the commission of an indictable offence.

[2] For the reasons set out below, the application for judicial review is granted.

I. Background

[3] On November 6, 2014, a Chief Investigator of the Passport Program sent the Applicant a letter advising him that he was the subject of an investigation as there was reason to believe that he had provided false or misleading information to procure a Canadian passport in the assumed identity of Jason Jane Lipskaia. The letter informed the Applicant that the Passport Program's investigation had revealed the following information:

- a) On November 5, 2011, the Passport Program received information from Service Alberta indicating that the Applicant had assumed the identity of Jason Jane Lipskaia and had successfully obtained an Alberta identification [ID] card. As a result of this information, an investigation was undertaken by the Passport Program to confirm the Applicant's true identity;
- b) Verifications in the Passport Program records indicated that a passport was issued in the name of Jason Jane Lipskaia on November 19, 2008, and that the Applicant had listed John Charles Wiese as guarantor and Randall Robert Wiese as a reference in order to authenticate his identity;
- c) An application for the renewal of the 2008 passport in the name of Jason Jane Lipskaia was submitted by the Applicant on October 10, 2013. In support of this application, the passport issued in 2008 was provided. A new passport was issued to the Applicant on October 11, 2013 and was collected on October 15, 2013;

- d) Verifications in the Passport Program's database indicated that the Applicant had obtained two passports in the identity of Randall Robert Wiese: one issued on May 23, 1991, and the second, on April 3, 1997. The applications in both cases listed John C. Wiese, father, as emergency contact;
- e) On November 28, 2011, the Passport Program attempted to send the Applicant correspondence but could not deliver it to the address indicated in the 2008 passport application in the name of Jason Jane Lipskaia. The Passport Program thus suspended its investigation;
- f) Further verifications were conducted with external partners. These verifications led the Passport Program to determine that it was highly probable that the Applicant's true identity was Randall Robert Wiese. Accordingly, on December 3, 2013, the Passport Program invalidated the passport which was issued to the Applicant in 2013. This invalidation resulted in the seizure of the passport on August 10, 2014, at Pierre Elliot Trudeau International Airport;
- g) The Passport Program's assessment, based on a balance of probabilities and after consideration of the information, was that the Applicant allegedly provided false or misleading information in order to procure a passport in the assumed identity of Jason Jane Lipskaia, depicting his photograph;
- h) The Royal Canadian Mounted Police [RCMP] municipal detachment in Fort Saskatchewan, Alberta informed the Passport Program that the Applicant had

been charged with committing an indictable offence under subsection 145(3) of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*], and a warrant for arrest had been issued by the province of Alberta in the Applicant's name on July 2, 2014.

[4] The November 6, 2014 letter also invited the Applicant to file information for consideration that would contradict or neutralize the information presented to him, failing which, his file would be forwarded to a decision-maker who would determine whether the information on file was sufficient, on a balance of probabilities, to revoke the Applicant's passport under paragraphs 10(2)(d), 9(1)(b) and subsection 10(1) of the *Canadian Passport Order SI/81-86* [CPO] and to impose a period of refusal of passport services pursuant to section 10.2 of the CPO.

[5] By letter dated December 17, 2014, the Applicant's representative asserted that the Applicant was Jason Jane Lipskaia. In support of this statement, the Applicant's representative provided the following documents as exhibits: (1) a copy of an Order of Justice Lee of the Alberta Court of Queen's Bench, issued on August 7, 2008, directing that the Applicant's request for a delayed registration of birth be accepted by the Director of Vital Statistics; (2) a delayed registration of birth issued in the name of Jason Jane Lipskaia; and (3) a statutory declaration by Jason Jane Lipskaia in support of a delayed registration of birth. The Applicant's representative also asserted that his other client, John Charles Wiese, had "signed as a grantor" because he knew the Applicant.

[6] By letter dated January 23, 2015, a Senior Investigator of the Passport Program advised the Applicant that the information provided by the Applicant's representative had been reviewed and that it had been noted that the father's information in the birth certificate issued in the name of the Applicant was incomplete. Only a surname appeared on the birth certificate and his given name and place of birth were unknown. The letter also informed the Applicant that the Passport Program had reviewed the Applicant's passport history and that it appeared that the Applicant had obtained two Canadian passports in the name of Randall Robert Wiese in 1991 and 1997. Further verifications with external partners indicated that the Applicant's identity was more likely Randall Robert Wiese and not Jason Jane Lipskaia. The Senior Investigator concluded that the Applicant's submissions did not provide new information and failed to neutralize the findings of fact contained in the November 6, 2014 letter. He indicated that a Passport Program decision-maker would determine whether the information on file, including the Applicant's statements, were sufficient to revoke his passport under paragraphs 10(2)(d), 9(1)(b) and subsection 10(1) of the CPO. The Applicant was advised that the maximum period for refusal of passport services was five years from the date of the incident or information leading to the decision.

[7] In a decision dated April 28, 2015, addressed to Randall Robert Wiese, but sent to the Applicant's address and to his representative, the Director of the Passport Program revoked the passport issued to the Applicant in 2013 and imposed a period of refusal of passport services until October 11, 2018. Based upon the same information and for the same reasons as enunciated in the letters of November 6, 2014 and January 23, 2015, the Director determined that there was sufficient information to support a conclusion that Randall Robert Wiese had obtained the

passport issued in 2013 in the assumed identity of Jason Jane Lipskaia by means of false or misleading information and that he stood charged of the commission of an indictable offence.

[8] It is this decision which is the subject of this application for judicial review.

II. Analysis

[9] On July 2, 2013, the Minister of Citizenship and Immigration [Minister] became responsible for the Passport Program and the entity known as Passport Canada ceased to exist. The Minister's authority with respect to the issuance, revocation and recovery of passports and refusal of passport services is set out in the CPO, which was created by the Governor in Council exercising Her Majesty in right of Canada's royal prerogative over passports.

[10] Pursuant to paragraph 10(2)(d) of the CPO, the Minister may revoke the passport of a person who has obtained the passport by means of false or misleading information. The Minister may also, pursuant to paragraph 9(1)(b) and subsection 10(1) of the CPO, revoke a passport of an applicant who stands charged in Canada with the commission of an indictable offence. Additionally, the Minister is empowered under section 10.2 of the CPO to impose a period during which passport services will be refused when there is a decision to refuse or revoke a passport.

[11] In the present proceedings, the Applicant claims that he is Jason Jane Lipskaia. The Respondent, on the other hand, claims that the Applicant is in fact Randall Robert Wiese.

[12] While the Applicant raised a number of issues in his notice of application upon which he did not elaborate in his written submissions, the Respondent maintains that the Applicant was afforded procedural fairness and that the decision to revoke the passport and to refuse passport services for five years was reasonable.

[13] For the following reasons, I have determined that the decision dated April 28, 2015 revoking the Applicant's passport and imposing a refusal of passport services until October 11, 2018, must be set aside as there was a breach of procedural fairness in the process followed by the Passport Program in the Applicant's file. Given my conclusion, I will not pronounce on whether the decision to revoke the passport and to deny passport services was reasonable.

[14] This Court has previously determined that issues of procedural fairness are to be reviewed against the standard of correctness (*Gomravi v Canada (Attorney General)*, 2015 FC 431 at para 23; *Kamel v Canada (Attorney General)*, 2008 FC 338 at paras 62, 89 [*Kamel*];)

[15] In *Kamel*, Justice Noël summarized the requirements of procedural fairness in the context of the revocation of a passport and the suspension of passport services. He wrote at para 72:

...[i]t is sufficient if the investigation includes disclosure to the individual affected of the facts alleged against him and the information collected in the course of the investigation and gives the applicant an opportunity to respond to it fully and informs him of the investigator's objectives; as well, the decision maker must have all of the facts in order to make an informed decision.

[16] A few years later, in *Abdi v Canada (Attorney General)*, 2012 FC 642, Justice Gleason provided further guidance on the scope of disclosure required to meet the threshold of procedural fairness in the context of the revocation of a passport. At para 21, she stated:

Counsel for the applicants argues that the requirements of procedural fairness necessitated providing the applicants with a copy of the entire file that was placed before the adjudicator. I do not agree that procedural fairness requires disclosure of that extent in the circumstances of determinations by Passport Canada under the Order. Rather, in my view, what is required is that all material facts discovered by the Section in its investigation be disclosed to the parties affected; in addition, any documents which make any form of submission in support of the Section's position that are provided to the adjudicator must also be disclosed to the parties affected. Finally, the affected parties must be afforded a full opportunity to respond, prior to the case being remitted to the adjudicator for determination.

[17] In *Gomravi v. Canada (Attorney General)*, 2013 FC 1044 at para 32, Justice Mactavish reiterated that the duty of fairness in passport revocation matters requires that all material facts discovered by Passport Canada in its investigation be disclosed to the affected party, which includes both inculpatory and exculpatory information. She found that Passport Canada had breached procedural fairness as it had not provided the Applicant with the facial recognition analysis and an email from Canada Border Services Agency, which it had relied upon to determine that the Applicant had facilitated the use of a passport by a different person.

[18] In the present case, notwithstanding the absence of argument by the Applicant on this issue, the Respondent nevertheless submitted in its written and oral submissions that a review of the record indicates that the Applicant was provided with the basis upon which the Minister proposed to revoke the passport, that the Applicant was given the opportunity to respond to the

results of the investigation and that his representative provided submissions in response. According to the Respondent, all requirements respecting procedural fairness were met.

[19] I disagree. While the November 6, 2014 and January 23, 2015 letters provide the Applicant the basis upon which the Minister proposed to revoke the passport, the letters do not disclose relevant information and material facts which appear to have been considered by the Director of the Passport Program in reaching his decision.

[20] The Certified Tribunal Record [CTR] contains several email exchanges between the Passport Program, Service Alberta and the RCMP which relate to both Jason Jane Lipskaia and Randall Robert Wiese. The content of these communications was not disclosed to the Applicant.

[21] In particular, the CTR contains the results of a facial recognition analysis based upon the Applicant's photograph. The facial recognition analysis results include hits for the 2008 and 2013 passports issued to Jason Jane Lipskaia but do not include hits for the two passports issued to Randall Robert Wiese in 1991 and 1997 (CTR, 222-232).

[22] The CTR also contains an email from the RCMP dated January 13, 2015, which states that several pieces of ID in the name of Lipskaia were seized at Randall Robert Wiese's residence during a search in 2013 and that he also uses the alias of Jason Sgfusion [CTR, 113).

[23] Moreover, the CTR includes an incomplete and undated investigative report of the Special Investigations Unit, Governance and Program Integrity, at Service Alberta concerning

Randall Robert Wiese, also identified by the report as Jason Jane Lipskaia, who is accused and charged with uttering a forged document, contrary to paragraph 368(1)(b) of the *Criminal Code* (CTR, 108-109). According to the information in the investigative report, the documents which are alleged to have been forged consist of an application form for an Alberta ID card, an Alberta operator's license and a statutory declaration, all under the identity of Jason Jane Lipskaia. The report states that in October 2010, an investigator with the Advanced Education and Technology, Program Compliance and Investigations Unit contacted Service Alberta's Special Investigations Unit regarding the suspicious actions of a client who alleged that he had completed a legal name change and wished to have his education records transferred from Randall Robert Wiese to Jason Jane Lipskaia, but refused to provide evidence of a name change. The report further states that in email communications with the investigator, the client identified himself under both identities. Upon investigation, the unit discovered work records from a company where an employee applied as Randall Robert Wiese but requested to be paid as Jason Jane Lipskaia. The unit also discovered that at the time that an Alberta Operator's license was issued to Jason Jane Lipskaia in June 2006, there were Court Certificates in Alberta and British Columbia disqualifying Randall Robert Wiese from operating a motor vehicle.

[24] The CTR also contains an email exchange between the RCMP, Service Alberta and the Passport Program between January 13 and 20, 2015, to the effect that Randall Robert Wiese pled guilty in Provincial Court in Edmonton for utilizing the identity of Jason Jane Lipskaia (CTR, 80). This particular allegation is inconsistent with other information found in the CTR which indicates that the charge upon which Randall Robert Wiese is said to have pled guilty is one of

mischief in relation to the destruction or damage of property under paragraph 430(1)(a) of the *Criminal Code* (CTR, 96).

[25] None of the above information was provided to the Applicant prior to the April 28, 2015 decision being made. Regardless of whether the information was determinative in the Director's final decision, in my view, it was material to the investigation and in the case of the facial recognition analysis results in November 2013, possibly exculpatory.

[26] I am also puzzled by the apparent discrepancy between the offence upon which the Applicant's passport was revoked and the prevalence of other indictable offences referred to in the CTR, which were not put to the Applicant. While the Passport Program letters to the Applicant refer to a charge under subsection 145(3) of the *Criminal Code* (failure to comply with a condition of undertaking or recognizance), the CTR heavily refers to other charges, such as subsection 57(2) (false statement in relation to a passport), subsection 131(1) (perjury), and paragraph 368(1)(b) (use, trafficking or possession of forged document) of the *Criminal Code*. Neither the November 6, 2014 nor the January 23, 2015 letters allude to the other charges before the Alberta Courts.

[27] Given the nature of the information in the CTR, the Applicant should have been afforded the opportunity to know the case to be met and to respond to and challenge the information. As such, I find that the Passport Program breached the Applicant's right to procedural fairness.

[28] I recognize that one could be tempted to conclude that Randall Robert Wiese and Jason Jane Lipskaia are in fact the same person on the basis of the information found in the CTR, in addition to the statements made by the Applicant at the hearing regarding whether he knew Randall Robert Wiese and why he was listed as a reference on the 2008 passport application. However, the Applicant was entitled to procedural fairness and it is not open to this Court to deny him that right. It is also not open to this Court to speculate as to what the result might have been had the Applicant been apprised of the information before the Passport Program.

III. Conclusion

[29] For the aforementioned reasons, the application for judicial review is granted and the decision dated April 28, 2015 is set aside. The matter is remitted for re-determination by a different decision-maker.

[30] At the hearing, I raised the issue of whether the style of cause reflected the proper respondent. Counsel for the Respondent agreed that the proper respondent in these matters is the Attorney General of Canada pursuant to subsections 303(1) and (2) of the *Federal Courts Rules*, SOR/98-106. The style of cause is amended accordingly.

[31] I also raised the issue of costs with the parties. The Applicant, who is self-represented, informed the Court of his costs and the Respondent left it within the Court's discretion. While I have granted the application for judicial review on the basis that there has been a breach of procedural fairness, the Applicant failed to make any meaningful submissions with respect to the issues raised in his notice of application for judicial review. Notwithstanding, the Respondent

provided the Court with representations on the issues of procedural fairness and the reasonableness of the decision. For this reason, I have decided to exercise my discretion in the circumstances and order no costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The style of cause in the application for judicial review is amended to remove Passport Canada, Citizenship and Immigration Canada and Canadian Border Services Agency as the Respondents and instead name the Attorney General of Canada as the Respondent;
2. The application for judicial review is granted and the decision of the Director, Investigations Division, Passport Program Integrity Branch of Citizenship and Immigration Canada dated April 28, 2015 is set aside;
3. The issue of the revocation of the Applicant's passport and the denial of passport services shall be remitted to Citizenship and Immigration Canada for re-determination by a different decision-maker;
4. Each party will bear their own costs.

"Sylvie E. Roussel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-881-15

STYLE OF CAUSE: JASON JANE LIPSKAIA v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 26, 2016

JUDGMENT AND REASONS: ROUSSEL J.

DATED: MAY 10, 2016

APPEARANCES:

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