

Federal Court



Cour fédérale

Date: 20220304

Docket: T-1411-21

Citation: 2022 FC 302

Ottawa, Ontario, March 4, 2022

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

SE-BHARAT SINGH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Se-Bharat Singh, is seeking judicial review of a decision by the Domestic Network, Passport Entitlement and Investigation Division [Passport Division] of Immigration, Refugees and Citizenship Canada [IRCC], dated August 25, 2021, which refused to issue him a passport and imposed a two-year period of refusal of passport services pursuant to subsections 9(2) and 10.2(1) of the *Canadian Passport Order*, SI/81-86. The Passport Division determined

that there were reasonable grounds to believe that the refusal and suspension of passport services were necessary to prevent the commission of sexual offences against children outside Canada, as referred to in subsection 7(4.1) of the *Criminal Code*, RSC 1985, c C-46.

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

II. Background

[3] The Applicant is a Canadian citizen who is originally from Guyana. He was issued a Canadian passport on September 20, 2016.

[4] On February 23, 2018, as he was about to travel to Guyana, the Applicant was arrested at the Toronto Pearson Airport and charged with three (3) counts of child luring pursuant to paragraphs 172.1(1)(a) and (b) of the *Criminal Code*. He was later released on a Recognizance of Bail. Several conditions were imposed on the Applicant, one of which was to abstain from leaving the province of Quebec.

[5] In March 2018, the Passport Division learned that the Montreal Police Service [SPVM] had initiated an investigation into the Applicant following receipt of a report produced by the National Center for Missing and Exploited Children [NCMEC]. The report showed that two (2) Facebook accounts, linked to the Applicant's Internet Protocol address, were utilized to communicate with three (3) minors from Guyana between September 24, 2017, and February 4, 2018. The messages included offers of gifts for sexual favours and indicated that the Applicant would be back in Guyana on February 26, 2018, and was hoping to see them.

[6] The Passport Division advised the Applicant on March 14, 2018, of its intention to revoke his passport in accordance with paragraphs 9(1)(b) and (d), as well as subsection 10(1) of the *Canadian Passport Order*, and gave him the opportunity to present submissions. The Applicant's passport was revoked on April 16, 2018.

[7] On November 7, 2018, the Applicant pleaded not guilty to all the charges. He was acquitted on April 5, 2019, but was subject to a Recognizance to Keep the Peace under section 810.1 of the *Criminal Code*. Several conditions were imposed upon the Applicant for a one-year period, ending on April 5, 2020. The conditions included that the Applicant:

- Not have any contact, including communicating by any means, with a person under the age of sixteen (16) years;
- Not use or access any social media sites or communicate electronically with any person under the age of eighteen (18);
- Not attend a public park or public swimming area where persons under the age of sixteen (16) years old were present or can reasonably be expected to be present, or a daycare centre, school ground or playground;
- Not communicate, directly or indirectly, with the victims;
- Remain within the province of Quebec, unless written permission to leave that area is obtained by the Court;
- Abstain from seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or be a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of sixteen (16) years old; and

- Provide any detective of the SPVM with his passwords or access codes for all his electronic devices, if they make such request, in order to ensure that he is respecting his conditions.

[8] The Applicant subsequently contacted IRCC to inquire if his passport could be reactivated and was told that he could reapply for passport services if he was not subject to conditions listed in section 9 of the *Canadian Passport Order*. The Applicant submitted a passport application on May 13, 2019.

[9] On July 19, 2019, the Passport Division informed the Applicant that he was the subject of an administrative investigation to determine if administrative measures might be warranted to prevent the commission of any act or omission referred to in subsection 7(4.1) of the *Criminal Code*. The letter further noted that the results of the administrative investigation could affect his entitlement to passport services and that a passport would not be issued in his name pending the completion of the investigation. The Applicant responded on August 20, 2019, insisting upon the fact that he had been acquitted of all charges and did not have a criminal record.

[10] On February 19, 2020, the Passport Division wrote to the Applicant reiterating that paragraph 9(1)(d) and subsection 9(2) of the *Canadian Passport Order* may apply in his case and invited him to file any information that he would like to be considered before a decision was rendered in his file, no later than April 6, 2020. The letter also provided extensive details of what the administrative investigation had revealed thus far. The Applicant was again provided the opportunity to submit information in response.

[11] On March 19, 2020, the Applicant sent a response letter, which included a written statement that he had fully complied with the Court Order under section 810.1 of the *Criminal Code*, a letter from his lawyer stating that he had been acquitted of all counts and did not have a criminal record, as well as a copy of his court docket. The Applicant reiterated that he had been acquitted of all charges and did not have a criminal record. He also believed that the revocation of his passport was premature. The Applicant further indicated that the only reason he had applied for a passport was because of his father's ill health and added he understood the seriousness of the charges. He provided an explanation for the items seized at the airport, indicating that they were gifts for his girlfriend and male friends in Guyana. Finally, he mentioned the losses and the difficulties that have resulted from his ordeal.

[12] By letter dated January 14, 2021, the Applicant was informed that paragraph 9(1)(d) of the *Canadian Passport Order* was no longer in issue, as the period the Applicant had to abide by the conditions of the Recognizance to Keep the Peace had ended, and no new charges had been laid against him.

[13] On August 25, 2021, the Passport Division determined that there were reasonable grounds to believe that the refusal of the Applicant's passport application was necessary to prevent the commission of any act or omission referred to in subsection 7(4.1) of the *Criminal Code*, as per subsection 9(2) of the *Canadian Passport Order*. It also found, pursuant to section 10.2(1) of the *Canadian Passport Order*, that the imposition of a two-year refusal of passport services was required to further the Passport Division's mandate.

[14] In its letter to the Applicant, the Passport Division first observed that the Applicant was given an opportunity to respond during the investigation. It also enumerated all of the information that formed the basis of its decision to refuse the Applicant's passport application. The Passport Division then acknowledged the need to carefully balance the different objectives of its mandate with the severity of the interference on the Applicant's mobility rights protected under section 6 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*. The Passport Division considered several factors, including the Applicant's personal circumstances and submissions. In doing so, it noted that while the Applicant was acquitted of the criminal offences, actions taken by the Passport Division were subject to a lower burden of proof than in criminal proceedings. Furthermore, it noted the Applicant's desire to visit his ailing father abroad and explained the ability to apply for a limited validity passport due to urgent and compelling considerations. After weighing these factors and its mandate against the hardship that a period of refusal of passport services may cause, the Passport Division concluded that the Applicant would not be eligible for regular passport services until August 25, 2023.

[15] The Applicant, who is self-represented, submits that the decision is both unreasonable and unfair. While his memorandum of argument is brief, he essentially argues that his acquittal of the charges does not seem to have any bearing on restoring his passport. He disagrees with the Passport Division's statement regarding the lower burden of proof, which, according to him, implies two (2) levels of justice. He adds that the Passport Division used "that very information which acquitted [him], to deny [him] passport services using lower standards as their basis".

[16] The Applicant also alleges that the decision is unfair because it took two (2) years to be rendered, and he is now facing an additional two (2) years of suspension. The Passport Division's decision actually means that he will have been denied passport services for more than five (5) years since his arrest and the seizure of his passport. The Applicant states that he always maintained his Canadian passport in good standing and that he has travelled extensively without any incident. He repeats his acquittal of all charges.

III. Analysis

A. *Preliminary Matters*

[17] The Respondent argues that the proper responding party is the Attorney General of Canada, as per subsection 303(2) of the *Federal Courts Rules*, SOR/98-106. I agree and, as a result, the style of cause shall be amended to name the Attorney General of Canada as the Respondent (*Elangovan v Canada (Attorney General)*, 2020 FC 882 at para 4 [*Elangovan*]; *Villamil v Canada (Attorney General)*, 2013 FC 686 at para 2).

[18] The Applicant and the Respondent have both included documents in their records that are not in the tribunal record. Generally, new evidence is not admissible on judicial review except if the new evidence: (1) provides general background information that may assist the Court in understanding the issues relevant to the judicial review, but does not add new evidence on the merits; (2) addresses procedural fairness issues; or (3) highlights the complete absence of evidence before the administrative decision maker (*Association of Universities and Colleges of*

Canada v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22 at paras 19-20).

[19] After reviewing the documentation submitted by both parties, I am satisfied that, with the exception of the additional photographs submitted by the Applicant, the evidence is admissible as it merely provides general background information. As for the photographs, there is no evidence in the record before me to support the Applicant's contention that they were sent to the Passport Division prior to the August 2021 decision. That said, I understand that the Applicant is self-represented and that he may not be aware of the rules regarding the admissibility of evidence in judicial review and the law on deficient record. For that reason, I will presume that they were before the Passport Division.

[20] Finally, during the hearing, the Applicant alleged that the conversation in one of the Facebook messages contained in the tribunal record did not reflect the true nature of the conversation. He attempted to corroborate his argument with the photographs he included in his Applicant's record. The Applicant also argued that he did not raise this issue with the Passport Division because he did not see the Facebook messages before the issuance of the August 2021 decision.

[21] The Applicant did not raise this argument in his memorandum of argument before this Court. The Respondent objects to the Applicant raising a new argument at the hearing.

[22] It is a well-established principle that the Court should not entertain new arguments at the hearing unless the situation is exceptional. To do so would prejudice the responding party and could leave the Court without the ability to fully assess the merits of the new argument (*Rouleau-Halpin v Bell Solutions Techniques Inc*, 2021 FC 177 at para 33; *Adewole v Canada (Attorney General)*, 2012 FC 41 at para 15; *Tibilla v Canada (Attorney General)*, 2011 FC 163 at para 36).

[23] While the issue of the alleged non-disclosure of the Facebook messages could possibly give rise to a procedural fairness argument, I am satisfied that, in the circumstances of this case, the Applicant knew the case he had to meet and that he was afforded the opportunity to present his case fairly and fully.

[24] In its letter to the Applicant dated February 19, 2020, the Passport Division provided significant details about the Facebook messages contained in the NCMEC's report, which triggered the SPVM's investigation. The Applicant knew the information upon which the Passport Division was relying and he had a fair opportunity to respond to it.

[25] While one could reasonably assume that the Applicant had access to the Facebook accounts and messages, the Applicant suggested during the hearing that he did not have a copy of the Facebook conversations because they were in the possession of his previous counsel. The Applicant did not elaborate on how his previous counsel obtained a copy, but it is possible that the NCMEC's report was communicated to the Applicant in the course of the criminal proceedings. If indeed the Applicant did not have a copy of the Facebook messages, there is no evidence that he requested such copy from his counsel or from the Passport Division after

receiving the letter dated February 19, 2020. I also note that, despite receiving a copy of the tribunal record containing the Facebook messages, the Applicant did not raise this as an issue in his memorandum of argument.

[26] Upon review of the record and considering the Applicant's submissions, I am satisfied that the Applicant's argument should not be entertained.

B. *Standard of Review*

[27] A decision to refuse passport services is highly fact-based and reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]; *Elangovan* at para 14; *Alsaloussi v Canada (Attorney General)*, 2020 FC 364 at paras 24, 100).

[28] When determining whether a decision is reasonable, the Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The "burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

C. *The Decision is Reasonable*

[29] The authority to refuse or revoke a passport and passport services is set out in sections 9 and 10 of the *Canadian Passport Order*. Pursuant to subsection 9(2) of the *Canadian Passport Order*, the Minister of IRCC may refuse to issue a passport where there are reasonable grounds to believe that the refusal is necessary to prevent the commission of sexual offences against children outside Canada. The Minister may also refuse to provide passport services on the same grounds for a maximum period of ten (10) years pursuant to subsection 10.2(1) of the *Canadian Passport Order*.

[30] More specifically, subsections 9(2) and 10.2(1) of the *Canadian Passport Order* read as follows:

Refusal of Passports and Revocation

9 (2) Without limiting the generality of subsections 4(3) and (4) and for greater certainty, the Minister may refuse to issue a passport if he or she has reasonable grounds to believe that the refusal is necessary to prevent the commission of any act or omission referred to in subsection 7(4.1) of the *Criminal Code*.

...

10.2 (1) If the Minister refuses to issue or revokes a passport, on any grounds other than the one set out in paragraph 9(1)(g), he or she may refuse

Refus de délivrance et révocation

9 (2) Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que le ministre peut refuser de délivrer un passeport s'il a des motifs raisonnables de croire que cela est nécessaire pour prévenir la commission de tout fait visé au paragraphe 7(4.1) du *Code criminel*.

[...]

10.2 (1) Dans le cas où le ministre refuse de délivrer un passeport ou en révoque un pour un motif autre que celui visé à l'alinéa 9(1)g), il peut

on those same grounds to deliver passport services for a maximum period of 10 years.

refuser, pour le même motif, de fournir des services de passeport pendant une période d'au plus dix ans.

[31] Subsection 7(4.1) and paragraphs 172.1(1)(a) and (b) of the *Criminal Code* state:

Offence in relation to sexual offences against children

7 (4.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153 or 155, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1, 172.2 or 173 or subsection 286.1(2) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a *permanent resident* within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

...

Luring a child

172.1 (1) Every person commits an offence who, by a means of telecommunication, communicates with

(a) a person who is, or who the accused believes is, under the age of 18 years, for the

Infraction relative aux infractions d'ordre sexuel impliquant des enfants

7 (4.1) Malgré les autres dispositions de la présente loi ou toute autre loi, le citoyen canadien ou le *résident permanent* au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* qui, à l'étranger, est l'auteur d'un fait – acte ou omission – qui, s'il était commis au Canada, constituerait une infraction aux articles 151, 152, 153 ou 155, aux paragraphes 160(2) ou (3), aux articles 163.1, 170, 171, 171.1, 172.1, 172.2 ou 173 ou au paragraphe 286.1(2) est réputé l'avoir commis au Canada.

[...]

Leurre

172.1 (1) Commet une infraction quiconque communique par un moyen de télécommunication avec :

a) une personne âgée de moins de dix-huit ans ou qu'il croit telle, en vue de faciliter

purpose of facilitating the commission of an offence with respect to that person under subsection 153(1), section 155, 163.1, 170, 171 or 279.011 or subsection 279.02(2), 279.03(2), 286.1(2), 286.2(2) or 286.3(2);

la perpétration à son égard d'une infraction visée au paragraphe 153(1), aux articles 155, 163.1, 170, 171 ou 279.011 ou aux paragraphes 279.02(2), 279.03(2), 286.1(2), 286.2(2) ou 286.3(2);

(b) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or

b) une personne âgée de moins de seize ans ou qu'il croit telle, en vue de faciliter la perpétration à son égard d'une infraction visée aux articles 151 ou 152, aux paragraphes 160(3) ou 173(2) ou aux articles 271, 272, 273 ou 280;

[Emphasis added.]

[32] As noted above, the Applicant contends that passport services should be restored to him since he was acquitted of all charges and does not have a criminal record. In his view, the lower burden of proof means that there are “two levels of justice”.

[33] I am not persuaded by the Applicant's argument.

[34] The decision to refuse or revoke a passport or passport services is an administrative decision. It is based on actions taken and information gathered by the Passport Division, an administrative body, and its investigations are administrative in nature. The investigations are not criminal proceedings and do not require the evidentiary standard of proof beyond a reasonable doubt.

[35] Decisions taken pursuant to subsection 9(2) of the *Canadian Passport Order* are subject to the “reasonable grounds to believe” standard. Unlike the criminal threshold of “beyond a reasonable doubt”, the “reasonable grounds to believe” threshold is a low one. It requires more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities. Reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paras 114, 116-117; *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at para 89; *Ghahraman-Ebrahimi v Canada (Attorney General)*, 2020 FC 746 at paras 44, 49 [*Ghahraman-Ebrahimi*]).

[36] While this Court has considered the standard of “reasonable grounds to believe” in the context of the *Immigration and Refugee Protection Act*, SC 2001, c 27, it does not appear to have been examined in the context of subsection 9(2) of the *Canadian Passport Order*. However, this Court has examined it in the context of paragraph 10(2)(b) of the *Canadian Passport Order*, and found that a conviction was not required (*Ghahraman-Ebrahimi* at para 49).

[37] In this case, the Passport Division reasonably found that the information gathered during its investigation was sufficiently probative to constitute reasonable grounds to believe that the refusal of the Applicant’s passport application and passport services for a two-year period was necessary to prevent the commission of any act or omission referred to in subsection 7(4.1) of the *Criminal Code*.

[38] The Passport Division notably took into consideration: (1) the factual information gathered during the investigation; (2) the details of the Facebook correspondence with the three (3) minors; (3) the Applicant’s travel history; (4) the objects seized from his house and the

personal items that were found on him at the time of the arrest, which corresponded to the Facebook conversations; and (5) the Applicant's criminal proceedings, including the fact that he pled not guilty and was ultimately acquitted. The Passport Division also considered the Recognizance to Keep the Peace signed by the Applicant and the fact that it expired on April 5, 2020. More importantly, the Passport Division took into account the fact that, despite the Applicant's acquittal, the judge assigned to the Applicant's criminal case imposed several conditions upon the Applicant to prevent interactions with minors. The Passport Division could reasonably attribute weight to the existence and the substance of these conditions, which clearly indicated that the Applicant posed a risk to minors.

[39] Recognizing that the refusal of passport services infringes an individual's mobility rights protected under subsection 6(1) of the *Charter*, the Passport Division considered the objectives of the passport program. In addition to protecting the security, value and integrity of Canadian passports, the Passport Division noted Canada's commitment to the protection of children and the need to prevent sexual offences against children outside Canada. The Passport Division also considered the Applicant's specific circumstances, including the Applicant's acquittal and absence of a criminal record, the losses he sustained because of the criminal charges and his wish to visit his ailing father and other family members abroad. In addition, it acknowledged the hardship associated with the Applicant's inability to travel but noted the possibility to apply for a limited validity passport based on urgent, compelling and compassionate considerations.

[40] Along with these positive elements, the Passport Division considered aggravating factors, particularly the Applicant's lack of remorse and accountability and his admission, during the criminal proceeding on April 5, 2019, that the minors had reasonable grounds to fear for their safety. The Passport Division noted that this raised concerns regarding the possibility of

recurrence if the Applicant were to be permitted to travel. The Passport Division further noted, with respect to the gifts found by the police, that the Applicant had not provided any documentation to support the fact that he had a serious girlfriend in Guyana. Similarly, it considered the likelihood of the Applicant returning to Guyana given the strong ties he held there. After weighing the various elements related to the Applicant's case, as well as the mandate of the Passport Division, it concluded that a two-year period of refusal of passport services in the Applicant's name was reasonable.

[41] The Applicant argues that the two-year suspension means that he will have been denied passport services for a period of approximately five (5) years.

[42] In *Abaida v Canada (Attorney General)*, 2018 FC 490, the Court explained its role when reviewing such decision on judicial review:

[50] The function of this Court is not to determine what the appropriate period of suspension ought to have been in any particular case. Rather, it is to assess whether a particular suspension that has been imposed is unreasonable, having regard to the requirement that the suspension decision reflect a proportionate balancing of the values protected by s. 6 of the *Charter* and the objectives of Canada's passport program: *Doré*, above, at para 57; *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12, at para 37.

[43] Upon review of the record and considering the facts of this case, I am not persuaded that the decision to suspend passport services to the Applicant for a two-year period interferes more than it is necessary with the Applicant's rights under section 6 of the *Charter*. The lack of remorse and accountability and the Applicant's own admission regarding the risk incurred by the minors were clearly aggravating factors for the Passport Division.

[44] In summary, I am satisfied that the Passport Division's decision to refuse a passport and passport services for a two-year period is sufficiently justified, transparent and intelligible.

[45] The Applicant requested that no costs should be awarded. At the hearing, the Respondent stated that it did not seek any costs in this application. Therefore, no costs are awarded.

JUDGMENT in T-1411-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The style of cause is amended to reflect the Attorney General of Canada as the Respondent; and
3. No costs are awarded.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1411-21

STYLE OF CAUSE: SE-BHARAT SINGH v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 21 2022

JUDGMENT AND REASONS: ROUSSEL J.

DATED: MARCH 4, 2022

APPEARANCES:

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(ON HIS OWN BEHALF)

Andrea Shahin

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT