

Federal Court



Cour fédérale

**Date: 20250131**

**Docket: T-492-23**

**Citation: 2025 FC 209**

**Toronto, Ontario, January 31, 2025**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**AIMAN HATOUM**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision by the Passport Entitlement and Investigations Division [PEID] of Immigration, Refugees and Citizenship Canada dated February 24, 2023 [the Decision].

[2] In the Decision, the PEID found that there were reasonable grounds to believe the Applicant permitted his relative [the Relative] to use the Applicant's Canadian passport to enter

Canada without authorization. The PEID also found the Applicant provided false or misleading information when applying for a second passport. As such, the PEID revoked both passports pursuant to the *Canadian Passport Order*, SI/81-86 [CPO].

[3] In addition to revoking the Applicant's passports, the PEID exercised its discretion under subsection 10.2(1) of the CPO to refuse passport services to the Applicant for a period of five years from the date of the alleged misuse of the first passport, October 10, 2021.

[4] As explained in further detail below, this application for judicial review is allowed, because the Applicant has established that a material component of the Decision lacks intelligibility and is therefore unreasonable.

## II. Background

[5] The Applicant is a citizen of Canada and Syria. In November 2015, he was issued a Canadian passport with the number HD654408 [the First Passport].

[6] In October 2021, the Applicant submitted a passport application [the Application] at the Embassy of Canada in Beirut, Lebanon [the Beirut Embassy]. The Applicant included a signed declaration (form PPTC 203), dated October 12, 2021, reporting the First Passport as stolen on October 10, 2021 [the Declaration] and stating the following:

My passport and other needed documents were in a small bag that was stolen from me while I was asleep. I came from Syria to go to Beirut airport. I visited a rental place in Baisour in Lebanon on the way to relax before my flight to Canada as I was so early and so tired. I woke up to the disappearance [*sic*] of the host and my bag...I searched everywhere. I tried to get hold of **[first name of Relative]**, the host. I went to your embassy but you were closed. I

sent you an email asking for guidance [sic]. I asked someone for help and I sent him to a police station to report it as lost and ask if they found it. Police won't report it unless I go to their station...I was given 24 hours to leave Lebanon at the entry at the Syrian border. That time has expired. I am afraid they may depart [sic] me back to Syria where is no Canadian embassy.

[7] I note that, in the interests of preserving the privacy of the Relative, who is pursuing a refugee claim in Canada, these Reasons will employ the term [name of Relative] or [first name of Relative], rather than stating the Relative's name. Also, because the point is relevant to one of the Respondent's arguments in this application, I note that, while the excerpt from the Declaration cited immediately above included the first name of the Relative, the Declaration did not identify that individual as being related to the Applicant.

[8] The Applicant states that he was unable to report the theft of the First Passport until October 13, 2021, because the Beirut Embassy was closed on October 10 and 11, and on October 12, he was assigned an appointment at the Beirut Embassy for October 13. The Applicant was subsequently issued a Canadian passport with the number AR482304 [the Second Passport] at the Beirut Embassy on October 25, 2021.

[9] The PEID later learned that the Lebanese authorities had detained the Applicant on November 3, 2021, for investigative purposes after receiving information that the Relative had used the First Passport to travel to Canada on October 10, 2021, and that the Applicant used the Second Passport to enter Canada on November 20, 2021. The PEID began to investigate the Applicant.

[10] The Relative submitted a refugee claim on November 23, 2021, declaring the Applicant as his representative and relative and identifying his residential information and phone number to be the same as that of the Applicant.

[11] On or around December 23, 2021, the Applicant returned the Second Passport to a passport issuing office in London, Ontario, stating that the Second Passport contained an error as to his place of birth, and applied for a gratis replacement passport. The PEID subsequently sent the Applicant a letter dated January 6, 2022, informing him that his application was under review by the PEID.

[12] In the course of the ensuing investigation, the Applicant asserted that the Relative had stolen the First Passport and used it to enter Canada without the Applicant's knowledge. The Relative has corroborated this assertion.

### III. **Decision under Review**

[13] In the Decision that is the subject of this application for judicial review, the PEID found there were reasonable grounds to believe the Applicant permitted the Relative to use the First Passport to enter Canada without authorization. The PEID also found the Applicant provided false or misleading information when applying for the Second Passport. As such, the PEID revoked the First Passport and the Second Passport [together, the Passports] under paragraphs 10(2)(c) and 10(2)(d) of the CPO, respectively, and refused the Applicant passport services for five years from the date of misuse of the First Passport, October 10, 2021.

[14] In arriving at this result, the PEID first noted facts that it considered relevant to its determination, including facts derived from inquiries of the Immigration and Refugee Board of Canada about the Relative's refugee claim. The PEID then identified in a number of paragraphs its resulting analysis and conclusions. As those paragraphs of the Decision are fundamental to identifying the reasoning underlying the PEID's revocation of the Passports, it is useful to set out those paragraphs in full:

Subsequently, upon further review of Passport Program's records revealed that the address history in Canada and telephone number provided by **[first name of Relative]** in their refugee claim submission appear to be consistent with the information you provided in the passport application submitted for Canadian passport number AR482304 at the Embassy of Canada in Beirut and in the passport application for the gratis passport replacement issued in London. It is more probable than not that this information, given the level of details may have been provided to **[first name of Relative]**.

After reviewing the entry and exit stamps in both passport numbers HD654408 and AR482304, there were discrepancies in the storyline of your travel history and the context relating to how and where passport number HD654408 was lost or stolen.

In the form PPTC 203, you advised that you came from Syria to go to Beirut airport, that you visited a rental place in Baisour, Lebanon, to relax before your flight to Canada and that you woke up to the disappearance of the host and your bag. You stated that you searched everywhere and that you tried to get a hold of **[first name of Relative]**, the host, and in your email correspondence dated April 12, 2022, you indicated that **[first name of Relative]** stole your passport.

A review of the stamps in passport number HD654408 indicated that you entered Lebanon and the Syrian Arab Republic on June 22, 2021, and that you exited the Syrian Arab Republic, on October 9, 2021, and entered Lebanon, the same day. As stated in our letter, further verifications were conducted and no entries were found into Canada, in your name, between June and October 2021. Further while reviewing the information provided by CBSA and IRB and the entry/exit stamps in Canadian passport number HD654408 it appears that you and **[name of Relative]** were both in Syria on or around the same time before entering Lebanon.

You were still abroad and **[name of Relative]** travelled to Canada, using Canadian passport number HD654408, issued in your name, and then stated they are residing at your address upon their arrival, while you were abroad.

Please note that **[name of Relative]** used Canadian passport number HD654408 and the passport was not reported lost or stolen until after the fact.

[15] Following this analysis, the PEID stated its conclusion that there were reasonable grounds to believe the Applicant had permitted the Relative to use the First Passport to enter Canada without authorization, as well as finding that the Applicant had provided false or misleading information when applying for the Second Passport.

[16] The PEID then considered whether to exercise its discretion to refuse passport services to the Applicant. The PEID acknowledged that refusing passport services would infringe the Applicant's mobility rights under section 6 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*, such that, in making the decision, it must balance the objectives of the PEID's mandate against the infringement on the Applicant's *Charter* rights.

[17] The PEID summarized the objectives of the Passport Program as facilitating the international travel of Canadians through rigorous processes of authentication of identity and entitlement determination and undertaking activities to safeguard the security, value and integrity of Canadian passports while contributing to international security. The PEID contributes to this objective by conducting administrative investigations into cases of suspected entitlement fraud, identity fraud and passport misuse, as these matters may have serious impacts on the integrity of

the passport issuing process, which in turn may tarnish the reputation that Canadian travel documents benefit from in the international community.

[18] The PEID then listed the factors it considered in reaching its decision whether to refuse passport services to the Applicant, including placing significant weight on the determination it had made that the Applicant had permitted the Relative to use the First Passport to unlawfully enter Canada. Ultimately, the PEID found that, after weighing all the factors it had considered, its mandate, and potential hardship to the Applicant, refusing the Applicant passport services for five years was reasonable.

#### IV. Legislative Framework

[19] The CPO states that a passport always remains the property of the Canadian government (s 3(c)).

[20] The power of the Minister of Citizenship and Immigration [the Minister] to revoke a passport is set out in the CPO as follows:

**10 (1)** Without limiting the generality of subsections 4(3) and (4) and for the greater certainty, the Minister may revoke a passport on the same grounds on which he or she may refuse to issue a passport.

**(2)** In addition, the Minister may revoke the passport of a person who:

**(a)** being outside Canada, stands charged in a foreign country or state with the commission of any offence that would constitute an indictable offence if committed in Canada;

**10 (1)** Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que le ministre peut révoquer un passeport pour les mêmes motifs que ceux qu'il invoque pour refuser d'en délivrer un.

**(2)** Il peut en outre révoquer le passeport de la personne:

**a)** qui, étant en dehors du Canada, est accusée dans un pays ou État étranger d'avoir commis une infraction qui constituerait un acte criminel si elle était commise au Canada;

(b) the Minister has reasonable grounds to believe uses the passport in committing an indictable offence in Canada or any offence in a foreign country or state that would constitute an indictable offence if committed in Canada;

(c) the Minister has reasonable grounds to believe permits another person to use the passport;

(d) has obtained the passport by means of false or misleading information; or

(e) has ceased to be a Canadian citizen.

b) s'il a des motifs raisonnables de croire qu'elle utilise le passeport pour commettre un acte criminel au Canada, ou pour commettre, dans un pays ou État étranger, une infraction qui constituerait un acte criminel si elle était commise au Canada;

c) s'il a des motifs raisonnables de croire qu'elle permet à une autre personne de se servir du passeport;

d) qui a obtenu le passeport au moyen de renseignements faux ou trompeurs;

e) qui n'est plus citoyen canadien

[21] If the Minister revokes a passport on any of those grounds, subsection 10.2(1) of the CPO allows the Minister to refuse passport services on those same grounds for a maximum period of 10 years.

[22] The PEID is empowered to make decisions regarding the revocation of passports on behalf of the Minister.

## V. Issues

[23] The Applicant's arguments raise the following issues for the Court's determination:

- a. Is the Decision reasonable (as to both the decision to revoke the Passports and the decision to refuse the Applicant passport services for a period of five years)?
- b. Did the PEID afford the Applicant the required procedural fairness in reaching the Decision?
- c. What is the appropriate remedy, if any?



[24] The standard of review for the fairness issue is correctness, or akin to correctness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, leave to appeal to SCC refused, 39522 (5 August 2021)). Put otherwise, the Court is required to assess whether the procedure followed was fair having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The reasonableness standard applies to the Court's review of the merits of the Decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16–17).

[25] The Respondent also raises a preliminary issue regarding the style of cause, submitting that the named Respondent should be the Attorney General of Canada rather than Immigration, Refugees and Citizenship Canada.

## VI. Analysis

### A. *Preliminary Issue*

[26] The Applicant's Notice of Application names Immigration, Refugees and Citizenship Canada as the Respondent in this matter. In its written submissions, the Respondent argues that the correct Respondent is the Attorney General of Canada. In the Applicant's reply written submissions, he opposes this position, arguing that the name of the Respondent should not be changed, because the Decision under review was made on behalf of the Minister.

[27] While this is purely a technical point, which does not affect the outcome or effect of my decision, I agree with the Respondent. Rule 303(2) of the *Federal Courts Rules*, SOR/98-106,

states that the Attorney General of Canada should be named as a respondent where there are no persons that can be named as respondent under Rule 303(1), *i.e.*, a person who is directly affected by the order sought, other than a tribunal in respect of which an application for judicial review is brought, or a person who is required to be named under the statute by which the application is brought. Following Rule 303(2), the Attorney General of Canada is the properly named respondent in this case (see, for example, *Volkov v Canada (Attorney General)*, 2015 FC 41 at paras 1, 7, involving an application for judicial review of a decision by the Chief Investigator of the Passport Program to refuse to issue a limited-validity travel document).

[28] My Judgment will therefore effect this change to the style of cause.

B. *Is the Decision reasonable (as to both the decision to revoke the Passports and the decision to refuse the Applicant passport services for a period of five years)?*

[29] My decision to allow this application for judicial review turns on the Applicant's submissions challenging the reasonableness of the Decision.

[30] The Applicant takes issue with the following paragraph of the Decision (as cited earlier in these Reasons) that contributed to the PEID's decision to revoke the Passports:

After reviewing the entry and exit stamps in both passport numbers HD654408 and AR482304, there were discrepancies in the storyline of your travel history and the context relating to how and where passport number HD654408 was lost or stolen.

[31] The Applicant argues that the stamps in the Passports do not demonstrate any discrepancies in his narrative as to his travels and the theft of the First Passport. He suggests that

the PEID confused stamps in the First Passport related to his entry into and exit from Lebanon in October 2020 with other stamps related to such entry and exit in October 2021 (the month of the events giving rise to this application) and therefore developed concern that the period of time the Applicant was in Lebanon did not match his narrative.

[32] The Respondent submits that there is nothing in the record to indicate that the PEID was mistakenly relying on the October 2020 stamps as the Applicant suggests. I agree with the Respondent's submission, as the relevant paragraph of the Decision does not identify the particular entry and exit stamps to which the PEID is referring. However, therein lies the difficulty with this component of the Decision. The Decision identifies neither the particular stamps to which it is referring nor the resulting discrepancies in the Applicant's narrative that were of concern to the PEID.

[33] At the hearing of this application, the Respondent argued that, while the language of the above-cited paragraph was perhaps not as precise as it could be, the referenced discrepancies were those set out in the paragraphs that followed. In particular, referencing one of those paragraphs, the Respondent argued that the stamps in the First Passport from October 2021 showed the Applicant leaving Lebanon for Canada on October 10, 2021, when in fact he was still in Lebanon.

[34] I have difficulty interpreting the Decision in this matter. As the Applicant noted in reply to the Respondent's argument, it has never been disputed that he remained in Lebanon following October 10, 2021 (when the First Passport disappeared) and that it was the Relative who used the

First Passport to leave Lebanon and enter Canada on that date. Therefore, it would not be intelligible to interpret the Decision as identifying these facts as demonstrating a discrepancy in the Applicant's narrative.

[35] Nor do the other ensuing paragraphs of the Decision particularly assist. Those paragraphs identify the Applicant's statements in the Declaration, his subsequent explanation that it was the Relative who had stolen the First Passport, the period of time he spent in Syria before entering Lebanon on October 9, 2021, information that the Relative had been in Syria during the same time, and the fact that the Applicant had not reported the First Passport stolen after the Relative had already used it to enter Canada on October 10, 2021. However, the Court is not able to identify how any of these facts represent discrepancies in relation to the Applicant's narrative.

[36] In both written and oral submissions, the Respondent emphasized the Applicant's statements in the Declaration that the First Passport was stolen from a "rental place" in Lebanon and that the theft coincided with the disappearance of his "host", the first name of whom the Applicant included, all without identifying that the host at the rental was a relative. The Respondent argues that the fact the First Passport had apparently been stolen by a relative was a particularly relevant detail and that its omission from the Declaration supports a conclusion that the Applicant was not being truthful in his communications with the Passport Program.

[37] I accept the logic of the Respondent's argument surrounding the omission of this detail from the Declaration. However, it is not apparent from the Decision that this logic forms part of the PEID's reasoning. As *Vavilov* explains, reasonableness review is concerned with the

justification for an administrative decision that is actually provided by the decision-maker (at para 96).

[38] Several of the Applicant's submissions in relation to other findings in the Decision arguably ask the Court to examine the PEID's weighing of the evidence, which is not the Court's role in judicial review. However, I find his argument surrounding the passport stamps and resulting discrepancies in his narrative to be compelling, and the Court cannot be certain that the PEID would have weighed the evidence in the same manner and arrived at the same findings, had it not determined based on the objective evidence of the entry and exit stamps that there were discrepancies in his narrative. As that determination is not intelligible, the PEID's conclusions that there were reasonable grounds to believe that the Applicant had permitted the Relative to use the First Passport to unlawfully enter Canada and that the Applicant had provided false or misleading information leading to the issuance of the Second Passport, and the resulting decision to revoke the Passports, are unreasonable.

[39] The PEID in turn assigned significant weight to those conclusions in determining that that it was reasonable to impose a five-year refusal of passport services. Moreover, the CPO authorizes the PEID to impose a period of refusal of passport services only where a passport has been refused or revoked (CPO, s 10.2(1)). As such, the refusal of services is also unreasonable, and the Decision as a whole must be set aside.

C. *Did the PEID afford the Applicant the required procedural fairness in reaching the Decision?*

[40] In addition to challenging the reasonableness of the Decision, the Applicant also advances arguments challenging the fairness and length of the process followed by the PEID. However, as I found the Decision to be unreasonable, my Judgment will set the Decision aside and (as will be explained in the next portion of these Reasons) will return the matter to a differently constituted panel of the PEID for redetermination. It is therefore unnecessary, and would serve no particular benefit, for the Court to adjudicate the Applicant's fairness arguments related to the process followed by the PEID.

D. *What is the appropriate remedy, if any?*

[41] I note that, in his written submissions, the Applicant asks the Court to: (a) order the issuance of a passport; and (b) grant various requests for compensation.

[42] *Vavilov* provides guidance as to how the Court should select the appropriate remedy when it finds an administrative decision to be unreasonable (at paras 140–142):

140. Where the reasonableness standard is applied in conducting a judicial review, the choice of remedy must be guided by the rationale for applying that standard to begin with, including the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide: see *Delta Air Lines*, at para. 31. However, the question of remedy must also be guided by concerns related to the proper administration of the justice system, the need to ensure access to justice and “the goal of expedient and cost-efficient decision making, which often motivates the creation of specialized administrative tribunals in the first place”: *Alberta Teachers*, at para. 55.

141. Giving effect to these principles in the remedial context means that where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court's

reasons. In reconsidering its decision, the decision maker may arrive at the same, or a different, outcome: see *Delta Air Lines*, at paras. 30-31.

142. However, while courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, 459 N.R. 167, at paras. 18-19. An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose: see *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, at pp. 228-30; *Renaud v. Quebec (Commission des affaires sociales)*, [1999] 3 S.C.R. 855; *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 S.C.R. 772, at para. 161; *Sharif v. Canada (Attorney General)*, 2018 FCA 205, 50 C.R. (7th) 1, at paras. 53-54; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175, at paras. 51-56 and 84; *Gehl v. Canada (Attorney General)*, 2017 ONCA 319, 138 O.R. (3d) 52, at paras. 54 and 88. Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed: see *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6, at paras. 45-51; *Alberta Teachers*, at para. 55.

[43] Consistent with this guidance, the general rule is that a successful application for judicial review results in the Court quashing the administrative decision and returning the matter to the administrative decision-maker to be redetermined, rather than the Court deciding the question that Parliament has entrusted to the administrative decision-maker. As *Vavilov* notes, there are

limited circumstances where it can be appropriate for the Court to decide the relevant question. However, those circumstances do not apply in the case at hand.

[44] As such, my Judgment will refer the matter back to a differently constituted panel of the PEID to be re-determined.

[45] In the Applicant's second request, he seeks various categories of compensation, amounting to a claim for an award of damages related to costs or losses he incurred in the course of the PEID's process. It is trite law that damages are not available in an application for judicial review (*Brake v Canada (Attorney General)*, 2019 FCA 274 at para 26).

[46] However, one of the claimed categories seeks fees paid to the Court, costs to prepare for this application, and losses resulting from taking a day off work to attend the hearing. This category amounts to a claim for costs of this application itself, which are within the Court's jurisdiction to award. The Respondent does not claim costs in the event of its own success, and it argues that costs should not be awarded to the Applicant in the event of his success.

[47] As the Applicant has prevailed in this application, it is appropriate that he receive an award of costs. Although the Court has no evidence of out-of-pocket costs incurred by the Applicant, it is apparent from the Court file that he incurred Court filing costs of \$50 in connection with his Notice of Application and \$50 in connection with his Requisition for Hearing. As such, my Judgment will award the Applicant costs of \$100.



**JUDGMENT IN T-492-23**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause in this application is amended as above to name the Attorney General of Canada as the sole Respondent.
2. This application is allowed, the Decision is set aside, and the matter is returned to a differently constituted panel of the Passport Entitlement and Investigations Division of Immigration, Refugees and Citizenship Canada for redetermination.
3. The Applicant is awarded costs of this application in the amount of \$100.

"Richard F. Southcott"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-492-23

**STYLE OF CAUSE:** AIMAN HATOUM v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 29, 2025

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** JANUARY 31, 2025

**APPEARANCES:**

Aiman Hatoum

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(ON THEIR OWN BEHALF)

Nadine Silverman

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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Toronto, Ontario

FOR THE RESPONDENT