Federal Court  Cour fédérale

Date: 20140117

Dockets: T-1379-12
T-1380-12

Citation: 2014 FC 48

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 17, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JACQUES EASTWOOD LÉONARD SAINT-VIL

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applications for judicial review filed by Jacques Eastwood Léonard Saint-Vil, the applicant, were heard on December 17 after some problems arose. In fact, the cases were to be the subject of a hearing on October 15, but had to be adjourned because counsel for the applicant stated that he could no longer act in the matter. I granted his motion to be removed, under Rule 125 of the *Federal Courts Rules*, SOR/98-106, on November 13.

[2] With some delays, largely attributable to weather, the applicant appeared in person in Toronto on December 17 to make his submissions.

[3] Two applications for judicial review are before the Court. Docket T-1379-12 involves a decision dated January 26, 2012, in which Passport Canada refused to issue a passport and ordered a five-year period of refusal of passport services starting on May 8, 2009.

[4] The second decision, docket T-1380-12, involves the refusal to issue the applicant a passport for urgent, compelling and compassionate reasons. In that case, the applicant wished to obtain a passport to allow him to participate in certain professional activities in the Luanda Jazz Festival in 2012. He filed an application in that respect on July 5, 2012, and it was refused.

[5] That proceeding can be disposed of quickly. In fact, the application for judicial review is now moot. The Court cannot order a remedy that will have any effect because the said Jazz Festival took place and is finished. On these grounds, the matter is closed and I do not see why legal resources should be devoted to assessing an issue that is now moot. The decision in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 applies.

[6] During the hearing of this matter on December 17, the applicant did not object when the respondent made him realize that his application is moot. It is entirely to his credit. Like I indicated at the hearing itself, even without that concession, I would not have been prepared to further assess the matter given that it is now completely moot.

[7] This therefore brings is to docket T-1379-12, which concerns the decision dated January 26, 2012, to refuse to issue a passport to the applicant and to impose the five-year period to which I already referred.

[8] The facts are important. The applicant applied for a passport on May 8, 2009. The applicant filed that application on an urgent basis, indicating that he required a passport to attend his father's funeral in Paris. That was false. Instead, he wished to go to Paris for his work.

[9] Furthermore, he stated in that application that that was his first passport application. However, Passport Canada verified this and found that a passport had been issued in the name of Jacques Eastwood Léonard Saint-Vil. It seemed that the passport had been issued on July 16, 2004, and that the Canadian authorities had been notified that it had been seized by the Nigerian authorities around October 12, 2004. There is no doubt, at least for the purposes of this matter, that specific information about Mr. Léonard Saint-Vil had been used to obtain that passport, but that the photo appearing in it did not match his photo. The issuance of that passport led to an investigation. In trying to explain the use of certain identity documents, the applicant stated that he had misplaced certain identity documents over two periods of incarceration, that is, in 2002 and 2003 and in 2007 and 2008.

[10] At that time, the applicant also stated that his application for the purposes of attending his father's funeral was false. Charges were thus brought against him under paragraph 57(2)(*b*) of the *Criminal Code* on April 28, 2010. He pleaded guilty and was fined $1,000, which he paid.

[11] That situation had consequences for the applicant. He was obviously refused the issuance of a passport further to his application dated May 8, 2009. First, he was criticized for not being truthful about it being his first passport application because he was blamed for the issuance of a passport in 2004 in his name using his identity documents but not a photo resembling him. Finally, he was refused the passport pursuant to his conviction under section 57 of the *Criminal Code*.

[12] The two paragraphs of the *Canadian Passport Order*, SI/81-86, that are relevant in this case read as follows:

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	**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*) 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;	*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;
(*e*) has been convicted of an offence under section 57 of the *Criminal Code* or has been convicted in a foreign state of an offence that would, if committed in Canada, constitute an offence under section 57 of the *Criminal Code*;	*e*) a été déclaré coupable d'une infraction prévue à l'article 57 du *Code criminel* ou, à l'étranger, d'une infraction qui constituerait une telle infraction si elle avait été commise au Canada;

[13] Passport Canada was satisfied that the first passport issued could not have been issued unbeknownst to the applicant. His Quebec health system identity card and a birth certificate

issued on August 2, 1999, were indeed used and the applicant was unable to provide a valid explanation as to how that could have happened. Regarding the second reason, the guilty plea for the offence committed is sufficient for the refusal to issue the said passport.

[14] Above all, it is the period of refusal of passport services imposed on the applicant that he objects to the most. That period of refusal of passport services was established at five years starting from the passport application dated May 8, 2009, for the offence under paragraph 9(*a*), and at four years for the guilty plea so as to acknowledge that the applicant admitted that he did not have the urgent grounds that he had raised and chose to plead guilty to the offence. That period would only be imposed starting on September 11, 2009, the date on which the admission was made. Because those periods are applied concurrently, it is obviously the five-year period starting on May 8, 2009, that applies. The applicant submits that that period is unfair.

[15] Passport Canada claims that the sanction was considerably reduced with respect to the recommendations made during the investigation. Indeed, at that time, it was suggested that the starting date for the period of refusal of services be January 19, 2011, because the guilty plea was entered on that date. If that were the date chosen, the period would have finished on January 19, 2016, instead of May 9, 2014.

[16] During the hearing, the applicant essentially put himself at the mercy of the Court. He acknowledged his errors, but needs a passport to resume his professional activities. Clearly, and despite the quality of his plea, an otherwise valid decision cannot be overturned simply because the applicant pleads sympathy. The decision is not unreasonable or unjust.

[17] The written arguments that were submitted in support of the judicial review were a lot more considerable. However, they came up against a significant problem. Applications for judicial review must indeed be filed within 30 days of the decision to be reviewed. In this case, the application was filed four months later. The reasons for that are far from convincing. Since it has been difficult to hold a hearing in this matter because the applicant is often very hard to reach, he became the author of his own misfortune and his inability to meet his obligations arises essentially from his own practices. Like he candidly acknowledged at the hearing, he is often the cause of his own misfortune. On that basis alone, I would have been prepared to dismiss the judicial review in docket T-1379-12.

[18] However, I chose to briefly examine the arguments that were raised to ensure that their quality is not sufficient to overturn the decision.

[19] The applicant argued that a hearing before Passport Canada was necessary and that he was deprived of one. That argument has already been examined by my colleagues, Justice Hughes and Justice Gleason, in *Sathasivam v The Attorney General of Canada*, 2013 FC 419 and *Slaeman v The Attorney General of Canada*, 2012 FC 641 (*Slaeman*). In both cases, my colleagues did not hesitate to state that such hearings were not required and I agree with them. The applicant was perfectly able to make his complaints because he was informed of the quality of the allegations against him and of the details under review. That was sufficient in this case. Justice Gleason stated the following at paragraph 38:

> There is ample authority from other context, where the interests concerned are important but do not concern the life or liberty of

> individuals, to support the notion that the requirements of natural justice are met if the investigator provides a summary of the material facts that are relevant to the determination to be made.

[20] The applicant also complained that the calculation of the period of refusal of services was arbitrary in that its starting date does not seem to be fixed anywhere. It is difficult to understand why the applicant is complaining because he benefitted from the earliest start date for the five-year period of refusal of passport services. Justice Zinn stated the following in *Mikhail v Canada (Attorney General)*, [2013] FCJ No 788 (QL), at paragraph 28:

> The period of suspension of services is a matter entirely within the discretion of the adjudicator.

[21] Regarding the length of the five-year period, Justice Gleason stated the following in *Slaeman*, above, at paragraph 49:

> The imposition of the penalty is a highly discretionary element of the decision, and its length is certainly within the range of possible, acceptable outcomes (and coincides with the length of penalties in other cases that have been upheld by this Court such as in *Okhionkpanmwonyi v Canada*, 2011 FC 1129).

[22] There is no question that the integrity of the Canadian passport is an essential consideration and that periods of suspension must reflect the importance of ensuring that the Canadian passport is considered authentic everywhere in the world.

[23] To the extent that the applicant made a false statement in applying for his passport in May 2009 and considering that his involvement in the issuance of a passport in 2004 was deemed not innocent, a five-year suspension period certainly seems reasonable.

[24] Finally, the applicant's written submissions included general allegations regarding the application of the *Canadian Charter of Rights and Freedoms* (Charter) on this issue. Unfortunately, his arguments were generic in nature when he referred to two decisions, that is, *Kamel v Canada (Attorney General)*, 2009 FCA 21, [2009] 4 FCR 449 (*Kamel*) and *Abdelrazik v Canada (Minister of Foreign Affairs)*, 2009 FC 580, [2010] 1 FCR 267 (*Abdelrazik*).

[25] Those matters support the proposal that the Charter can apply in passport issuance matters. But that is not the matter here. A description of what constitutes the constitutional infringement in this case was necessary. The issue in *Kamel* was the constitutionality of subsection 10(1) of the *Canadian Passport Order*, which is not the case here. The matter in *Abdelrazik* was the Minister of Foreign Affairs' decision to not issue a passport for reasons of national security in the case of an individual who wanted to be repatriated to the country. In both cases, the applicants satisfied the conditions for the issuance of a passport, which was otherwise refused. In our case, the applicant was refused a passport not despite meeting the conditions, but because he did not meet them.

[26] I agree with the respondent's argument that asking Canadian citizens to provide honest information and to not commit offences with respect to their passport (section 57 of the *Criminal Code*) constitutes obligations that cannot be said to breach section 6 of the Charter.

[27] In the absence of a well structured argument, given that the applicant, who is no longer represented by counsel, never mentioned a constitutional argument, I prefer to refrain from any further comments.

[28] Thus, the two applications for judicial review must be dismissed. Regarding docket T-1380-12, the issue is moot and for this reason alone the application for judicial review is dismissed. Regarding docket T-1379-12, the application for judicial review was filed late, but, despite that, my assessment of the written arguments led me to find that those arguments would not have been successful. Thus, for both procedural and substantive reasons, the application for judicial review must be dismissed.

[29] The morning of the hearing, the applicant drove from Montréal to Toronto to state his position. He was no longer expected when he appeared in the court room. Driving in a snow storm to present his arguments is entirely to his credit. In the circumstances, I do not see how the interests of justice would be served by imposing costs. As a result, the applications for judicial review are dismissed, without costs.

JUDGMENT

The application for judicial review of the decision by Passport Canada dated January 26, 2012, is dismissed, without costs.

"Yvan Roy"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-1379-12 AND T-1380-12
STYLE OF CAUSE:	JACQUES EASTWOOD LÉONARD SAINT-VIL v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	December 17, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	Roy J.
DATED:	January 17, 2014

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