

Federal Court



Cour fédérale

Date: 20131016

Docket: T-1335-12

Citation: 2013 FC 1044

Ottawa, Ontario, October 16, 2013

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ALIREZA GOMRAVI

Applicant

and

**THE ATTORNEY GENERAL OF CANADA
(THE MINISTER OF FOREIGN AFFAIRS AND
INTERNATIONAL TRADE) AND
PASSPORT CANADA**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] Alireza Gomravi seeks judicial review of the decision by Passport Canada to revoke his passport and to deny him access to passport services for a period of five years. Passport Canada found that Mr. Gomravi had used his Canadian passport while acting as an escort assisting an unidentified individual who was unlawfully using the passport of one Ebrahim Latifi while trying to board a flight to Canada.

[2] Mr. Gomravi asserts that Passport Canada's decision was unreasonable and that he was treated unfairly as material evidence was not disclosed to him during the adjudication process.

[3] For the reasons that follow, I have concluded that Mr. Gomravi was indeed denied procedural fairness in the adjudication process. Consequently, his application for judicial review will be allowed.

Background

[4] The facts giving rise to the revocation of Mr. Gomravi's passport are complicated and convoluted. Because I have found that the procedural fairness issue is dispositive of the application, I will not go through an exhaustive review of the allegations and Mr. Gomravi's various explanations of what transpired at the Istanbul airport on December 23, 2010.

[5] Suffice it to say that Mr. Gomravi is a naturalized Canadian citizen of Iranian origin who held a Canadian passport issued on March 12, 2010. He is acquainted with Ebrahim Latifi, another Canadian citizen. Indeed, Mr. Gomravi had acted as a character reference for Mr. Latifi's May 6, 2006 Canadian passport application.

[6] On December 23, 2010, Mr. Gomravi was at the Istanbul airport where he attempted to board a plane to Toronto. Mr. Gomravi was stopped by Turkish airport security who determined that Mr. Gomravi was travelling with an impostor who was travelling on Mr. Latifi's Canadian passport.

[7] Mr. Gomravi initially stated that he and the impostor were friends. However, after it became apparent that the Turkish authorities were concerned about the identity of the other individual, Mr. Gomravi changed his story and denied knowing the person in question.

[8] Turkish airport security subsequently determined that Mr. Gomravi and the impostor had changed their seat assignments the previous day so that they could sit together on the Istanbul-Toronto flight. They concluded that Mr. Gomravi was involved in facilitating the impostor's improperly documented travel and informed the Canadian authorities accordingly. The Turkish authorities also provided Canadian authorities with a photograph of the individual using Mr. Latifi's passport together with a copy of the passport itself.

[9] Passport Canada commenced an investigation into both Mr. Gomravi and Mr. Latifi. The same investigator was assigned to carry out each investigation, and there was considerable overlap in the evidence in the two cases as it related to the events of December 23, 2010.

[10] On May 26, 2011, Passport Canada sent Mr. Gomravi a proposal letter advising him that he was the subject of an investigation for having been involved in an attempt to escort an improperly documented individual to Canada. A similar letter was sent to Mr. Latifi on the same day.

[11] The letter to Mr. Gomravi advised him that, based on the information that it had received through its investigation, the Investigations Division of Passport Canada would be recommending to an adjudicator that Mr. Gomravi's passport be revoked based upon

section 10(2)(b) of *Canadian Passport Order*, SI/81-86 (a copy of which is appended to these reasons), and that passport services be withheld from Mr. Gomravi for a five-year period beginning December 23, 2010.

[12] Mr. Gomravi was then invited to provide information to Passport Canada that “would contradict or neutralize” the information set out in the May 26, 2011 proposal letter, prior to the issuance of a final decision by an Adjudicator.

[13] Between July 2011 and October 2011, Mr. Gomravi and Passport Canada exchanged correspondence regarding these allegations, in which Mr. Gomravi made a number of confusing and inconsistent statements. After reviewing Mr. Gomravi’s submissions, the Investigations Division of Passport Canada referred his file to an adjudicator on October 21, 2011.

[14] The same adjudicator was assigned to both Mr. Gomravi and Mr. Latifi’s cases. In each case, the adjudicator found that there had been misuse of Mr. Latifi’s passport and that Mr. Gomravi had facilitated the travel of an improperly documented individual who was travelling on Mr. Latifi’s Canadian passport. The same penalty was imposed on both Mr. Gomravi and Mr. Latifi, namely revocation of their passports and the suspension of access to passport services for a period of five years.

Analysis

[15] Mr. Gomravi categorically denies facilitating the travel of an impostor through the Istanbul airport. Indeed, Mr. Gomravi denies the existence of any such impostor. Although

Mr. Gomravi's evidence on this point has varied over time, he now insists that it was Mr. Latifi himself who was traveling on his own Canadian passport on December 23, 2010, and that it was unreasonable for the adjudicator to have concluded otherwise. Given my conclusion on the procedural fairness issue, it is not necessary to address this argument.

[16] Mr. Gomravi asserts that he was treated unfairly as material facts and information were not disclosed to him during the investigative and adjudicative processes.

[17] In particular, Mr. Gomravi points to a June 27, 2011 email to the investigator from a Canada Border Services Agency officer at the Canadian Embassy in Ankara advising that the Turkish police "were unable to conclude that [the individual using Mr. Latifi's passport] was an impostor". The email goes on to state that, as a result, the individual was allowed to return to Germany (where his journey had originated) on the next available flight back. The email also advised that the Turkish police had informed the German police that the individual in question was en route back to Germany. According to Mr. Gomravi, this email is exculpatory evidence, given that it calls into question the very existence of the impostor.

[18] Mr. Gomravi also points to the report of a "Facial Comparison Analysis" dated July 11, 2011, which compares the photograph of the individual caught using Mr. Latifi's passport on December 23, 2010 with the photograph of Mr. Latifi in his Canadian passport. The report concludes that the photographs are of two different individuals.

[19] Neither of these documents was provided to Mr. Gomravi prior to the decision being made to revoke his passport. Mr. Gomravi only became aware of the existence of these documents when he obtained a copy of the Certified Tribunal Record filed in connection with Mr. Latifi's application for judicial review of the revocation of his passport.

[20] Mr. Gomravi says that both documents were material to the issues before the adjudicator, and that he was denied any opportunity to address either one of them. In support of his contention that this constitutes a denial of procedural fairness, Mr. Gomravi cites the decision in *Abdi v. Canada (Attorney General)*, 2012 FC 642, [2012] F.C.J. No. 945, in which Justice Gleason determined that Passport Canada had breached the applicant's right to procedural fairness by failing to disclose information that was material to the investigation.

[21] The Minister asserts that the May 26, 2011 letter sent to Mr. Gomravi by Passport Canada clearly sets out the allegations against him. Moreover, the correspondence subsequently exchanged by Mr. Gomravi and Passport Canada demonstrates that Mr. Gomravi was given a meaningful opportunity to contest these allegations.

[22] The Minister also points out that neither the email nor the Facial Comparison Analysis report appear in the Certified Tribunal Record in Mr. Gomravi's case. The Minister says that this demonstrates that neither document was before the adjudicator when he made the decision under review. This is further confirmed by the fact that neither document is referred to in the adjudicator's decision in Mr. Gomravi's case. The Minister also points out that the documents both post-date the Investigations Division's letter of May 26, 2011.

[23] As a consequence, the Minister says that Passport Canada was not obliged to disclose either document to Mr. Gomravi, and there has been no denial of procedural fairness in this case.

[24] I cannot accept the Minister's argument.

[25] While the cases of Mr. Latifi and Mr. Gomravi were technically two separate matters, the reality is that they were closely intertwined and the distinction between the two files is in fact somewhat artificial. The cases involved the same individuals involved in the same events. Both were being investigated by the same investigator at the same time, and much of the evidence in the two cases overlapped.

[26] The inter-relationship between the two files is compounded by the fact that the same adjudicator dealt with both cases. Significantly, by the time the adjudicator rendered his decision in Mr. Gomravi's case, he had already made very specific and very damning findings against Mr. Gomravi in the context of Mr. Latifi's case based upon the record that was before him in that matter, which included the June 27, 2011 CBSA email and the Facial Comparison Analysis report.

[27] That is, it is apparent from the decision of Justice Manson in *Latifi v. Attorney General of Canada et al.*, 2013 FC 939, [2013] F.C.J. No. 975 (QL), that the adjudicator's decision in Mr. Latifi's case was rendered on September 22, 2011, and a reconsidered decision was issued on October 17, 2011: at para. 8. The decision in Mr. Gomravi's case was rendered on June 12, 2012.

[28] Based upon the evidence in Mr. Latifi's case, the adjudicator found that Mr. Latifi had allowed an impostor to use his passport to travel to Toronto from Istanbul. More importantly for our purposes, the adjudicator also found as a fact that Mr. Gomravi had acted as a facilitator for the impostor: see Justice Manson's decision at para. 11.

[29] It should be noted that while this finding by the adjudicator could potentially have given rise to other concerns, Mr. Gomravi has limited his procedural fairness arguments to the issue of non-disclosure.

[30] The July 11, 2011 "Facial Comparison Analysis" report was potentially very damning evidence against Mr. Gomravi. While the report is not referred to in the adjudicator's decision in Mr. Gomravi's case, there is also nothing in that decision to suggest that the adjudicator had disabused himself of the evidence that had been considered in Mr. Latifi's case.

[31] The fact that the CBSA email and the "Facial Comparison Analysis" report both post-date the May 26, 2011 letter sent to Mr. Gomravi by Passport Canada setting out the allegations against him does not, in my view, relieve Passport Canada from its obligation to have disclosed the evidence to Mr. Gomravi.

[32] This Court has held 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: *Abdi*, above at para. 21. This would clearly include both inculpatory and exculpatory information.

[33] The fact that the Turkish police “were unable to conclude that [the individual using Mr. Latifi’s passport] was an impostor” was clearly a material fact relevant to the case against Mr. Gomravi. It is arguably exculpatory evidence in that it potentially calls into question the existence of the impostor, whose existence was central to the case against Mr. Gomravi.

[34] It would, of course, have been open to the adjudicator to ascribe whatever weight he deemed appropriate to this evidence, in light of the other evidence before him corroborating the existence of the impostor. However, fairness required that Mr. Gomravi should at least have been afforded the opportunity to address the issue prior to a decision being made to revoke his passport.

Remedy

[35] The Minister argues that even if there was a breach of procedural fairness in this case, nothing would be served by quashing Passport Canada’s decision and remitting the matter for re-determination. The Minister submits that the result of the new review will inevitably be the same in light of Mr. Gomravi’s overwhelming lack of credibility and ever-changing story.

[36] As a general rule, a breach of procedural fairness will void the hearing and the resulting decision: see *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643, 24 D.L.R. (4th) 44. The Supreme Court observed in *Cardinal* that the right to a fair hearing is “an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have”: at para. 23. The Court went on in the same

paragraph to observe that “[i]t is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a [fair] hearing”.

[37] There is a limited exception to this rule. That is, a reviewing court may disregard a breach of procedural fairness “where the demerits of the claim are such that it would in any case be hopeless”: *Mobil Oil Canada Ltd. et al. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, [1994] S.C.J. No. 14 (QL) at para. 53. See also *Yassine v. Canada (Minister of Employment and Immigration)* (1994), 172 N.R. 308 at para. 9 (F.C.A.), 27 Imm. L.R. (2d) 135. This situation may arise where, for example, the circumstances of the case involve a legal question which has an inevitable answer: *Mobil Oil* at para. 52. Justice Iacobucci went on, however, in *Mobil Oil* to emphasize the “exceptional character” of this exception, noting that he “would not wish to apply it broadly”: at para. 54.

[38] I have given careful consideration to the Minister’s argument. While there are undoubtedly significant credibility issues involving Mr. Gomravi, I have determined that these issues are better addressed by Passport Canada, on the basis of the record as a whole, once Mr. Gomravi has had a reasonable opportunity to address the previously undisclosed evidence.

[39] Mr. Gomravi has also made submissions with respect to the issue of remedy. He submits that if I grant his application, I should quash the decision to revoke his passport and suspend passport services, and not remit the matter for re-determination. Mr. Gomravi points out that his passport services have already been suspended for nearly three years, and the delays associated with the re-determination of his case would render the matter essentially moot.

[40] I am not prepared to grant Mr. Gomravi the remedy he seeks. Once again, deference to the process created by Parliament suggests that the merits of the case against Mr. Gomravi should be decided by Passport Canada. While I am sympathetic to Mr. Gomravi's concern with respect to the delays that may be associated with the re-determination process, these concerns can be addressed through the provision of directions governing the re-determination process.

Conclusion

[41] For these reasons, Mr. Gomravi's application for judicial review is granted, and the decision of the Passport Canada adjudicator dated June 12, 2012 is set aside.

[42] The issue of the revocation of Mr. Gomravi's passport and the imposition of a ban on his receiving passport services shall be remitted back to Passport Canada for re-determination by a different adjudicator than the one who issued the June 12, 2012 decision, if there is another individual employed by Passport Canada who could act as an adjudicator in this matter.

[43] If there is no other such individual available to act as an adjudicator, then the matter may be remitted to the same adjudicator, who shall conduct a hearing *de novo* and in no way refer to or consider anything said in the decision that has been set aside.

[44] Mr. Gomravi shall have 30 days in which to make whatever additional submissions he may wish to make based upon the additional materials from the Certified Tribunal Record in Mr. Latifi's case, and Passport Canada shall render a decision in relation to Mr. Gomravi's case within 60 days thereafter.

[45] These timelines may be varied by agreement of the parties.

[46] Mr. Gomravi seeks his costs fixed in the amount of \$5,000, on the basis of what he says was grossly unfair conduct on the part of Passport Canada. The respondent has similarly sought an award of costs in the same amount, based upon Mr. Gomravi's allegedly egregious conduct in attempting to assist an individual in unlawfully entering Canada.

[47] While I accept that Mr. Gomravi should receive an award of costs in connection with this application in light of the unfairness of the process, I am not prepared to grant him the amount sought.

[48] At the hearing of this matter, Mr. Gomravi's counsel made allegations of racism on the part of Canadian authorities. Counsel observed that one of Mr. Gomravi's basic rights of citizenship had been taken away from him by Passport Canada, suggesting that someone of British extraction might not have received the same treatment. Counsel conceded, however, that there was no evidence in the record to suggest that racism played any role in this matter.

[49] It is a serious matter to allege that the actions of public officials have been animated by racism, and such allegations should not lightly be made in the absence of any evidentiary foundation.

[50] Taking all of the circumstances into account and in the exercise of my discretion, Mr. Gomravi shall have his costs fixed in the amount of \$1,500, inclusive of disbursements.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is granted and the decision of the Passport Canada adjudicator dated June 12, 2012 is set aside;
2. The issue of the revocation of Mr. Gomravi's passport and the imposition of a ban on his receiving passport services shall be remitted back to Passport Canada for re-determination by a different adjudicator than the one who issued the June 12, 2012 decision, if there is another individual employed by Passport Canada who could act as an adjudicator. If there is no other such individual available to act as an adjudicator, then the matter may be remitted to the same adjudicator who is to consider the matter *de novo* and in no way refer to or consider anything said in the decision that has been set aside;
3. Mr. Gomravi shall have 30 days in which to make further submissions and Passport Canada shall render a decision in relation to Mr. Gomravi's case within 60 days thereafter. These timelines may be varied by agreement of the parties; and

4. Mr. Gomravi shall have his costs fixed in the amount of \$1,500, inclusive of disbursements.

"Anne L. Mactavish"

Judge

Canadian Passport Order, SI/81-86

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

...

(b) uses the passport to assist him 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;

10.3 If a passport that is issued to a person has expired but could have been revoked under any of the grounds set out in sections 10 and 10.1 had it not expired, the Minister may impose a period of refusal of passport services on those same grounds, except for the grounds set out in paragraph 9(g), if the facts that could otherwise have led to the revocation of the passport occurred before its expiry date.

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 qui :

...

b) 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;

10.3 Dans le cas où un passeport aurait pu être révoqué pour l'un des motifs visés aux articles 10 et 10.1 — à l'exception du motif prévu à l'alinéa 9g) — s'il n'avait pas été expiré, le ministre peut imposer une période de refus de services de passeport pour le même motif si les faits qui auraient autrement pu mener à la révocation se sont produits avant la date d'expiration.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1335-12

STYLE OF CAUSE: ALIREZA GOMRAVI v THE ATTORNEY GENERAL
OF CANADA (THE MINISTER OF FOREIGN AFFAIRS
AND INTERNATIONAL TRADE) AND PASSPORT
CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: OCTOBER 10, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:**

MACTAVISH J.

DATED: OCTOBER 16, 2013

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