

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20191023**

**Docket: A-240-18**

**Citation: 2019 FCA 267**

**CORAM: DE MONTIGNY J.A.  
RIVOALEN J.A.  
LOCKE J.A.**

**BETWEEN:**

**JASON JANE LIPSKAIA**

**Appellant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Montréal, Québec, on October 15, 2019.

Judgment delivered at Ottawa, Ontario, on October 23, 2019.

**REASONS FOR JUDGMENT BY:**

**RIVOALEN J.A.**

**CONCURRED IN BY:**

**DE MONTIGNY J.A.  
LOCKE J.A.**

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**REASONS FOR JUDGMENT**

**RIVOALEN J.A.**

I. Introduction

[1] This appeal considers the reasonableness of a decision to revoke a passport. The appellant appeals from a decision of Mr. Justice Diner of the Federal Court (2018 FC 789), dated July 26, 2018, in which he dismissed an application for judicial review brought by the appellant

challenging a January 2, 2018, decision of the Passport Entitlement and Investigations Division of Immigration, Refugees and Citizenship Canada (Passport Division). The Passport Division revoked passport GC165363 issued in the name of Jason Jane Lipskaia and imposed a seven-year period of refusal of regular passport services, from the date the passport application was filed (October 10, 2013), until October 10, 2020.

[2] For the reasons below, I would dismiss the appeal.

[3] The legal history of this matter is well set out in paragraphs 2 to 8 of the Federal Court's reasons. I need not repeat it here.

[4] The appellant is self-represented. He raises three arguments in support of his appeal.

- A. He questions the jurisdiction of the Federal Court and whether it has the authority to disregard an order of a superior provincial court;
- B. He says that his right to a fair hearing was breached; and
- C. He says the Federal Court erred in connecting him to Randall Robert Wiese.

## II. Jurisdiction of the Federal Court

[5] The Federal Court's jurisdiction is a question of law reviewed on a standard of correctness.

[6] The question of the Court's jurisdiction dominated the appellant's oral submissions before this Court. The appellant rightfully points out in his memorandum of fact and law that questions involving the registration of birth fall under provincial jurisdiction and the Federal Court has no jurisdiction to review or otherwise interfere with decisions from Alberta authorities in matters falling under their *Vital Statistics Act*, S.A. 2007, c. V-4.1.

[7] The appellant relies on an order of a judge from the Alberta Court of Queen's Bench directing the provincial registrar to register a birth certificate in the name of Jason Jane Lipskaia in accordance with the Vital Statistics Act. The appellant points to paragraph 55 of the Federal Court reasons and argues that the Federal Court does not have the authority to ignore this order.

[8] The Federal Court in paragraph 55 of its reasons reiterated the facts from the record and found that it was reasonable for the Passport Division to prefer the most recent information from the Alberta government agencies that the registration of birth of Jason Jane Lipskaia was no longer valid because it was based on fraudulent information. The Federal Court did not ignore the order.

[9] During oral submissions before this Court, the appellant provided further information regarding the validity of the registration of birth of Jason Jane Lipskaia. He says that the Alberta provincial authorities have agreed to set aside the revocation of the birth certificate and hold a further hearing in Alberta at the end of October 2019. The respondent agreed with this information and added that Crown counsel in Alberta advised that the issuance of the birth

certificate remains a live issue. Crown counsel in Alberta takes the position that the birth certificate should be revoked because it was based on fraudulent information.

[10] This new information regarding the Alberta process was raised for the first time during oral argument. It assists somewhat to provide further context to the question of the validity of the birth certificate. Regardless, for the purposes of this hearing, it is not necessary for this Court to know ultimately whether the birth certificate will be revoked. Other evidence exists on the record to justify the Passport Division's decision.

[11] On the question of jurisdiction, the Federal Court has the power to review decisions from the Passport Division, in accordance with subsection 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. It is the Minister of Citizenship and Immigration who is responsible for the issuance, refusal to issue, revocation and recovery of passports, and the refusal of any passport services. The passport itself remains at all times the property of Her Majesty the Queen (see *Canadian Passport Order S1/81-86* paragraphs 3(c) and 10(2)(d)) (the Canadian Passport Order).

[12] The Federal Court committed no errors in exercising its jurisdiction.

### III. Procedural Fairness

[13] As he did before the Federal Court, the appellant raises procedural fairness issues before this Court. He repeats his arguments that Jason Jane Lipskaia was never legally served at any

time with any notice that his passport had been revoked. He says that there was never a finding of a crime against Jason Jane Lipskaia. He complains that all of the correspondence and various forms of communications in these proceedings were addressed to Randall Wiese, not Jason Jane Lipskaia.

[14] On questions involving procedural fairness, it is useful to turn to the decision of this Court in *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2018] F.C.J. No. 382. This Court noted that “[a] court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances” and that “[a]ttempting to shoehorn the question of procedural fairness into a standard of review analysis is [...] an unprofitable exercise.” (at paragraphs 54-55). Although historically referred to as a review on a correctness standard, questions of procedural fairness are not decided according to any particular standard of review. Rather, it is a legal question to be answered by the Court. In assessing procedural fairness, the Court has to be satisfied that procedural fairness has been met.

[15] The Federal Court in its analysis appropriately focused on whether the Passport Division violated procedural fairness principles and whether procedural fairness had been met, having regard to all of the circumstances (reasons at paragraphs 11 to 35).

[16] The record is clear that before the Passport Division, as before the Federal Court, the appellant knew the case against him, received all relevant documents and had a fair opportunity to respond to the submissions made against him. His complaint about the name on the correspondence delivered to his attention is one more of form than of substance; he fully

participated in the hearings before the Passport Division and the Federal Court. He also fully participated in the proceedings before this Court. The process was fair.

[17] The Federal Court was correct to find that there were no breaches of procedural fairness.

#### IV. Error in connecting Jason Jane Lipskaia to Randall Wiese

[18] The appellant once again argues that he has never been found guilty of obtaining a birth certificate by fraud or of any other criminal offences. His written submissions suggest that the Federal Court misapprehended the evidence or gave too much weight to some of the information in the record.

[19] The standard of review applicable to decisions from the Passport Division is reasonableness. The Federal Court properly identified this standard of review and properly applied it (reasons at paragraph 37). The Federal Court found that the Passport Division's decision to revoke the passport of Jason Jane Lipskaia and to deny services for a period of seven years was reasonable. I agree.

[20] Despite the continued uncertainty of the validity of the birth certificate issued in the name of Jason Jane Lipskaia, as discussed in paragraphs [9] and [10] above, the record contains further strong evidence of the appellant's identity being Randall Robert Wiese. Following are but some examples of such evidence as noted by the Passport Division when assessing the appellant's identity:

- a. Randall Robert Wiese had pleaded guilty to charges involving the false use of the identity of Jason Jane Lipskaia (AB, vol. 2, pages 384-385);
- b. Service Alberta had advised the Passport Program that the identity of Jason Jane Lipskaia was fraudulent (AB, vol. 2, pages 554-556);
- c. Alberta Vital Statistics had ordered that the Delayed Registration of Birth created for Jason Jane Lipskaia based upon an August 7, 2008 order from Justice Lee of the Alberta Court of Queen's Bench was to be deleted as it was obtained by the use of fraudulent proof of identity (AB, vol. 2, pages 401-402);
- d. John Charles Wiese was identified as the father on the passport applications for Randall Wiese. He was also identified as a guarantor for the passport application for Jason Jane Lipskaia. Randall Wiese was listed as a reference on the passport application for Jason Jane Lipskaia (AB, vol. 2, pages 506, 508, 518, 520, 521);
- e. A review of the photograph of the appellant received from Service Alberta in respect of a person known as both Randall Wiese and Jason Jane Lipskaia indicated that he had been issued passports in the name of Jason Jane Lipskaia (AB, vol. 2, page 541);
- f. A review using facial recognition software of the photograph of Randall Wiese provided by the RCMP indicated that it matched the photographs of



the two passports that had been issued in the name of Jason Jane Lipskaia  
(AB, vol. 2, pages 6, 127-130, 205, 361-363);

- g. The RCMP stating that while the appellant had identified himself to them as Jason Jane Lipskaia, his fingerprints were those of Randall Wiese (AB, vol. 2, 205);
- h. There was no Alberta death certificate for Randall Robert Wiese (AB, vol. 2, page 482); and
- i. There was no passport record of Jason Jane Lipskaia between 1968 and 2007 (AB, vol. 2, page 484).

[21] The evidence before the Passport Division was overwhelming. It was reasonable for it to find that the appellant had obtained passport GC165363 in the name of Jason Jane Lipskaia by providing false or misleading information. It was reasonable for the Passport Division to revoke the passport in question pursuant to section 10(2)(d) of the Canadian Passport Order.

[22] In conclusion, I find that the Federal Court did not commit any reviewable errors and I would dismiss this appeal, with costs in the amount of \$300.

"Marianne Rivoalen"

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J.A.

"I agree.  
Yves de Montigny J.A."

"I agree.  
George R. Locke J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-240-18

**STYLE OF CAUSE:** JASON JANE LIPSKAIA v. THE  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** MONTRÉAL, QUÉBEC

**DATE OF HEARING:** OCTOBER 15, 2019

**REASONS FOR JUDGMENT BY:** RIVOALEN J.A.

**CONCURRED IN BY:** DE MONTIGNY J.A.  
LOCKE J.A.

**DATED:** OCTOBER 23, 2019

**APPEARANCES:**

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FOR THE APPELLANT  
(SELF-REPRESENTED)

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