

Federal Court



Cour fédérale

Date: 20150417

Docket: T-499-14

Citation: 2015 FC 431

Montréal, Québec, April 17, 2015

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

ALIREZA GOMRAVI

Applicant

And

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Alireza Gomravi seeks judicial review of the January 31, 2014 decision by the Director, Investigations Division, Passport Program Integrity Branch of Citizenship and Immigration Canada [CIC] who revoked his passport and denied him access to a passport until December 23, 2015.

[2] The events leading to this decision took place in December 2010 at the Ataturk International Airport in Istanbul, Turkey, when Mr. Gomravi was taking a flight back to Canada. He states he was travelling with his business partner and friend, Mr. Ebrahim Latifi, who, CIC concluded, was being impersonated by another person using Mr. Latifi's Canadian passport.

[3] CIC revoked Mr. Gomravi's passport and denied him access to a passport until December 23, 2015, after concluding that he had used his Canadian passport while acting as an escort to assist an unidentified individual who was unlawfully using Mr. Latifi's passport in order to board a flight to Canada.

[4] A first decision was issued by Passport Canada (now the Passport Program Integrity Branch of CIC) on June 1, 2012, and Mr. Gomravi challenged it before this Court. Madam Justice Mactavish allowed the judicial review as she found Mr. Gomravi had been denied procedural fairness in the adjudication process. She noted that Mr. Gomravi should have had the opportunity to address pieces of evidence which constituted "material facts" and pointed to the June 27, 2011, Canada Border Services Agency email [CBSA email] and the July 7, 2011, Facial Comparison Analysis report [Facial Analysis] (*Gomravi v Canada (Attorney General)*, 2013 FC 1044 [*Gomravi* 2013]).

[5] By letter dated October 31, 2013, Mr. Gomravi was advised that the CBSA email and the Facial Analysis were added to his file and he was given the opportunity to make submissions. A new decision was rendered by CIC on January 31, 2014, which is the one under review in this case.

[6] For the reasons set down below, this application for judicial review will be dismissed.

II. Background

[7] As Justice Mactavish found in her decision, the facts giving rise to the revocation of Mr. Gomravi's passport are complicated and convoluted.

[8] Mr. Gomravi is a Canadian citizen. On March 12, 2010, he was issued Canadian passport number WG916449, which was valid until March 12, 2015.

[9] He is acquainted with Mr. Ebrahim Latifi, a Canadian citizen who he described as his friend and business partner.

[10] On December 19, 2010, Mr. Gomravi left Calgary for a business trip to Germany and Belgium. During that trip, Mr. Gomravi was to travel with Mr. Latifi, meet with a business contact, Mr. Mohammed Bassiri, and dine at Mr. Latifi's sister's house in Liege. He was returning from Germany to Canada on December 22 and 23, 2010, transiting through Istanbul, Turkey.

[11] Hence, following his stay in Germany and Belgium, Mr. Gomravi took a flight from Germany and arrived at the airport in Istanbul at approximately 7:50 p.m. on December 22, 2010. He remained at the airport and, since he was in transit, he was not admitted into Turkey.

[12] He presented himself at the check-in counter for his flight to Toronto at 9:00 a.m. on December 23, 2010.

[13] The events that followed are at the heart of this case, and it is worthy to note from the onset, that Mr. Gomravi presented different versions of those events.

[14] In brief, at the check-in counter, the Gozen security (airport security) suspected that the individual using Mr. Latifi's passport in order to board the Toronto-bound flight was not actually Mr. Latifi, but an imposter. Therefore, they referred the individual to the Turkish authorities.

[15] The Turkish authorities were unable to confirm that the individual using Mr. Latifi's passport was an imposter, but they nevertheless did not allow him to take the flight to Canada and directed him to take the next flight back to Germany, as an in-transit passenger.

[16] On May 26, 2011, B. Harrison, Chief Investigator of the Investigations Division of then Passport Canada, advised Mr. Gomravi by letter that he was the subject of an investigation for his involvement in an attempt to escort an improperly documented individual into Canada. From July to October of 2011, Mr. Gomravi and CIC exchanged emails and letters in which Mr. Gomravi made submissions and CIC responded to his submissions.

[17] On June 1, 2012, CIC revoked Mr. Gomravi's passport pursuant to paragraph 10(2)(b) of the *Canadian Passport Order*, SI/81-86 [the CPO] and declared it null and void. Based on

section 10.2 of the CPO, it also decided that passport services would not be available to Mr. Gomravi until December 23, 2015.

[18] Mr. Gomravi challenged the June 1, 2012 decision by way of judicial review and, on October 16, 2013, Justice Mactavish of this Court set it aside.

[19] From October 2013 to January 2014, Mr. Gomravi made submissions to CIC and CIC responded to those submissions. Mr. Gomravi was given an opportunity to make submissions on the evidence held by CIC, namely the aforementioned CBSA email and Facial Analysis report.

III. The decision under review

[20] On January 31, 2014, CIC revoked Mr. Gomravi's passport and refused him passport services until December 23, 2015.

[21] CIC found that, on a balance of probabilities, there was sufficient information to conclude that Mr. Gomravi used passport number WG916449, issued in his name, to accompany an improperly documented person to enter Canada illegally, and that he should have been aware that by doing so, he was attempting to organize, aid, or abet this person to enter Canada illegally contrary to section 117, in conjunction with section 135 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[22] CIC relied on the following documentary evidence in rendering its decision:

- A December 23, 2010 email from the Security Supervisor of Gozen security [Gozen security email] at the Ataturk International Airport in Istanbul to the CBSA Liaison Officer in Syria advising him that they had intercepted a passenger attempting to use the Canadian passport issued to another individual on a flight to Toronto and that Mr. Gomravi had been identified as a facilitator;
- Several images attached to the Gozen security email, including images of the Canadian passport used by the alleged imposter, an image of Mr. Gomravi's Canadian passport WG916449, and a photograph of the alleged imposter taken at the airport;
- The Facial Analysis conducted by CIC, comparing the photograph of the alleged imposter and the photograph of the rightful bearer of the passport;
- The CBSA email dated June 27, 2011, advising CIC that they were not certain that the passenger travelling on the Canadian passport was the rightful holder of the passport and that they suspected that he was an imposter. The email also mentioned that the subject had been allowed to return to Germany since he was an in-transit passenger from Germany, and CBSA was unable to conclude that he was an imposter; and
- A letter dated December 13, 2013, from Mr. Gomravi's counsel, explaining that there was no imposter as the individual in question was Mr. Latifi, and that Mr. Gomravi had denied knowing him to the Gozen security agents because he was angry at him at the time.

IV. Issues

- 1) Does paragraph 10(2)(b) of the CPO grant CIC jurisdiction to revoke Mr. Gomravi's passport in the absence of charges or of a conviction of an indictable offence ?
- 2) Did CIC arrive at a decision without regard to the evidence before it?
- 3) Did CIC breach procedural fairness?

V. Standard of review

[23] The issues of jurisdiction and procedural fairness are to be reviewed against the standard of correctness (*Dias v Canada (Attorney General)*, 2014 FC 64, aff'd in 2014 FCA 195 at para 11 [*Dias*]; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 70).

[24] However, CIC's decision to revoke the passport and to deny passport services is to be assessed under the reasonableness standard (*Kamel v Canada (Attorney General)*, 2008 FC 338 at paras 57-59 [*Kamel*]; *Villamil v Canada (Attorney General)*, 2013 FC 686 at para 30).

VI. Submission of the parties

[25] According to Mr. Gomravi, CIC's decision is unreasonable as the elements of the offence under section 117 of the IRPA, in conjunction with section 135, were not established. Mr. Gomravi submits that there is no evidence that he ever used his passport for any purpose other than to board his flight or that he used his passport to aid or abet the alleged imposter.

[26] Mr. Gomravi further submits that there is no evidence of the existence of an "imposter".

[27] He submits that neither he nor the alleged imposter was convicted of any offence relating to impersonation or illegal use of a passport.

[28] According to Mr. Gomravi, his procedural rights have been breached by CIC as it failed to provide him with the CBSA email, which constitutes crucial and compelling evidence that the Turkish authorities had verified that there was no imposter.

[29] Mr. Gomravi also submits that CIC was required to contact the German authorities and obtain information on Mr. Latifi's or the alleged imposter's admission in Germany, upon return from Istanbul, and has failed to do so.

[30] Finally, Mr. Gomravi alleges that CIC acted in bad faith and discriminated against him.

[31] The Respondent submits that paragraph 10(2)(b) of the CPO and section 117 of IRPA require a person to have used the passport, directly or indirectly, to aid, abet, or otherwise help a person in an attempt to enter Canada without the required documents. Therefore, even if Mr. Gomravi used his passport for his own travel and did not alter, copy, or otherwise misuse it, he was using his passport while claiming to be the friend of an imposter which aided that person's attempt to enter Canada without the required documents.

[32] The Respondent submits that the decision was reasonable in the circumstances, given that CIC had evidence of the existence of an imposter, and the fact that Mr. Gomravi was travelling with him.

[33] The Respondent submits that Mr. Gomravi is not credible as he presented several accounts of the events. For instance, Mr. Gomravi denied knowing the person travelling with Mr. Latifi's passport, but later asserted on the contrary that he did know him and explained that he denied knowing him because he was angry at him.

[34] The Respondent submits that a criminal proceeding, let alone a criminal conviction, is not a precondition to the authority to revoke a passport under paragraph 10(2)(b) of the CPO, and relies on the decision in *Vithiyanthan v Canada*, [2000] 3 FC 576 [*Vithiyanthan*] to support this argument. According to the Respondent, the interpretation in *Vithiyanthan* ought to prevail, "as it is supported by the language of the provision interpreted using basic principles of statutory interpretation."

[35] The Respondent also submits that there was evidence of the existence of an imposter. The fact that CBSA was unable to confirm that the individual using the passport was an imposter does not establish that there was no imposter.

[36] Hence, according to the Respondent, CIC's findings were based on the information before it and were not perverse or capricious.

[37] The Respondent also submits that the decision to refuse passport services for Mr. Gomravi for a period of five years is reasonable.

[38] The Respondent submits that the requirements of procedural fairness were met in this case as Mr. Gomravi was aware of the allegations against him and was afforded an opportunity to participate in the investigative process (*Kamel* at para 68; *Abdi v Canada (Attorney General)*, 2012 FC 642 at para 21). Mr. Gomravi obtained both the CBSA email and the Facial Analysis referred to in Justice Mactavish's decision, and the evidence from Mr. Latifi's judicial review was included within his material.

[39] Finally, the Respondent submits that CIC was under no duty to collect information from foreign authorities about the imposter's whereabouts once he was not allowed to board the flight to Toronto (*Sathasivam v Canada (Attorney General)*, 2013 FC 419 at para 28).

VII. Analysis

[40] For the reasons set down below, I find that CIC did not lack jurisdiction to revoke Mr. Gomravi's passport, that CIC made no reviewable error with regard to the assessment of the evidence, and that Mr. Gomravi was afforded the procedural fairness rights he was entitled to.

A. *The Jurisdictional Issue*

[41] Paragraph 10(2)(b) of the CPO provides that :

Canadian Passport Order,
SI/81-86

Décret sur les passeports
canadiens, TR/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;

[Emphasis added.]

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;

[...]

[42] The Court is divided on the interpretation to be given to the meaning of the word “committed” in paragraph 10(2)(b) in that it has been held to require a “conviction” in certain cases and the simple “commission” of the act in other cases.

[43] In *Vithiyanthan*, Justice Simpson held that subsection 10(b) (now paragraph 10(2)(b)) does not require that a charge be laid or that a conviction be obtained in order for CIC to be entitled to revoke an individual's passport (*Vithiyanthan* at para 23). This reasoning stemmed from the use of the word “committed” (*Vithiyanthan* at para 11). Justice Simpson determined that the wording used in other provisions of the CPO is different than the wording used under subsection 10(b), which indicates that the purpose is also different. She pointed out that

subsection 10(a) (now paragraph 10(2)(a) of the CPO) deals with people who have been charged with an offence, while section 9 covers both those who have been charged (subsection 9(b) and (c)) and those who have been convicted (subsection 9(e)).

[44] More recently, Justice Phelan of this Court analyzed CIC's jurisdiction under paragraph 10(2)(b) of the CPO, and opened the door to the need for a conviction (*Dias* at paras 14-16). A few months later, Justice Zinn found in *Siska v Canada (Passport)*, 2014 FC 298 [*Siska*] that a conviction is a precondition to the authority to revoke a passport or to refuse passport services (*Siska* at para 18).

[45] Subsequently, in *De Hoedt v Canada (Minister of Citizenship and Immigration)*, 2014 FC 829 [*DeHoedt*], Justice McVeigh, relying on the decision in *Mbala v Canada (Attorney General)*, 2014 FC 107 and taking into account the decision in *R v Appulonappa*, 2014 BCCA 163, leave granted [2014] SCCA No 283, found that CIC had the jurisdiction to find that the Applicant committed the offence under section 117 of IRPA (*DeHoedt* at para 29). Justice McVeigh based her decision on the different terms used in the CPO and, relying on *Vithiyanthan*, stated that the rationale of paragraph 10(2)(b) "would seem to be that some foreign countries do not have the same legal processes as Canada and with this section we do not need to rely on foreign countries justice systems for a conviction of an equivalent offence".

[46] The Federal Court of Appeal issued its decision in *Canada (Attorney General) v Dias*, 2014 FCA 195, and upheld Justice Phelan's decision. Justice Stratas agreed with the Federal Court's result and noted "that the facts relied upon by the Director could not lead to his

conclusion that Mr. Dias committed the offence under section 117.” However, the Federal Court of Appeal made no comment on whether or not a conviction is required under paragraph 10(2)(b) to entitle CIC to revoke a passport.

[47] On February 20, 2015, Justice Fothergill ruled on this same issue for this Court. After reviewing the Court’s jurisprudence on the issue, Justice Fothergill found the language of paragraph 10(2)(b) of the CPO to be ambiguous and resolved the ambiguity in favour of the Applicant.

[48] After a careful reading of the CPO and of the jurisprudence of this Court, I am of the opinion that paragraph 10(2)(b) of the CPO is not ambiguous, that the use of the term “committed” indicates that the commission of the act is sufficient, and that a conviction is not a precondition to its application.

[49] Hence, CIC had the jurisdiction to revoke Mr. Gomravi’s passport and deny him passport services on the basis that he acted in contravention of section 117, in conjunction with section 135 of IRPA, in “committing” an act that would constitute an indictable offence if committed in Canada.

B. *The Reasonableness of the Decision*

[50] With regard to the reasonableness of the decision, this Court is concerned with the “existence of justification, transparency and intelligibility within the decision-making process” and will intervene only where the decision under judicial review does not “fall within a range of

possible, acceptable outcomes which are defensible with respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[51] Mr. Gomravi contravened section 117 of IRPA and paragraph 10(2)(b) of the CPO by using his passport to assist him in organizing, inducing, aiding or abetting the coming into Canada of an imposter knowing that, or being reckless as to whether his coming into Canada is or would be in contravention of the IRPA. Mr. Gomravi challenges this finding on the basis that there is no evidence that he aided and abetted anyone through the use of the passport issued in his name and, moreover, that there is no evidence that there was, in fact, an imposter.

[52] Mr. Gomravi’s report of the events that occurred on December 23, 2010 at the airport comprises, to say the least, inconsistencies and incoherencies.

[53] For example, on December 31, 2013, Mr. Gomravi wrote a letter to the investigator, Mr. Hubbard, and pointed that “as the imposter told me, his name is Ebrahim Latifi” (Certified Tribunal Record [CTR] at para 35) and stated in this same letter that “I did not know the third party. Also I did not know his name” (CTR at para 52).

[54] At the hearing, in response to a question from the Court about the CBSA email, Mr. Gomravi indicated that Mr. Latifi arrived at the check-in counter escorted by Turkish police as he had been detained since the previous night, a fact that he had never mentioned before.

[55] It is unnecessary to examine each of Mr. Gomravi's inconsistencies. This Court is satisfied that there was sufficient evidence before CIC to conclude that there was an imposter, and that Mr. Gomravi committed an indictable offence under section 117 of the IRPA while using his passport.

[56] The Facial Analysis carried out using the photograph from Mr. Latifi's 2011 passport application, and the photograph taken at the Istanbul airport in December 2010 clearly demonstrate that the two photographs are of two separate and distinct individuals. Mr. Gomravi doubted the authenticity of this evidence, but submitted no evidence in support of his allegations and I do not find any reason to doubt the reliability of this document.

[57] I find that it was reasonable for CIC to conclude that "although the Turkish airport police were unable to conclude the passenger was an imposter, their actions are revealing in that they decided to return the passenger to Germany, rather than permit him to travel to Canada", particularly in the context that the individual was in transit and had not been admitted in Turkey.

[58] Therefore, in light of the aforementioned evidence and of the other evidence included in the application, I find that CIC made no reviewable error with regard to the existence of an imposter.

[59] With respect to Mr. Gomravi's allegation that there is no evidence that he aided and abetted anyone through the use of the passport issued in his name, the security case history sheet reveals that:

Both individuals had booked identical itineraries [...] Both paid the exact same fare for flight – Imposter had no check in bags whereas GOMRAVI had two check in bags [...] GOMRAVI requested at the CGY counter to sit beside imposter to seat 31 A imposter 31 B [...] Both were in line together and check in same time with the same Turkish Arline Employee

[60] Moreover, CIC pointed to the following fact in its decision :

The information received from Gozen security regarding their questioning of the passenger indicated that he was travelling without any check-in baggage, could not speak English or French well, was inconsistent in identifying his place of residence, was not able to provide additional documentation to confirm his identity, could not answer question regarding the visas and stamps in the Canadian passport, and was not able to replicate the signature appearing in the passport.

[61] Thus, I also find that there was sufficient evidence in front of CIC for it to reach the conclusion that Mr. Gomravi attempted to organize, induce, aid or abet the coming into Canada of an imposter.

C. *The Procedural Fairness Issue*

[62] The Court in *Kamel* held at paragraph 72 that the investigations made by then Passport Canada will comply with the principle of procedural fairness where “the investigation includes disclosure to the individual affected of the facts alleged against him and the information collected in the course of the investigation and gives the applicant an opportunity to respond to it fully and informs him of the investigator's objectives; as well, the decision-maker must have all of the facts in order to make an informed decision” (see also *Slaeman v Canada (Attorney General)*, 2012 FC 641 at para 23 [*Slaeman*]).

[63] In *Gomravi* 2013, Justice Mactavish ruled that CIC had an obligation to disclose all material facts to Mr. Gomravi, specifically referring to the CBSA email and the Facial Analysis. By way of a letter dated October 31, 2013, CIC informed Mr. Gomravi that the CBSA email and the Facial Analysis had been added to his file. Mr. Gomravi was provided with the opportunity to make further submissions. Therefore, the issues pointed out by Justice Mactavish in *Gomravi* 2013 were addressed by CIC and the second investigation conducted by CIC did not breach Mr. Gomravi's rights to procedural fairness.

[64] On October 31, 2013, in response to Mr. Gomravi's request, CIC informed him that "the primary evidence provided by the Turkish police or authorities to the Migration Integrity Officer was not held by Passport Canada." With respect to Mr. Gomravi's allegation, I find that CIC was under no obligation to collect information from foreign authorities. In fact, Mr. Gomravi was entitled to all the information gathered that is relevant to the determination to be made and that is what he was provided with (*Slaeman* at para 37). The evidence disclosed to Mr. Gomravi is the information CIC relied on to make its decision and this information was sufficient to support CIC's conclusion.

[65] Mr. Gomravi made many allegations to the effect that CIC acted in bad faith and discriminated against him. Since those allegations are serious and are not supported by the evidence, and to deter Mr. Gomravi or other applicants from making such gratuitous and unfounded allegations, costs will be awarded to the Respondent in the amount of \$2,500.00.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;
2. Mr. Gomravi shall pay an amount of \$2,500.00 to the Respondent.

“Martine St-Louis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-499-14

STYLE OF CAUSE: ALIREZA GOMRAVI v CANADA (MINISTER OF
CITIZENSHIP AND IMMIGRATION)

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: MARCH 16, 2015

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: APRIL 17, 2015

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