

Federal Court



Cour fédérale

**Date: 20160421**

**Docket: T-1715-15**

**Citation: 2016 FC 434**

**Fredericton, New Brunswick, April 21, 2016**

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

**BETWEEN:**

**YUSHAN XIE**

**Applicant**

**and**

**CITIZENSHIP AND IMMIGRATION  
CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered orally from the Bench on March 21, 2016)**

[1] As a preliminary matter, pursuant to Rule 303 of the *Federal Courts Rules*, and on the consent of the applicant, I order that the Style of Cause be amended to read Yushan Xie, Applicant and Attorney General of Canada, Respondent.

[2] The applicant, Mr. Yushan Xie, seeks judicial review of the decision made by the Passport Program Integrity Branch [Passport Program] dated September 11, 2015, to revoke the passports of his two daughters, Janelle Jingwei Xie and Joelle Jingwei Xie. He also seeks judicial review of the Passport Program's decision to revoke his passport. The facts can be briefly summarized as follows.

[3] On April 8, 2015, Mr. Xie submitted two general passport applications for Canadians under 16 years of age, one for his daughter Joelle Jingwei Xie and the other, for his daughter, Janelle Jingwei Xie. On the application forms Mr. Xie answered 'no' to the question: "Are there any separation agreements, court orders or legal proceedings pertaining to custody or mobility of or access to the child?" On these application forms, Mr. Xie also declared that the children's mother was Ms. Bing Li Dong. On April 27, 2015, Ms. Len Mee Wong, the children's mother, attended the passport issuing office and informed passport officials that the applicant had telephoned her on April 20, 2015, and advised her that he would be taking the children to China on May 21, 2015. Ms. Wong informed passport officials that she objected to Mr. Xie removing the children from Canada. Ms. Wong further informed passport officials that her children later telephoned her to inform her that Mr. Xie was obtaining passports for them in order to take them to China.

[4] Ms. Wong provided the passport office with a copy of an Order made by the British Columbia Supreme Court dated November 14, 2007, in which it ordered, among other things, that Mr. Xie and Ms. Wong would be divorced and that they would have joint custody of the

children. The Court ordered that the primary residence of the children was to be with Mr. Xie while Ms. Wong was to maintain reasonable access to her children.

[5] In a letter dated April 30, 2015, to Mr. Xie from an investigator at the Passport Program, the investigator advised Mr. Xie that he was the subject of an investigation as there was information that gave the Passport Program reason to believe he (Mr. Xie) may have obtained passports in the names of his children by submitting false or misleading information. The passport office advised Mr. Xie of the Passport Program's mandate, the decision-making process and the information held by the Passport Program with respect to the applications for passports. Mr. Xie was invited to provide information that might contradict or respond to the information presented to him. As a result of that correspondence, Mr. Xie replied to the Passport Program. In that correspondence he admitted he had made a mistake. In a letter dated September 11, 2015, a Passport Program officer informed Mr. Xie about the revocation of his daughters' passports pursuant to subsection 10(2) of the *Canadian Passport Order*, SI/81-86 [the Order] and the revocation of his passport pursuant to paragraph 9(1)(a) of the Order.

[6] I am satisfied that the standard of review with respect to the revocation of the passports issued to the two daughters, Joelle and Janelle, is clearly one of reasonableness. In this regard, the investigator is owed considerable deference, and, provided his or her decision is justified, transparent and intelligible, and falls within a range of reasonably acceptable outcomes as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, this Court will not intervene. When I consider the revocation of the daughters' passports, in light of the missing information

from their applications, including erroneously identifying the mother of the children, I find the decision of the Passport Program to be reasonable.

[7] During oral argument, I raised the issue of the Passport Program's interpretation of paragraph 9(1)(a) and subsections 10(1) and 10(2) of the Order, as those provisions relate to the revocation of Mr. Xie's passport. I enquired of counsel for the respondent and Mr. Xie, whether the standard of review on that issue should be correctness or reasonableness. There is very limited jurisdiction with respect to the revocation of Mr. Xie's own passport, which was lawfully obtained. However, for the reasons noted below, I conclude that in the circumstances, the appropriate standard is that of reasonableness.

[8] Paragraph 9(1)(a), and subsections 10(1) and 10(2) of the Order read as follows:

**Refusal of Passports and Revocation**

9 (1) 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

(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

...

10 (1) Without limiting the generality of subsections 4(3) and (4) and for the greater

**Refus de délivrance et révocation**

9 (1) 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) ne lui présente pas une demande de passeport dûment remplie ou ne lui fournit pas les renseignements et les documents exigés ou demandés

...

10 (1) Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que

certainty, the Minister may revoke a passport on the same grounds on which he or she may refuse to issue a passport.	le ministre peut révoquer un passeport pour les mêmes motifs que ceux qu'il invoque pour refuser d'en délivrer un.
(2) In addition, the Minister may revoke the passport of a person who	(2) Il peut en outre révoquer le passeport de la personne :
...	...
(d) has obtained the passport by means of false or misleading information; or	d) qui a obtenu le passeport au moyen de renseignements faux ou trompeurs;
...	...

[9] When I consider the combined application of those provisions of the Order, it is evident that the Passport Program is interpreting legislation exclusively within its domain. That is, it is interpreting its home statute. While I may have reached a different interpretation with respect to the application of those various sections as it relates to the revocation of Mr. Xie's personal passport, I do not find the Passport Program's interpretation to be unreasonable. In this regard, I would cite the foundational cases of *CUPE v NB Liquor Corporation*, [1979] 2 SCR 277 and *Dunsmuir*, above, as they relate to the interpretation of a tribunal's home statute.

[10] Applying the standard of reasonableness to the Passport Program's decision, I therefore conclude that the officer's decision in all three circumstances, namely: the revocation of Mr. Xie's passport and the revocation of the passports of his two daughters, to be reasonable in the circumstances.

[11] Mr. Xie also contends that the investigation was not properly conducted. In making that allegation, he appears to suggest the investigation was not 'correctly' conducted and that his

right to procedural fairness was not respected. With respect to this aspect of the judicial review application, I must apply the standard of correctness. Having carefully reviewed the file and considered the officer's invitation to Mr. Xie to provide information in response to the allegations made against him, I am satisfied the Passport Program and its officer met any duty of procedural fairness imposed upon them and reject Mr. Xie's contention that the investigation was in some fashion unfair to him.

[12] In all the circumstances, I would therefore dismiss the application for judicial review and would do so without costs. I confirm my previous Order, at the beginning of this hearing, that the Style of Cause shall be amended to name the Attorney General of Canada as the Respondent.

[13] I wish to thank Mr. Xie for his submissions today and the professional manner in which they were delivered. I also wish to thank Ms. Aharon for her submissions and assisting me with respect to this latter issue of the interpretation of one's home statute and the jurisprudence related thereto. Thank you very much, counsel.

**JUDGMENT**

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

1. The Style of Cause is amended to substitute the Attorney General of Canada as the Respondent.
2. The application for judicial review is dismissed.
3. There will be no order for costs.
4. There is no question certified.

“B. Richard Bell”

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Judge

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

**DOCKET:** T-1715-15

**STYLE OF CAUSE:** YUSHAN XIE v CITIZENSHIP AND IMMIGRATION  
CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** MARCH 21, 2016

**JUDGMENT AND REASONS** BELL J.

**DATED:** APRIL 21, 2016

**APPEARANCES:**

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FOR THE APPLICANT  
(ON HIS OWN BEHALF)

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FOR THE RESPONDENT

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