

Federal Court



Cour fédérale

**Date: 20170224**

**Docket: T-1129-16**

**Citation: 2017 FC 235**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, February 24, 2017**

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

**BETWEEN:**

**JOURJOS HADDAD**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant became a permanent resident of Canada in 2002 and obtained Canadian citizenship in 2006. He is also a citizen of Syria. He is married and has two children. In 2012, he left Canada to move to the Netherlands, before relocating to the United Arab Emirates [Emirates], where he currently lives with his family.

[2] In April 2016, the applicant applied to renew his Canadian passport through the Consulate General of Canada in Dubai. On April 15, 2016, a new passport was issued, but because of an administrative error, it was delivered to the Canadian Embassy in Oslo. In trying to correct that administrative error, an officer with the “Safekeeping” Division of the Passport Program’s Security Bureau of Immigration, Refugees and Citizenship Canada [IRCC] checked the applicant’s record with the Canadian Police Information Centre (CPIC). It was discovered that there were criminal charges against the applicant in Canada and that a provincial arrest warrant had been issued on July 14, 2014, while the applicant was living abroad.

[3] In this case, the applicant is charged with having made, while in or out of Canada and on various dates, misrepresentations as described in paragraphs 127(a) and 128(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]; having illegally used a certificate and committed an offence as set out in subsection 29(3) of the *Citizenship Act*, RSC 1985, c C-29; and/or having made a false statement in relation to a passport contrary to paragraphs 57(2)(a) and 380(1)(a) of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*] [collectively referred to as the charges].

[4] More specifically, the applicant is charged with having committed the following acts, reproduced from Appendix A to the arrest warrant issued in Quebec by a justice of the peace on police information:

**[TRANSLATION] In Montreal, District of Montreal, and in the United Arab Emirates**

Between March 8, 2002, and December 13, 2006, knowingly made, directly or indirectly, misrepresentations or withheld material facts relating to a relevant matter that induces or could induce an error in the administration of the *Immigration and*

*Refugee Protection Act*, namely: the place of permanent residence, contrary to paragraph 127(a) of the Act, thus committing an indictable offence under paragraph 128(a) of the Act.

On or around December 14, 2006, used, acted on or caused or attempted to cause any person to use or act on a certificate, knowing it to have been unlawfully issued, provided or altered or to have been counterfeited, contrary to paragraph 29(3)(c) of the *Citizenship Act*, R.S.C. 1985, c. C-29, thus committing an indictable offence under subsection 29(3) of the *Citizenship Act*.

On or around December 14, 2006, while in or out of Canada, for the purpose of procuring a passport for himself or any other person or for the purpose of procuring any material alteration or addition to any such passport, made a written or an oral statement that he knew to be false or misleading, contrary to subsection 57(2) of the *Criminal Code*, thus committing an indictable offence under paragraph 57(2)(a) of the *Criminal Code*.

On or around July 10, 2007, used, acted on or caused or attempted to cause any person to use or act on a certificate, knowing it to have been unlawfully issued, provided or altered or to have been counterfeited, contrary to paragraph 29(3)(c) of the *Citizenship Act*, R.S.C. 1985, c. C-29, thus committing an indictable offence under subsection 29(3) of the *Citizenship Act*.

On or around February 12, 2008, used, acted on or caused or attempted to cause any person to use or act on a certificate, knowing it to have been unlawfully issued, provided or altered or to have been counterfeited, contrary to paragraph 29(3)(c) of the *Citizenship Act*, R.S.C. 1985, c. C-29, thus committing an indictable offence under subsection 29(3) of the *Citizenship Act*.

On or around February 12, 2008, while in or out of Canada, for the purpose of procuring a passport for themselves or any other person or for the purpose of procuring any material alteration or addition to any such passport, made a written or an oral statement that they knew to be false or misleading, contrary to subsection 57(2) of the *Criminal Code*, thus committing an indictable offence under paragraph 57(2)(a) of the *Criminal Code*.

On or around November 15, 2010, used, acted on or caused or attempted to cause any person to use or act on a certificate, knowing it to have been unlawfully issued, provided or altered or to have been counterfeited, contrary to paragraph 29(3)(c) of the *Citizenship Act*, R.S.C. 1985, c. C-29, thus committing an indictable offence under subsection 29(3) of the *Citizenship Act*.

On or around November 15, 2010, while in or out of Canada, for the purpose of procuring a passport for himself or any other person or for the purpose of procuring any material alteration or addition to any such passport, made a written or an oral statement that he knew to be false or misleading, contrary to subsection 57(2) of the *Criminal Code*, thus committing an indictable offence under paragraph 57(2)(a) of the *Criminal Code*.

On or around August 19, 2011, while in or out of Canada, for the purpose of procuring a passport for himself or any other person or for the purpose of procuring any material alteration or addition to any such passport, made a written or an oral statement that he knew to be false or misleading, contrary to subsection 57(2) of the *Criminal Code*, thus committing an indictable offence under paragraph 57(2)(a) of the *Criminal Code*.

Between August 13, 2007, and April 2, 2013, by deceit, falsehood or other fraudulent means, defrauded the public or any person, whether ascertained or not, of any property, money or valuable security or any service in excess of five thousand dollars, thus committing an indictable offence under paragraph 380(1)(a) of the *Criminal Code*.

[5] On May 27, 2016, following the communication of this information by the RCMP, an IRCC investigator [the investigator] sent the applicant a letter, informing him of the substance of the charges against him and notifying him that, unless he provided explanations that would allow the situation to be reassessed, issuance of his new passport would be refused pursuant to the powers conferred on the Minister of Citizenship and Immigration [Minister] under paragraph 9(1)(b) of the *Canadian Passport Order*, SI/81-86 [Order] and that his current passport would be revoked on the same grounds, in accordance with subsection 10(1) of the Order.

[6] The provisions in question read as follows:

9(1) Without limiting the generality of subsections 4(3)	9(1) Sans que soit limitée la généralité des paragraphes
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and (4) and for greater certainty, the Minister <u>may refuse to issue</u> a passport to an applicant who	4(3) et (4), il est entendu que le ministre <u>peut refuser de délivrer</u> un passeport au requérant qui :
[...]	[...]
(b) <u>stands charged in Canada with the commission of an indictable offence;</u>	b) est accusé au Canada d'un acte criminel;
10 (1) Without limiting the generality of subsections 4(3) and (4) and for the greater certainty, <u>the Minister may revoke a passport on the same grounds on which he or she may refuse to issue a passport.</u>	10 (1) Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que <u>le ministre peut révoquer un passeport pour les mêmes motifs que ceux qu'il invoque pour refuser d'en délivrer un.</u>
[Emphasis added]	[Nos soulignements]

[7] On June 8, 2016, in a letter from his counsel, the applicant submitted, among other things, that he had been completely unaware of the criminal charges against him. On June 10, 2016, the applicant was advised by the investigator that the information received from his counsel did not make it possible to reconsider the ministerial decision to revoke the passport, which led to this application for judicial review. That revocation took effect on June 25, 2016.

[8] Today, the applicant is asking the Court to decide the following three issues:

1. Was there a breach of procedural fairness?
2. Was there an error in the interpretation or application of paragraph 9(1)(b) of the Order?
3. Was there a failure to consider relevant mitigating factors?

[9] The standard of reasonableness applies to the review of the second and third issues above, which concern the very merits of the decision under review (*Xie v Canada (Citizenship and Immigration)*, 2016 FC 434, [2016] FCJ No. 440 at paragraph 6; *Gomravi v Canada (Attorney General)*, 2015 FC 431, [2015] FCJ No. 519 at paragraph 24 [*Gomravi*]). The standard applicable to the first issue, regarding procedural fairness, is that of correctness (*Kamel v Canada (Attorney General)* (FC), 2008 FC 338, [2009] 1 FCR 59 at paragraphs 62 and 72 [*Kamel*]; *Gomravi* at paragraph 23; *Lipskaia v Canada (Attorney General)*, 2016 FC 526, [2016] FCJ No. 489 at paragraph 14 [*Lipskaia*]).

[10] As a preliminary point, the respondent notes that a number of the applicant's exhibits in the Court record were never submitted to the investigator (Applicant's Record, exhibits P-3.1 to P-3.3, P-4 to P-10.2, P-13, P-16, P-17, P-18, P-18.1 and P-19, investigator's affidavit, at paragraph 17). The applicant is relying on a number of exhibits to challenge the validity and merits of his criminal charges. As a general rule, the record submitted to the Court as part of an application for judicial review is limited to evidence that was available to the administrative decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, [2012] FCJ No. 93 at paragraph 19 [*Association of Universities and Colleges*]; *Kharlan v Canada (Citizenship and Immigration)*, 2016 FC 678, [2016] FCJ No. 687 at paragraph 17 [*Kharlan*]). This Court nevertheless considered the additional evidence cited by the applicant to determine whether there was a breach of procedural fairness and, if applicable, how it affects the outcome (*Association of Universities and Colleges* at paragraph 20; *Kharlan* at paragraph 19). In this case, all of the

additional evidence is irrelevant, considering that the Federal Court does not review decisions by a justice of the peace or actions taken by the police.

***Procedural fairness***

[11] The applicant submits that the investigator's refusal to communicate the arrest warrant infringes on his right to a full answer and defence. He criticizes the investigator for inviting him to submit an access to information request to the police. Such conduct allegedly brings the administration of justice into disrepute, particularly since the evidence in the certified record clearly shows that the investigator was in possession of the warrant.

[12] The applicant argues that he is relying on ample jurisprudence that describes the duty of procedural fairness when the Minister intends to exercise the discretion to revoke a passport under sections 9 and 10 of the Order. Having reviewed that jurisprudence, I note that the applicant misunderstands the scope of the duty of fairness, which is variable in nature, depending on the circumstances.

[13] In *Abdi v Canada (Attorney General)*, 2012 FC 642, [2012] FCJ No. 945 [*Abdi*], the Court held that it was not essential to provide the applicant with a copy of the entire file that was before the investigator. On the contrary, the Minister or the Minister's agents must instead ensure that all material facts that the Division might have discovered in its investigation are disclosed to the concerned parties (*Abdi* at paragraphs 21–22; *Lipskaia* at paragraphs 19–20). However, the Court has noted in other decisions that documents containing material elements must be

disclosed to the concerned parties, particularly when the Minister or the investigator acting on the Minister's behalf relies on those documents.

[14] In *Kamel*, the Minister had decided to suspend the delivery of passport services to Mr. Kamel for an indefinite period after having found that he presented a security risk. That decision was based primarily on a report from the Canadian Security Intelligence Service, which had not been disclosed to Mr. Kamel. The Court thus found that procedural fairness had not been satisfied because Mr. Kamel had not been informed of the contents of the report. Nonetheless, Justice Noël clearly stated that, for procedural fairness to be satisfied, it is sufficient “if 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” (*Kamel* at paragraph 72).

[15] Another example is *Gomravi*, in which the Court stated that the Minister's duty of procedural fairness requires that all material facts discovered in the investigation, whether inculpatory or exculpatory, be disclosed to the parties affected (*Gomravi* at paragraph 32). In that case, the Court allowed the application for judicial review because the Minister had failed to disclose exculpatory evidence that cast doubt on the existence of the imposter, which was a fundamental element of the evidence against the applicant (*Gomravi* at paragraphs 33–34).



[16] That being said, the Minister's duty of disclosure is not automatic or unlimited, and it depends on the particular facts of each case. For example, at paragraph 14 of *Fontaine v Canada (Attorney General)*, 2016 FC 376, [2016] FCJ No. 343, the Court noted that the threshold for procedural fairness in the revocation of a passport is not high. Given that the applicant did receive a letter informing him of the substance of the charges against him and that he had every opportunity to respond to it, the Court found that there had been no breach of procedural fairness.

[17] In the case at hand, the Court finds that there was no breach of procedural fairness. At this stage, it is not a matter of whether the applicant was deprived of his right to a full answer and defence simply because he did not have access to the arrest warrant or the full investigator's file, but rather of determining whether the investigator disclosed all of the material facts to him, that is, the nature and substance of the charges brought against him. The letters dated May 27 and June 10, 2016, specifically mention the criminal charges against him.

[18] Moreover, the investigator followed all of the procedural requirements set out in section 11.3 of the Order, namely:

11.3(1) If a passport has been cancelled under section 11.1, the person to whom the passport was issued may, within 30 days after the day on which the person becomes aware that the passport is cancelled, apply to the Minister or the Minister of Public Safety and Emergency Preparedness, as the case may be, in writing to have the cancellation reconsidered.

11.3(1) La personne qui voit le passeport qui lui a été délivré annulé en vertu de l'article 11.1 peut, dans les trente jours suivant la date à laquelle elle a pris connaissance de l'annulation, demander par écrit au ministre ou au ministre de la Sécurité publique et de la Protection civile, selon le cas, de reconsidérer l'annulation.

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| <p>(2) The Minister or the Minister of Public Safety and Emergency Preparedness, as the case may be, shall give the person a reasonable opportunity to make representations.</p>                                       | <p>(2) Le ministre ou le ministre de la Sécurité publique et de la Protection civile, selon le cas, accorde au demandeur la possibilité de présenter des observations.</p>   |
| <p>(3) On receipt of the representations, the Minister or the Minister of Public Safety and Emergency Preparedness, as the case may be, shall decide if there are still reasonable grounds to cancel the passport.</p> | <p>(3) À la réception des observations, le ministre ou le ministre de la Sécurité publique et de la Protection civile, selon le cas, décide s'il existe encore des motifs raisonnables d'annuler le passeport.</p> |
| <p>(4) The Minister or the Minister of Public Safety and Emergency Preparedness, as the case may be, shall give notice to the person without delay of the decision made in respect of the application.</p>             | <p>(4) Le ministre ou le ministre de la Sécurité publique et de la Protection civile, selon le cas, donne sans délai au demandeur un avis de la décision qu'il a rendue relativement à la demande.</p>             |

[19] Although the procedure described in the Order was followed, the applicant argues that the investigator nevertheless breached his right to a full answer and defence. Citing the decision in *Dias v Canada (Attorney General)*, 2014 FC 64, [2014] FCJ No. 60 (QL) [*Dias*], the applicant argues that the investigator overstepped his jurisdiction in deciding on the value and merits of the charges laid against him. The applicant also argues that the arrest warrant issued against him by the Province of Quebec infringes on his mobility rights as a Canadian citizen.

[20] These alternative arguments must also be dismissed, in that they raise no issues of procedural fairness. Moreover, the jurisprudence the applicant cites does not apply here. Even if we assume for a moment, for the sake of argument, that there was in fact a breach of procedural

fairness, this Court, in exercising its discretion in a judicial review, finds that it would serve no useful purpose to set aside the Minister's decision and refer the case back for reconsideration by a different investigator (*Lou v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No. 862 at paragraphs 13–14; *Nagulathas v Canada (Citizenship and Immigration)*, 2012 FC 1159, [2012] FCJ No. 1317 at paragraph 24; *Pavicevic v Canada (Attorney General)*, 2013 FC 997, [2013] FCJ No. 1084 at paragraphs 55–56; *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 114 (SCC), [1994] 1 SCR 202).

[21] In the case at hand, the Minister (or the Minister's delegate) did not base the decision to revoke the passport on the fact that the applicant is actually guilty of the alleged offences, but solely on the fact that he is currently facing criminal charges. In other words, the alleged breach of procedural fairness, that is, the fact that the warrant had not been disclosed in advance to the applicant, can have no impact on the outcome. Indeed, the applicant is still facing criminal charges for the various offences. In short, the ministerial decision would not have been different in the case under review.

[22] Moreover, the fact that the applicant wishes to return to Canada to defend himself against the charges is not a determining factor in this case. At the risk of repeating myself, the key element is that the applicant is currently facing criminal charges. Under paragraph 9(1)(b) and subsection 10(1) of the Order, that is sufficient grounds to revoke his passport. Moreover, there is nothing to prevent the applicant—despite the revocation of his passport—from applying for a temporary passport or an emergency travel document. As the investigator noted in his two letters, that solution would allow the applicant to return to Canada and resolve his situation, particularly

since he states that he has owned a condominium in Montreal since 2007 and has apparently retained the services of a lawyer to defend him against the criminal charges.

***Interpretation and application of paragraph 9(1)(b) of the Order***

[23] The applicant submits that paragraph 9(1)(b) of the Order applies only when the individual is convicted of the offence, not when there are only charges. He states that the word “guilty”—rather than “accused”—is used in subsections 57(2) and 380(1) of the *Criminal Code*, in subsection 29(3) of the *Citizenship Act* and in paragraph 128(a) of the IRPA. This Court does not agree with that interpretation, which is contrary to the very text of paragraph 9(1)(b) of the Order and the purpose of that provision. Moreover, paragraph 9(1)(e) of the Order—which specifically concerns the refusal to issue a passport to a person convicted of an offence under section 57 of the *Criminal Code*—does not exclude the application of paragraph 9(1)(b) of the Order.

[24] The Minister clearly has the discretion to suspend a passport in all cases referred to in section 9 and, furthermore, to revoke a passport under section 10 to maintain the integrity of the system for issuing passports. The jurisprudence cited by the applicant is not very relevant here.

[25] For example, in *Siska v Passport Canada*, 2014 FC 298 [*Siska*], the Court ruled that, in accordance with the text of paragraph 10(2)(b) of the Order, the Minister may revoke a passport if an indictable offence is committed in Canada or if a similar offence is committed in another country. Although there seems to be uncertainty in the jurisprudence regarding the interpretation of paragraph 10(2)(b), the Court found that, for the purposes of that specific provision, the

applicant had to be convicted (*Siska* at paragraph 18). The same type of reasoning is found in *Allen v Canada (Attorney General)*, 2015 FC 213, at paragraphs 23 and 33. Moreover, paragraphs 9(1)(b) and 10(2)(b) of the Order must not be confused (*Siska* at paragraph 16, referring to *Vithiyananthan v Canada (Attorney General)*, 2000 CanLII 17124 (FC), [2000] FCJ No. 409 at paragraph 11).

[26] In *Canada (Attorney General) v Dias*, 2014 FCA 195, [2014] FCJ No. 958, it was again a matter of interpreting paragraph 10(2)(b) of the Order, which enables the Minister to “revoke the passport of a person who. . . 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.” To meet the requirements of paragraph 10(2)(b) of the Order, the Minister must prove that all of the constituent elements of the offence are present, and that it is unreasonable for the Minister to act based on reasonable grounds or simple suspicions. However, the situation is quite different in this case, in which the investigator must simply be satisfied that a charge has been laid against the applicant under paragraph 9(1)(b) of the Order. As that evidence is on record, the investigator is not required to analyze the merits of the charges against the applicant.

[27] The Court finds that the decision-maker made no reviewable error in law.

### ***Mitigating factors***

[28] Even though the Court concludes that no error in law was committed in this case, the applicant argues in the alternative that the investigator erred in the assessment of the “mitigating

factors,” making the ministerial decision otherwise unreasonable. Moreover, he argues that the ministerial decision violates the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*, as the revocation of the applicant’s passport deprived him and his family of the right to life and security (section 7) and infringed on his right as a Canadian citizen to enter and leave Canada (section 6).

[29] The applicant’s arguments are unfounded. On the one hand, there is nothing in the Order or the jurisprudence that requires the investigator to take into account humanitarian or compassionate considerations or mitigating factors in the application of paragraph 9(1)(b) of the Order. On the other hand, according to the jurisprudence, in the event of revocation, applicants may still apply for a temporary passport based on urgent and compelling compassionate considerations (*Mikhail v Canada (Attorney General)*, 2013 FC 724, [2013] FCJ No. 788 at paragraph 1). It should be noted, in passing, that the notion of “mitigating factor” or “compassionate consideration” was addressed by this Court in *Desmond De Hoedt v Canada (Citizenship and Immigration)*, 2014 FC 829, [2014] FCJ No. 988 [*De Hoedt*]. In that case, the applicant alleged that he had accompanied his sister so that she could seek refuge in Canada and that this was a laudable goal. Noting that section 117 of the IRPA is related to Parliament’s historical concern with border control to prevent individuals from arranging the unlawful entry of undocumented migrants into Canada, the Court found that the compassionate considerations cited by the applicant had no importance in the decision to revoke the passport (*De Hoedt* at paragraphs 29 and 35).

[30] Moreover, in the case at hand, the applicant recognizes that all the offences with which he is charged are indictable offences under paragraph 128(a) of the IRPA, subsection 29(3) of the *Citizenship Act* and subsection 57(2) and paragraph 380(1)(a) of the *Criminal Code*. In this case, the IRCC investigator was not required to determine whether the applicant would have returned to Canada to defend himself had he known about the charges against him. Moreover, the applicant did not demonstrate to this Court that the late discovery of the charges that had been outstanding since the summer of 2014 caused him prejudice in terms of the evidence and arguments that he could have submitted in the spring of 2016 to prevent the Minister or the Minister's delegate from revoking his passport. There are therefore no mitigating factors that could taint the ministerial decision. In addition, the compassionate considerations raised by the applicant are irrelevant, in that it is possible for him to apply for a temporary passport to come settle the criminal charges against him in Canada.

### ***Conclusion***

[31] The revocation of the applicant's passport falls within the range of possible, acceptable outcomes in light of the applicable law and the evidence on record (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339). The letters dated May 27 and June 10, 2016, allow the applicant to understand the reasoning of the decision-maker, who relied on the evidence on record. There was no breach of procedural fairness in this case. The investigator obtained the relevant information from a reliable source—in this case, the RCMP—and subsequently informed the applicant of the nature of the criminal charges against him. Clearly, the revocation of a passport can have serious consequences on the individual, such that the Minister (or the

Minister's delegate) must ensure that criminal charges actually have been laid against the holder of the passport and that they do in fact concern the same person. In the case at hand, these conditions are met, meaning that the decision under review contains no reviewable errors that could be determinative in the outcome of the case.

[32] For these reasons, the Court dismisses this application for judicial review. The respondent has not claimed costs.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed,  
without costs.

“Luc Martineau”

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Judge

Certified true translation  
This 13th day of December 2019

Lionbridge

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

**DOCKET:** T-1129-16

**STYLE OF CAUSE:** JOURJOS HADDAD v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** MONTREAL, QUEBEC

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**DATED:** FEBRUARY 24, 2017

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