

Federal Court



Cour fédérale

**Date: 20171130**

**Docket: T-1740-16**

**Citation: 2017 FC 1085**

**Montréal, Quebec, November 30, 2017**

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

**BETWEEN:**

**MUNA AL NAHAWI**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant seeks judicial review of the Immigration, Refugees and Citizenship Canada's Program Integrity Branch, Passport Investigations Division's decision to revoke her Canadian passport pursuant to paragraph 9(1)b) and subsection 10(1) of the *Canadian Passport Order*, SI/81-86 [Order].

[2] These provisions read as follows:

9(1) Without limiting the

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generality of subsections 4(3) and (4) and for greater certainty, the Minister may refuse to issue a passport to an applicant who [...]	généralité des paragraphes 4(3) et (4), il est entendu que le ministre peut refuser de délivrer un passeport au requérant qui [...]
(b) stands charged in Canada with the commission of an indictable offence;	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, the Minister may revoke a passport on the same grounds on which he or she may refuse to issue a passport.	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.

[3] Decisions rendered by the Passport Program Integrity Branch are reviewed under the reasonableness standard (see especially *Kamel v Canada (Attorney General)*, 2008 FC 338 at paras 57 to 62 [*Kamel*], later rev'd on the constitutional question only in *Kamel v Canada (Attorney General)*, 2009 FCA 21), while procedural fairness issues are reviewed under the correctness standard (see e.g. *Kamel* at para 62; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[4] The relevant facts are not seriously disputed.

[5] The applicant became a permanent resident of Canada on June 28, 2001. She applied for Canadian citizenship on March 20, 2004, which she obtained on August 13, 2007. Following a request made on September 18, 2007, the applicant received her first Canadian passport. Her passport was renewed following an application submitted on May 21, 2012.

[6] Around June 15, 2016, the applicant received a letter dated June 10, 2016 from a senior investigator of the Passport Investigations Division informing her that her passport could be revoked [fairness letter]. In effect, the Division had received information according to which the applicant was charged with committing indictable offences under paragraphs 57(2)(a), 380(1)(a) and subparagraph 380(1)(b)(i) of the *Criminal Code*, RSC, 1985, c C-46 (false statement in relation to passport and fraud); subsections 29(2) and 29(3) of the *Citizenship Act*, RSC 1985, c C-29 (various indictable offenses related to citizenship documents) and paragraph 128(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (misrepresentation). The fairness letter also stated that the Division was informed of the existence of an arrest warrant issued under the applicant's name on December 29, 2014 by the Province of Québec. In compliance with paragraph 9(1)b) and subsection 10(1) of the Order, the Passport Investigations Division was in the process of revoking the applicant's passport. The applicant was however given until June 20, 2016 to respond to the disclosed information by bringing additional facts, mitigating information or correction to any erroneous information that would cause a reconsideration of the proposed decision.

[7] Following receipt of this fairness letter, the applicant requested an extension of delay. An extension was granted until July 20, 2016. No submissions were ever received, and in effect, the Passport Investigations Division revoked the applicant's passport on August 23, 2016.

[8] The applicant submits that the impugned decision was not made in accordance with procedural fairness because the Passport Investigations Division failed to disclose relevant information and material. While the fairness letter listed all the charges, the applicant argues that

she should be presumed innocent and that she only became aware of the charges after her mother's arrest on May 13, 2016. Moreover, she was unable to respond or dispute the facts that were considered by the Division and held against her. The cases cited by the respondent in support of the impugned decision are not helpful since it appears that the persons concerned had received sufficient information enabling them to properly respond.

[9] Conversely, the respondent submits that all relevant information relied upon by the Passport Investigations Division was disclosed to the applicant. The fact that she was charged and had an outstanding warrant were the only elements considered to revoke her passport – all of which were included in the fairness letter. The Division does not send copies of the indictments or the warrants to the individuals, especially since it does not ground its decision on the facts underlying the charges, but rather on their mere existence. If the applicant wishes to dispute the charges themselves, she should do so before Canadian criminal courts. The respondent further submits that the applicant was given an adequate opportunity to respond. Indeed, the fairness letter first gave her ten days to make observations – a standard deadline. Moreover, she was even granted a subsequent thirty day extension, and yet failed to present any observations.

[10] I agree with the respondent that the present application must fail.

[11] The information disclosed to the applicant was sufficient in light of the particular circumstances of the case. Procedural fairness does not require the disclosure of the entire file, but rather of all material facts discovered by the Passport Investigations Division in its investigation (see *Abdi v Canada (Attorney General)*, 2012 FC 642 at para 21). In various cases,

the Passport Investigations Division (or its predecessor) had conducted an extensive investigation, and subsequently relied on various documents like investigative reports, facial recognition analyses, seized evidence, etc (see e.g. *Lipskaia v Canada (Attorney General)*, 2016 FC 526 at paras 19-25; *Gomravi v Canada (Attorney General)*, 2013 FC 1044). These documents then had to be disclosed. In our case however, the Division revoked the applicant's passport simply because she was charged with various indictable offenses. I agree with the respondent that the only material facts relied upon by the Division were the charges and the arrest warrant. The information underlying those charges was not considered. In addition, it was not necessary to provide the applicant with the actual warrant, as the letter listed all the relevant information (see e.g. *Canada (Attorney General) v Dias*, 2014 FCA 195 at paras 5-6; *Haddad c Canada (Procureur général)*, 2017 CF 235 at paras 11, 21 and 31). The applicant was also awarded an adequate opportunity to respond. The fairness letter initially gave her ten days to bring additional information or correct any erroneous information. The Division then granted her a further extension of thirty days to do so. It was only after the expiration of this delay that her passport was effectively revoked. The Division followed a fair procedure. In conclusion, there was no breach to procedural fairness.

[12] This application for judicial review is dismissed with costs. Parties have not raised a question of law of general importance.

**JUDGMENT in T-1740-16**

**THIS COURT'S JUDGMENT is that** the present judicial review application be dismissed with costs. No question of general importance is certified.

"Luc Martineau"

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Judge

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

**DOCKET:** T-1740-16

**STYLE OF CAUSE:** MUNA AL NAHAWI v THE ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** NOVEMBER 27, 2017

**JUDGMENT AND REASONS:** MARTINEAU J.

**DATED:** NOVEMBER 30, 2017

**APPEARANCES:**

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