

Federal Court



Cour fédérale

Date: 20200313

Docket: T-2083-18

Citation: 2020 FC 364

Ottawa, Ontario, March 13, 2020

PRESENT: Mr. Justice Gascon

BETWEEN:

MOHAMMED ALSALOUSSI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Mohammed Alsaloussi, challenges a decision issued on November 28, 2018 [Decision] by the Passport Entitlement and Investigations Division [Passport Division] of Immigration, Refugees and Citizenship Canada [IRCC], which revoked his Canadian passport and imposed on him a three-year suspension of passport services pursuant to sections 10(2)(d) and 10.2(1) of the *Canadian Passport Order*, SI/81-86, as amended [*Passport Order*]. In his

Decision, the officer acting on behalf of the Passport Division [Decision-Maker] determined that, further to the application he made on April 25, 2018 [April 2018 Passport Application], Mr. Alsalousi had obtained a passport by means of false or misleading information.

[2] Mr. Alsalousi maintains that the Decision is unreasonable because the finding that he provided false or misleading information is unjustifiable in fact and in law. He submits that the three-year suspension of passport services is also unreasonable because it failed to take relevant facts into account and to consider the disproportionate effect of the sanction on his mobility rights protected by section 6 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c 11 [*Charter*]. This provision states that “[e]very citizen of Canada has the right to enter, remain in and leave Canada”. Mr. Alsalousi further contends that, in rendering the Decision and imposing the suspension, the Passport Division breached the principles of procedural fairness. Finally, he claims that the Decision amounts to a cruel and unusual punishment contrary to section 12 of the *Charter*.

[3] In his application for judicial review, Mr. Alsalousi seeks the following relief from the Court: 1) an order quashing the Decision; 2) a declaration that the Passport Division violated the principles of procedural fairness and his *Charter* rights; 3) an order that his Canadian passport be permanently returned to him without limitation of use within five days of the Court’s decision; 4) an order that the Government of Canada modify the general passport application to properly address questions in connection with or distinguishing name change or name amendment of an applicant; and 5) costs.

[4] Further to the hearing before the Court, four issues need to be determined in this application for judicial review: 1) was it unreasonable for the Decision-Maker to conclude that Mr. Alsaloussi had provided false or misleading information in connection with his passport application; 2) was it unreasonable to impose a three-year suspension of passport services on Mr. Alsaloussi, considering its effect on his mobility rights and the objectives underlying Canada's passport program [Passport Program]; 3) was the Passport Division's process procedurally fair; and 4) did the Decision violate Mr. Alsaloussi's rights under section 12 of the *Charter*.

[5] For the reasons that follow, I will grant Mr. Alsaloussi's application in part. I am satisfied that the finding made by the Decision-Maker on Mr. Alsaloussi's false or misleading representations in his April 2018 Passport Application is justified and intelligible, and that it is reasonable in light of the evidence. The reasons detailed in the Decision demonstrate that this conclusion is based on an internally coherent and rational chain of analysis and that it is justified in relation to the facts and law that constrain the Passport Division. Moreover, I also conclude that the investigation and decision-making process followed by the Passport Division was procedurally fair, and that Mr. Alsaloussi was not the victim of cruel and unusual punishment under section 12 of the *Charter*. However, based on the specific facts of this case, I am not satisfied that the three-year suspension imposed by the Decision-Maker meets the standard of reasonableness. In my view, the Decision does not explain how the three-year suspension is justified in light of the evidence and how it furthers the objectives of the Passport Program. In addition, the reasons do not allow me to understand the basis for the three-year suspension of passport services and to conclude that it is a proportionate infringement of Mr. Alsaloussi's *Charter*-protected mobility rights. This is sufficient to justify the Court's intervention.

II. Background

A. *Factual context*

[6] In September 2005, Mr. Alsaloussi became a Canadian citizen under the name of “Mohamed Essam El Saloussy”. Twelve years later, in October 2017, IRCC approved Mr. Alsaloussi’s request to amend his immigration record, in order to change his name from “Mohamed Essam El Saloussy” to “Mohammed Alsaloussi”.

[7] Prior to his name change, Mr. Alsaloussi had applied for Canadian passports on five different occasions, under his previous surname “El Saloussy”. On each occasion, he always submitted his previous passports in support of his applications. The last passport he held under the surname “El Saloussy” was issued on July 19, 2016 under the number HM804068 [Passport HM804068].

[8] On April 25, 2018, Mr. Alsaloussi applied to obtain a new passport under his new corrected name, Mohammed Alsaloussi, at the passport office in London, Ontario. On his April 2018 Passport Application, Mr. Alsaloussi left the fields of “Surname (last name) at Birth” and “Former Surname (last name)” blank, and he responded “No” to the question “Has a Canadian travel document (passport, certificate of identity or refugee travel document) been issued to you?”

[9] The parties disagree on the facts leading to the contents of the April 2018 Passport Application and on the events of April 25, 2018. Mr. Alsaloussi claims to have answered the

application form the way he did because of instructions provided to him over the phone by the representatives of the IRCC's Client Support Service Centre [IRCC Centre], to whom he had allegedly explained the correction recently made to his name. Furthermore, Mr. Alsaloussi asserts that he confirmed with an IRCC representative that he could keep Passport HM804068, which he held at the time of the April 2018 Passport Application. He wished to keep this passport because it contained an expensive visa for travelling to Saudi Arabia. Mr. Alsaloussi further maintains that he had brought Passport HM804068 with him to the London passport office when he presented his April 2018 Passport Application, and was then advised by a passport officer that he could keep it.

[10] The Attorney General of Canada [AGC] asserts that none of the information that Mr. Alsaloussi claims to have received from the Canadian passport authorities are in line with the policies and procedures of the Passport Program. There is no record of Mr. Alsaloussi having presented Passport HM804068 at the time of his April 2018 Passport Application. The AGC further notes that the IRCC Centre is required to record the incoming phone calls, and that there was no trace of a call made by Mr. Alsaloussi around April 2018. In addition, the AGC observes that the IRCC Centre does not provide any assistance for passport applications, as this assistance is specifically provided by the Passport Program's separate call centre.

[11] Further to Mr. Alsaloussi's April 2018 Passport Application, passport number AC588690 was issued under Mr. Alsaloussi's new name on April 26, 2018 [Passport AC588690]. While Mr. Alsaloussi kept Passport HM804068, it was in fact never used after Passport AC588690 was issued.

[12] Shortly after the issuance of Passport AC588690, an administrative investigation was launched by the Canadian passport authorities following a routine verification involving IRCC's Facial Recognition System [FRS]. FRS had generated an alert that the photograph submitted by Mr. Alsaloussi in support of his April 2018 Passport Application strongly resembled the individual appearing on the photograph in Passport HM804068 issued under the name of "Mohamed Essam El Saloussy". Mr. Alsaloussi was informed in early June 2018 that the Passport Program was attempting to contact him regarding his April 2018 Passport Application.

[13] Mr. Alsaloussi received a detailed nine-page letter from IRCC on July 25, 2018, requesting him to return both his previous Passport HM804068 and the newly issued Passport AC588690. The letter further informed Mr. Alsaloussi that he was under investigation as the Passport Division had reasons to believe that he had provided false or misleading information on his April 2018 Passport Application. The letter disclosed the facts leading to the investigation, as well as the procedures Mr. Alsaloussi should follow to respond to the letter. Mr. Alsaloussi was invited to submit information to the Passport Division to consider in its investigation and decision-making. The letter notably indicated that Mr. Alsaloussi appeared to have provided false or misleading information in support of his April 2018 Passport Application as he failed to declare his change of name, to indicate that a passport had been previously issued to him and to include the existing Passport HM804068 with his application.

[14] The letter further informed Mr. Alsaloussi that, if a passport is revoked by the Minister of Immigration, Refugees and Citizenship [Minister] because it was obtained by means of false or misleading information, the Minister may refuse to deliver passport services for a maximum

period of ten years. The letter finally mentioned that, after his passports were returned and during the investigation, Mr. Alsaloussi could apply for a passport of limited validity with geographical limitations based on urgent, compelling and compassionate considerations [UCCC Passport].

[15] On August 3, 2018, Mr. Alsaloussi attempted to return both passports as requested in the July 25, 2018 letter. The London passport office cancelled and retained Passport HM804068, but Passport AC588690 was remitted back to Mr. Alsaloussi, who was allowed to keep it. Mr. Alsaloussi subsequently surrendered Passport AC588690 on August 23, 2018.

[16] On August 27, 2018, the Passport Division sent another letter to Mr. Alsaloussi stating that the investigation was concluded and that his file was being forwarded for a decision.

[17] On September 6, 2018, Mr. Alsaloussi, through his counsel, sent detailed written submissions to the Passport Division, in response to the July 25, 2018 letter, in which he explained why, in his view, his April 2018 Passport Application was neither false nor misleading.

[18] On September 28, 2018, the Passport Division sent yet another letter to Mr. Alsaloussi, disclosing additional relevant information and providing him with an opportunity to respond to this information before a decision was made. This letter informed Mr. Alsaloussi that: 1) the IRCC Centre had no record of Mr. Alsaloussi calling their office during the year 2018; 2) the Canada Border Services Agency provided the Passport Division with records of Mr. Alsaloussi's entry into Canada and these records showed no use of Passport HM804068 after the issuance of

Passport AC588690; 3) an assistant manager working at the London passport office where Passport AC588690 was issued and who dealt with Mr. Alsaloussi during the investigation [Assistant Manager] had stated that the whole matter was the result of “an administrative error by our office” but advised that this opinion was based on Mr. Alsaloussi’s own statement that he had presented Passport HM804068 with his April 2018 Passport Application; and 4) there was no information on file that Passport HM804068 was presented with the April 2018 Passport Application for the issuance of Passport AC588690 (the letter noted that it is a requirement for passport officers to add remarks to a file on the status of passports and to physically mark the passport book and electronically cancel it before returning it to an applicant).

[19] On October 17, 2018, Mr. Alsaloussi, again through his counsel, sent another detailed letter to the Passport Division, in response to the September 28, 2018 letter.

[20] On November 28, 2018, the Decision-Maker rendered the Decision now being challenged. On January 8, 2019, the Court dismissed Mr. Alsaloussi’s motion for stay of execution of the Decision until a judgment was rendered on his application for judicial review.

B. *The Decision*

[21] In the Decision, the Decision-Maker made a detailed review of the investigation conducted by the Passport Division and of the elements taken into consideration in deciding whether or not to take any administrative measures in relation to Passport HM804068 and Passport AC588690. In particular, the Decision-Maker determined that Mr. Alsaloussi did not declare his former surname in his April 2018 Passport Application and had clearly declared that

no previous passport or other Canadian travel document had been issued to him. The Decision-Maker further concluded that it was more likely than not that Mr. Alsaloussi had not presented Passport HM804068 at the London passport office when he made his April 2018 Passport Application. As a result, Mr. Alsaloussi was informed that his Passport AC588690 was revoked.

[22] Mr. Alsaloussi was also informed that a three-year suspension of passport services had been imposed, pursuant to subsection 10.2(1) of the *Passport Order*. In this regard, the Decision acknowledged that “refusing passport services is a serious matter that may cause hardship and must be weighed against the [Passport Division]’s mandate”. The Decision-Maker referred to Mr. Alsaloussi’s personal circumstances and to the factors related to the mandate of the Passport Division that were taken into consideration in imposing the three-year suspension.

[23] The Decision concluded by noting that, notwithstanding the suspension, Mr. Alsaloussi may still apply for a UCCC Passport, based on urgent, compelling and compassionate considerations such as life threatening illness or a death in the family.

C. *Standard of review*

[24] It is not disputed that reasonableness is the applicable standard of review on a decision to revoke a passport and to withhold passport services (*Shamir v Canada (Attorney General)*, 2018 FC 769 [*Shamir*] at para 8; *Abaida v Canada (Attorney General)*, 2018 FC 490 [*Abaida*] at paras 33-34; *Villamil v Canada (Attorney General)*, 2013 FC 686 [*Villamil*] at para 30). This standard equally applies to the Decision-Maker’s balancing of Mr. Alsaloussi’s mobility rights with the objectives underlying the *Passport Order* (*Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*] at

paras 57-58; *Thelwell v Canada (Attorney General)*, 2017 FC 872 [*Thelwell*] at para 26). It has been recognized that the refusal of passport services infringes the *Charter*-protected mobility rights (*Canada (Attorney General) v Kamel*, 2009 FCA 21 [*Kamel 1*] at paras 15, 68; *Thelwell* at para 23). In this context, a decision that does not take these rights into account or that restricts them disproportionately is deemed to be unreasonable (*Kamel v Canada (Attorney General)*, 2013 FCA 103 [*Kamel 2*] at para 35).

[25] That reasonableness is the appropriate standard has recently been reinforced by the Supreme Court of Canada in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. In that judgment, the majority of the Court set out a revised framework for determining the standard of review with respect to the merits of administrative decisions, holding that they should presumptively be reviewed on the reasonableness standard, unless either legislative intent or the rule of law requires otherwise (*Vavilov* at paras 10, 17). I am satisfied that neither of these two exceptions apply in the present case, and that there is no basis for derogating from the presumption that reasonableness is the applicable standard of review for the Decision.

[26] Regarding the actual content of the reasonableness standard, the *Vavilov* framework does not represent a marked departure from the Supreme Court's previous approach, as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] and its progeny, which was based on the "hallmarks of reasonableness", namely justification, transparency and intelligibility (*Vavilov* at para 99). The reviewing court must consider "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome", to determine whether

the decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 83, 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at paras 2, 31).

[27] *Vavilov*’s revised framework for reasonableness requires the reviewing court to take a “reasons first” approach to judicial review (*Canada Post* at para 26). Where a decision maker has provided reasons, the reviewing court must begin its inquiry into the reasonableness of the decision “by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion” (*Vavilov* at para 84). The reasons must be read holistically and contextually in light of the record as a whole and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-94, 97). However, “it is not enough for the outcome of a decision to be *justifiable* [...] the decision must also be *justified*” (*Vavilov* at para 86).

[28] Before a decision can be set aside on the basis that it is unreasonable, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). An assessment of the reasonableness of a decision must be robust, but it must remain sensitive to and respectful of the administrative decision-maker (*Vavilov* at paras 12-13). Reasonableness review is an approach meant to ensure that the reviewing court only intervenes in administrative matters “where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). It is anchored in the principle of judicial restraint and in a respect for the distinct role and specialized

knowledge of administrative decision makers (*Vavilov* at paras 13, 75, 93). In other words, the approach to be followed by the reviewing court is still one of deference, especially with respect to findings of facts and the weighing of evidence. Absent exceptional circumstances, such as when the decision maker has “fundamentally misapprehended or failed to account for the evidence before it”, the reviewing court will not interfere with an administrative decision maker’s factual findings (*Vavilov* at paras 125-126).

[29] Turning to the issues of procedural fairness, the approach to be taken has not changed following *Vavilov* (*Vavilov* at para 23). It has typically been held that correctness is the applicable standard of review for determining whether a decision maker complies with the duty of procedural fairness and the principles of fundamental justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Shamir* at para 31).

[30] However, the Federal Court of Appeal has recently affirmed that questions of procedural fairness are not truly decided according to any particular standard of review. Rather, it is a legal question to be answered by the reviewing court, and the court must be satisfied that procedural fairness has been met. When the duty of an administrative decision maker to act fairly is questioned or a breach of fundamental justice is invoked, it requires the reviewing court to verify whether the procedure was fair having regard to all of the circumstances (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24-25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*,

2018 FCA 69 [CPR] at para 54). This assessment includes the five, non-exhaustive contextual factors set out in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [Baker] (Vavilov at para 77). It is up to the reviewing court to make that determination and, in conducting this exercise, the court is called upon to ask, “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed” (CPR at para 54). As the Federal Court of Appeal expressed it in CPR, “[n]o matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond” (CPR at para 56).

[31] Therefore, the real question raised when procedural fairness and alleged breaches of fundamental justice are the object of an application for judicial review is whether, taking into account the particular context and circumstances at issue, the process followed by the administrative decision maker was fair and offered the affected parties a right to be heard and the opportunity to know and respond to the case against them (*Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51-54).

III. Analysis

A. *Was it unreasonable to conclude that Mr. Alsaloussi had provided false or misleading information on his April 2018 Passport Application*

[32] Mr. Alsaloussi first submits that the Decision is unreasonable because the conclusion that he provided false or misleading information in support of his April 2018 Passport Application is

based on unjustifiable findings of fact and law. He contends that the Decision-Maker was unjustified to conclude that he did not provide his Passport HM804068 when he applied for a new passport in April 2018, or that it was unlikely for IRCC representatives to erroneously inform him to answer that he never had a passport previously issued. In essence, Mr. Alsaloussi claims that it was unreasonable not to believe his explanations that any false or misleading information he provided was due to the fault of IRCC representatives and passport officers rather than his own. To this effect, he notably relies on a statement made by the Assistant Manager at the London passport office, who mentioned that Mr. Alsaloussi was likely a victim of an administrative error. Relying on *Lévis (City) v Tétreault*, 2006 SCC 12, Mr. Alsaloussi further argues that any wrongful act he may have committed was officially induced by an error of the State.

[33] I disagree and I am not persuaded by Mr. Alsaloussi's arguments as far as the Decision's conclusions on the false or misleading information are concerned.

[34] In reaching the conclusion to revoke Passport AC588690, the Decision-Maker determined that it was more likely than not that Mr. Alsaloussi had not presented his Passport HM804068 at the London passport office on April 25, 2018 and that he had clearly marked, on his April 2018 Passport Application, that no previous Canadian travel document has been issued to him. The reasons outlining the Decision-Maker's analysis and review of the evidence in that respect are detailed, extending over five pages.

[35] In concluding that it was more likely than not that Mr. Alsaloussi's April 2018 Passport Application contained false or misleading information, the Decision-Maker explicitly took into account the information that Mr. Alsaloussi had provided to the Passport Division in his various written submissions. The Decision-Maker referred to it extensively in the reasons for the Decision. This included Mr. Alsaloussi's statement that he had called the IRCC Centre and was instructed to act as he did; his belief that he acted in accordance with the said instructions; his affirmation that he brought Passport HM804068 with him when he presented his April 2018 Passport Application; and his recollection of what the Assistant Manager told him.

[36] The Decision-Maker thoroughly addressed Mr. Alsaloussi's submissions that any false or misleading information appearing on his passport application was a direct result of errors made by the IRCC representatives, but the Decision-Maker was not convinced by them. And after assessing and weighing all the evidence before him, the Decision-Maker concluded that, on a balance of probabilities, Mr. Alsaloussi had obtained Passport AC588690 by means of false or misleading information. Contrary to Mr. Alsaloussi's submission that the Decision-Maker based his determinations on unjustified conclusions, I instead find that the Decision carefully considered all of the evidence provided by Mr. Alsaloussi as well as the Passport Division's records and that it was reasonably open to the Decision-Maker to conclude as he did.

[37] More specifically, the Decision-Maker took the following information into account and balanced this evidence against the statements made by Mr. Alsaloussi: 1) the incorrect statements made in response to the questions on his former surname and his previous travel documents in the April 2018 Passport Application; 2) the lack of objective evidence showing that Passport

HM804068 had been presented to the London passport office; 3) the lack of objective evidence on Mr. Alsaloussi's calls to the IRCC Center; 4) and the evidence from the Assistant Manager clarifying that her statements regarding an "administrative error" were strictly based on Mr. Alsaloussi's own affirmations.

[38] The evidence is clear that the April 2018 Passport Application contained false information on some mandatory information required by the form. Since Mr. Alsaloussi does not deny that he is "Mohamed Essam El Saloussy", whether he changed his name or simply corrected it is irrelevant, as he failed to provide his former surname "El Saloussy" on the application. I agree with the AGC that the name correction from "El Saloussy" to "Alsaloussi" was material and cannot be qualified as a simple spelling correction. Furthermore, whereas he had been issued a previous Canadian travel document (namely, Passport HM804068), Mr. Alsaloussi clearly marked on his April 2018 Passport Application that none had been issued to him. Both of these statements made on the April 2018 Passport Application were false.

[39] I pause to note that Mr. Alsaloussi was familiar with the Canadian passport applications and that, each time he had renewed his passports prior to April 2018, he had always indicated that he owned a previous passport and had returned it to the Canadian passport authorities, as evidenced by the various notes to file of the passport officers who handled his previous applications. Mr. Alsaloussi was therefore well aware that returning previous passports is a requirement for a new passport application.

[40] Turning to Mr. Alsaloussi's statement that he presented Passport HM804068 when he applied for his new passport on April 25, 2018 at the London passport office, it is not supported by any other evidence on the record, besides Mr. Alsaloussi's own affirmation. As stated in the Decision, the electronic remarks associated with the processing of Mr. Alsaloussi contain no mention that the passport officer who processed his request saw Passport HM804068. The Decision-Maker noted that, in the exercise of their duties, passport officers are required to cancel the previous passport electronically when an individual requests a new passport, and to physically mark the passport as having been cancelled. The passport officer's notes with respect to Mr. Alsaloussi's April 2018 Passport Application contained no such information.

[41] Since no evidence other than Mr. Alsaloussi's own statements supported his allegation that he presented Passport HM804068 on April 25, 2018, and in the absence of any note to that effect by the London passport officer, I do not find it unreasonable for the Decision-Maker to conclude, after evaluating all the circumstances and submissions, that it was more likely than not that Mr. Alsaloussi had not presented Passport HM804068 with his April 2018 Passport Application.

[42] Similarly, besides Mr. Alsaloussi's own affirmation, no other evidence established that IRCC representatives instructed Mr. Alsaloussi to leave the "Former Surname (last name)" field blank in his passport application and to respond in the negative to the question on Canadian travel documents previously issued to him. In fact, the evidence from the IRCC Centre reveals no record of Mr. Alsaloussi contacting their office in 2018 and indicates that the Centre does not provide assistance with passport applications. Furthermore, Mr. Alsaloussi's statements on his

exchanges with the IRCC Centre reflect instructions and behaviour that run contrary to the policies and procedures of the Passport Program. As explained in the Decision, the Passport Program's records are completely silent on all of the communications that Mr. Alsaloussi claims to have had with IRCC representatives regarding his passport application.

[43] I further note that Mr. Alsaloussi's allegations regarding his discussions with the IRCC Centre are vague and not substantiated. He did not identify anyone who gave him the advice he claims to have received and did not provide any evidence or details in support of his allegations. Considering that all the evidence supporting Mr. Alsaloussi's claim that any false or misleading information contained in his April 2018 Passport Application resulted from errors made by IRCC representatives or passport officers is again limited to his own statements, I find that it was reasonable for the Decision-Maker to conclude that it was not "more likely than not, on a balance of probabilities test, that two different employees would forget to apply the strict training they received while processing the application".

[44] I pause to observe that, if Mr. Alsaloussi had indeed been instructed by IRCC representatives not to declare that he had a previous Canadian travel document on his passport application and to refrain from producing it, it would be quite contradictory and implausible that he would have been told, at the same time, to nonetheless bring his previous passport to the passport office in order to get it cancelled.

[45] As to Mr. Alsaloussi's claim that the Assistant Manager had acknowledged that the situation sounded like an administrative error by the London passport office, the evidence clearly

establishes that all declarations made by the Assistant Manager to that effect were entirely based on the facts as reported by Mr. Alsaloussi, and not on her own independent observation or other evidence. The Assistant Manager's emails of August 3, 14 and 15, 2018 and of September 28, 2018 leave no doubt that she was simply relying on Mr. Alsaloussi's statements and representations alleging that he had presented Passport HM804068 to the London passport officer on April 25, 2018.

[46] Having regard to all of the above, I consider that it was reasonable for the Decision-Maker to conclude that, on a balance of probabilities, Mr. Alsaloussi had provided false or misleading information when he applied for Passport AC588690. I am satisfied that the Decision-Maker's determination of false or misleading information is well founded, and that it is both justifiable and amply justified in his reasons. In my view, the detailed reasons provided by the Decision-Maker demonstrate that the Decision on this front was based on an internally coherent and rational chain of analysis and that it conforms to the relevant legal and factual constraints that bear on the Passport Division and the issue at hand (*Canada Post* at para 30; *Vavilov* at paras 105-107).

[47] Further to *Vavilov*, the reasons given by a decision maker are the starting point of the analysis. They are the principal tool allowing the administrative decision makers "to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner" (*Vavilov* at para 79). I am satisfied that the Decision explains the conclusions reached by the Decision-Maker in a transparent and intelligible manner (*Vavilov* at paras 81, 136; *Canada Post* at paras 28-29; *Dunsmuir* at para 48), and that the reasons allow

me to understand the basis on which the Decision-Maker concluded that Mr. Alsaloussi had provided false or misleading information when he made his April 2018 Passport Application.

[48] The standard of reasonableness requires the reviewing court to pay “[r]espectful attention to a decision-maker’s demonstrated expertise” and specialized knowledge, as reflected in their reasons (*Vavilov* at para 93). Of course, a reviewing court should ensure that the decision under review is justified in relation to the relevant facts, but deference to decision-makers includes more specifically deferring to their findings of facts and assessment of the evidence. Reviewing courts should refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Canada Post* at para 61; *Vavilov* at para 125).

[49] Here, the Decision-Maker has thoroughly reviewed the evidence before the Passport Division, including all submissions made by Mr. Alsaloussi, and Mr. Alsaloussi has not persuaded me that the Decision-Maker’s conclusions on the false or misleading information were not based on the evidence that was actually before him (*Vavilov* at para 126). This is not a situation where the Decision-Maker has fundamentally misapprehended or failed to account for the evidence. I am satisfied that the Decision-Maker has meaningfully grappled with the key issues and central arguments raised by Mr. Alsaloussi regarding the revocation of his passport and that he was alert and sensitive to the evidence. When the reasons are considered as a whole, and not through a piecemeal approach, it is clear that that the Decision-Maker engaged in a thorough and detailed assessment of the evidence before concluding that Mr. Alsaloussi obtained his Passport AC588690 by means of false or misleading information. There is no reason for the Court to intervene on this portion of the Decision.

B. *Was it unreasonable to impose a three-year suspension of passport services on Mr. Alsaloussi*

[50] Mr. Alsaloussi submits that the three-year suspension imposed on him is also unreasonable because it fails to take relevant facts into account and to consider the disproportionate effect of the Decision on his mobility rights protected by section 6 of the *Charter*. Mr. Alsaloussi complains that the Decision does not explicitly mention his *Charter* rights, and has in fact ignored them. He further maintains that the Decision-Maker's analysis underlying the three-year suspension does not constitute a proper and proportionate balancing between the effect of the Decision on his mobility rights and the legitimate objectives of the Passport Program. He argues that these objectives are not furthered by the three-year suspension, and that the Decision-Maker failed to follow the prescribed analytical framework for balancing *Charter* protection with relevant statutory mandate as developed by the Supreme Court of Canada in *Doré* and subsequent cases.

[51] I agree with Mr. Alsaloussi on this aspect of the Decision.

[52] Applying the *Vavilov* framework and its approach to the standard of reasonableness, I cannot conclude that the Decision allows me to understand how the Decision-Maker reached his determination on the three-year suspension. I also am not satisfied that, in Mr. Alsaloussi's particularized situation, the three-year suspension reflects a proportionate balance between the values protected by section 6 of the *Charter* and the objectives of Canada's Passport Program (*Doré* at para 57; *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 [*Loyola*] at para 37). More specifically, I am not satisfied that the analysis is based on the evidence that was

actually before the Decision-Maker or shows that the Decision-Maker reasonably listened to the submissions made by Mr. Alsaloussi.

[53] In *Trinity Western University v Law Society of Upper Canada*, 2018 SCC 33 [*Trinity Western*], the Supreme Court of Canada confirmed the approach for judicially reviewing administrative decision engaging the *Charter*, as established in *Doré*. A decision will be reasonable only if it “reflects a proportionate balancing of the Charter protection with the statutory mandate”, and gives effect as fully as possible to the *Charter* protection at stake given the particular statutory mandate (*Trinity Western* at para 35; *Loyola* at para 39). In other words, a decision will be unreasonable if its impact on a *Charter* right is disproportionate (*Trinity Western* at para 35). Ultimately, the question is whether the decision maker furthered his or her statutory mandate in a manner that was proportionate to the resulting limitation on the applicant’s *Charter* rights (*Trinity Western* at para 36).

[54] The function of this Court is therefore to assess whether the three-year suspension that has been imposed is unreasonable, having regard to the requirement that the suspension decision reflect a proportionate balancing of Mr. Alsaloussi’s mobility rights protected by section 6 of the *Charter* and the objectives of Canada’s Passport Program (*Doré* at paras 57-58; *Loyola* at para 37; *Kamel 2* at para 39; *Thelwell* at paras 27, 55). The Supreme Court held in *Doré* that once the relevant statutory or program objectives have been identified, decision makers must then consider “how the *Charter* value at issue will best be protected in view of the statutory objectives” (*Doré* at para 56). This requires the decision maker to balance the severity of the interference of the Charter protection with the statutory objectives. This exercise necessarily

turns on the specific facts of each case and, in the present case, it requires the Court to consider whether the suspension decision interferes no more than necessary with Mr. Alsaloussi's section 6 mobility rights (*Abaida* at para 51).

[55] As this is a highly fact-based exercise, the Federal Court of Appeal noted that reviewing a decision to impose a period of suspension of passport services calls for deference (*Kamel 2* at para 35). However, it went on to state that it "would not give any deference to a ministerial decision that does not take *Charter* rights into account or that restricts them disproportionately" as "[t]hat would be an unreasonable decision" (*Kamel 2* at para 35).

[56] In the Decision, the Decision-Maker expressly acknowledged that refusing passport services is a serious matter that can cause "hardship", and must be weighted against the Passport Division's mandate and the objectives of the Passport Program, which includes several factors. Accordingly, the Decision-Maker conducted a balancing exercise in which he compared Mr. Alsaloussi's circumstances and these objectives.

[57] In the Decision, it was specifically stated that, as far as Mr. Alsaloussi was concerned, the following factors and personal circumstances were taken into consideration: 1) his cooperation during the process and the quick return of both Passports HM804068 and AC588690 when he was instructed to do so; 2) the absence of travel stamps in Passport HM804068 dated after Passport AC588690 was issued, and of any information suggesting that Mr. Alsaloussi attempted to travel using two different identities while having two passports in his possession; 3) the fact that Passport AC588690 would likely have been issued to Mr. Alsaloussi had he declared his

previous Canadian passport issued under a different name; and 4) Mr. Alsaloussi's claim that he requires a passport to travel for work and business purposes. On this last point, the Decision-Maker however noted that, while Mr. Alsaloussi claimed that each day without a passport causes him "great moral and financial harm", he "[had] not elaborated on this or provided any documentation to fully illustrate the hardship to be suffered during a period of refusal of passport services if one were to be imposed".

[58] Turning to the Passport Division's mandate and the objectives of the Passport Program, the Decision stated that the following factors were considered: 1) the fact that Canadian passports have an excellent reputation due to the knowledge in the international community that Canada has a robust entitlement process for passports; 2) the Passport Division's mandate of maintaining the integrity of the passport issuing process and the reputation of Canadian passports in the international community; 3) the fact that providing false or misleading information in support of a passport application threatens the integrity of the passport issuing process; 4) the fact that cases of "identity fraud, entitlement fraud or misuse are treated as serious matters by the Canadian government, as they may have severe repercussions for all Canadian passport bearers".

[59] The Decision-Maker added that, in weighing these factors and the Passport Division's mandate against the hardship caused by a suspension of passport services, he was mindful that Mr. Alsaloussi had provided false or misleading information when applying for a passport, which resulted in him holding two valid passports issued in two different names. The three-year period of suspension was imposed on the basis of the foregoing analysis.

[60] I pause a moment to observe that, as rightly argued by the AGC, Mr. Alsaloussi cannot seriously contend that his *Charter*-protected mobility rights were not considered in the Decision, simply because the Decision-Maker did not explicitly mention the *Charter* in his analysis. First, it is well established that these rights are at the core of a decision to refuse the issuance of a passport, to revoke a passport and to refuse passport services (*Kamel I* at para 15; *Lipskaia v Canada (Attorney General)*, 2018 FC 789 at paras 65-70; *Brar v Canada (Attorney General)*, 2014 FC 763 [*Brar*] at para 37). Second, it is obvious from the passages of the Decision mentioned above that the Passport Division was clearly aware of the mobility rights issue. In fact, they had been specifically raised by Mr. Alsaloussi in his September 6, 2018 and October 17, 2018 submissions to the Passport Division. It would certainly have been preferable for the Decision-Maker to refer explicitly to the “*Charter*-protected mobility rights” or to “section 6 of the *Charter*” in the Decision, but it cannot be said that, in light of the balancing exercise conducted in his reasons, the Decision-Maker failed to consider them. No precedent supports Mr. Alsaloussi’s assertion that a decision must be rendered unreasonable simply because a decision maker fails to expressly mention the specific *Charter* provision at stake.

[61] That said, on the specific facts of this case, I am unable to conclude that the three-year suspension of passport services is reasonable and does not interfere with Mr. Alsaloussi’s mobility rights more than what was necessary in the circumstances to maintain the integrity and good reputation of Canada’s Passport Program.

[62] First, I find that the Decision-Maker’s determination that Mr. Alsaloussi did not provide any documentation to fully illustrate the hardship he would suffer during a period of refusal of

passport services ignores the substantial evidence on the record regarding Mr. Alsaloussi's needs to have a passport for his work and, to a lesser extent, for health reasons. I concede that Mr. Alsaloussi's claims relating to his alleged need of his passport for family reasons is not supported by the evidence that was before the Decision-Maker. This is an assertion that was made and developed afterwards, once the Decision had been issued. However, Mr. Alsaloussi's claims that he needed his passport for his work and business travel is amply supported by the evidence. The Decision-Maker's assessment notably ignored the evidence, which was not contradicted, that Mr. Alsaloussi had been travelling extensively in and out of Canada for over 12 years, for work and business purposes; that he had applied for a duplicate passport in 2014 precisely to facilitate obtaining travel visas for business purposes; and that his Passport HM804068 was used for only two years, but nonetheless contained a significant amount of travel stamps, showing far more than occasional usage. In addition, there is evidence in the notes of the Assistant Manager where she acknowledges that Mr. Alsaloussi travels a lot for work and was very concerned about the Passport Division's investigation precisely because of his needs to travel for work. In other words, the Decision-Maker had clear and convincing evidence on the record that Mr. Alsaloussi effectively needed his passport for business reasons. In the same vein, there was a specific reference in October 2018 regarding the necessity to travel for appointments with surgical doctors, and thus his need to have his passport for healthcare treatments. I cannot find in the Decision's reasons an indication that the Passport Division engaged in a meaningful way with the evidence showing the adverse impact of the suspension on Mr. Alsaloussi's work.

[63] I acknowledge that a decision maker is generally not required to make an explicit finding on each constituent element of an issue when reaching its final decision. Nevertheless, it is also

clear that contradictory evidence should not be overlooked. This is particularly true with respect to key elements relied upon by the decision maker to reach his or her conclusion (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*] at paras 16-17). True, a decision maker is presumed to have weighed and considered all the evidence presented to him or her unless the contrary is shown (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). And a failure to mention a particular piece of evidence in a decision does not mean that it was ignored (*Newfoundland Nurses* at para 16; *Cepeda-Gutierrez* at paras 16-17). But, when an administrative decision maker is silent on evidence squarely contradicting its findings of fact, the Court may intervene and infer that the decision maker overlooked the contradictory evidence when making its decision (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez* at para 17). The failure to consider specific evidence must be viewed in context and may be sufficient to a decision being overturned when the non-mentioned evidence is critical, contradicts the decision maker's conclusion and the reviewing court determines that its omission means that the tribunal disregarded the material before it. This is the case here with respect to the finding that Mr. Alsaloussi had not provided evidence on his harm.

[64] I recognize that the written reasons given by an administrative body must not be assessed against a standard of perfection (*Vavilov* at para 91). An administrative decision maker's reasons do not need to be comprehensive or perfect. However, they need to be comprehensible and justified. And the failure to meaningfully grapple with key issues or central arguments raised by

a party may call into question whether the decision maker was actually alert and sensitive to matters before it and whether the decision exhibits the required degree of justification, transparency and intelligibility (*Vavilov* at paras 127-128). A reviewing court must also be satisfied that any alleged shortcomings or flaws relied on by the party challenging a decision are sufficiently central or significant to render the decision unreasonable (*Vavilov* at paras 96-97, 100). Needless to say, the potential impact of the suspension of passport services on Mr. Alsalousi's mobility rights and his ability to work was the main concern raised by Mr. Alsalousi in his various submissions to the Passport Division. Here, I find that this is a situation where, on a determinative issue, there is a flawed logical process by which the facts were drawn from the evidence, as the Decision-Maker failed to account for relevant evidence and made a finding that ignored the overwhelming weight of the evidence (*Vavilov* at para 126; *Dunsmuir* at para 47).

[65] Second, I am not persuaded that, in the circumstances of this case, the Decision-Maker performed an appropriate weighing between the objectives of the Passport Program and the hardship caused to Mr. Alsalousi by a refusal of passport services. In my view, as was the case in *Thelwell*, the Decision-Maker's assessment was not sufficiently individualized to reflect a proportionate restriction on Mr. Alsalousi's *Charter*-protected mobility rights (*Thelwell* at para 50). In other words, the reasons do not convince me that the decision to suspend passport services to Mr. Alsalousi for three years does not interfere more than was necessary with the values protected by section 6 of the *Charter*, and that the Decision-Maker reasonably balanced the severity of the interference of the *Charter* protection with the statutory objectives of the Passport Program.

[66] True, the Decision-Maker took the time to look at Mr. Alsaloussi's personal circumstances in arriving at the Decision, and he acknowledged that the objectives under the *Passport Order* had to be weighed against the "hardship" that a refusal of passport services caused to Mr. Alsaloussi. He notably expressly set out various factors related to the Passport Division's mandate, including the obligations of the Passport Division to render decisions in such a way as to "maintain the integrity of the passport issuing process and the reputation of Canadian travel documents in the international community".

[67] But the Decision-Maker still needed to justify and explain the three-year suspension in light of Mr. Alsaloussi's particular circumstances. In the present case, the reasons do not allow me to conclude that the Decision-Maker reasonably weighed the relatively limited gravity of the false or misleading information provided by Mr. Alsaloussi in his April 2018 Passport Application with the objectives of the Passport Program. I also do not find that the Decision-Maker looked at the objectives of the Passport Program in relation to the particular situation of Mr. Alsaloussi. Among the factors retained, the Decision notably referred to cases of "identity fraud, entitlement fraud or misuse" as being treated as serious matters by the Canadian government, given their potential severe repercussions for all Canadian passport bearers.

[68] However, this is not a situation where there is an alleged fraudulent use of a passport. I note that it was acknowledged that Mr. Alsaloussi had immediately cooperated in the investigation and never attempted to use Passport HM804068 that should have been returned in April 2018. It is also not a situation of passport forgery with aggravating factors, as in *Abaida*, or of lies on the applicant's travel history and alterations of official documents, as in *Shamir*, which

imply an obvious serious adverse impact on the integrity of Canada's Passport Program. In *Abaida*, for example, a five-year suspension was pronounced after it was determined that the applicant had likely forged the signature of his guarantor on his passport application and did not acknowledge his action despite several opportunities to do so (*Abaida* at para 47).

[69] Here, in my view, Mr. Alsaloussi's circumstances are quite different from cases where long suspensions of passport services have been imposed. A review of the passport cases decided by this Court and by the Federal Court of Appeal confirms that matters where suspensions of three and a half to five years of passport ineligibility have been imposed involved some form of misconduct that was far more serious than Mr. Alsaloussi's case. It included cases where the misconduct involved situations such as: allowing non-Canadians to use Canadian passports in order to gain unlawful entry to this country; forgery of a guarantor's signature; fraud in relation to the identity of a passport applicant or to the documents supporting an application; actions with some relation to terrorism; payments to allow foreign nationals to use their Canadian passports; actions aimed to facilitate travel or illegal entry by foreign nationals on false Canadian passports; or attempts to use a forged or altered document for the purpose of entering Canada. All cases which negatively affected, compromised and undermined the integrity of the Canadian passport system or potentially raised national security concerns (see for example *Thelwell* at paras 39-50; *Wong v Canada (Attorney General)*, 2017 FC 152 at para 12; *Lipskaia v Canada (Attorney General)*, 2016 FC 526 [*Lipskaia*] at para 6; *Siska v Passport Canada*, 2014 FC 298 at para 9; *Mbala v Canada (Attorney General)*, 2014 FC 107 at para 47; *Brar* at para 27; *Villamil* at paras 29-30, 34; *Krivicky v Canada (Attorney General)*, 2013 FC 1236 at para 12).

[70] I do not dispute that these types of identity frauds, forgery or misuses of passport services are serious matters, and that Canada is required to ensure that its passports are not altered, forged or misused in order to deter illegal migration and meet foreign governments' expectations regarding the reliability of Canadian travel documents. But Mr. Alsaloussi's conduct is not tarred with the same brush.

[71] In this case, I agree with Mr. Alsaloussi that the circumstances in which he provided false or misleading information in his passport application were materially less serious than the misconduct in these other cases, and yet the Decision-Maker failed to explain how he arrived at the determination of a three-year suspension bearing in mind the impact that the suspension would have on Mr. Alsaloussi's mobility rights. Stated otherwise, the Decision-Maker failed to balance Mr. Alsaloussi's particular situation against the objectives of Canada's Passport Program, and the reasons do not allow me to understand the causal link between the choice of the three-year suspension and the need to preserve the integrity of the Canadian passport system and other elements of the Passport Division's mandate (*Thelwell* at paras 36, 40, 50-51, 55).

[72] Mr. Alsaloussi is a Canadian citizen, and the Passport Division has acknowledged that he would likely have otherwise been entitled to his new Canadian passport. There is no evidence or suggestion that he intended to use his passport for any improper or unlawful purposes that might have undermined the integrity of the Canadian passport system or implicated Canada's national security. As was the case in *Thelwell*, the gravity of Mr. Alsaloussi's misconduct was nowhere near the order of magnitude of the misconduct of other individuals who received three and a half, four or five-year suspensions of passport services (*Thelwell* at para 51). In these circumstances,

the choice of the three-year period of suspension deserved a better explanation in order to meet the standard of reasonableness.

[73] I appreciate that the imposition of a penalty such as a suspension of passport services is a highly discretionary process and that the Court owes a high level of deference to the Decision-Maker. I also acknowledge that the three-year suspension imposed by the Decision-Maker in this case is slightly below the three and a half to five years period that was deemed appropriate in many other cases, including those named by Mr. Alsaloussi in his submissions. I am also mindful of the fact that Parliament considered it to be appropriate to provide, in subsection 10.2(1) of the *Passport Order*, for the possibility of imposing suspensions of passport services that extend to a maximum period of ten years, thus reflecting Parliament's view of the seriousness of conduct such as providing false or misleading information (*Abaida* at para 53).

[74] However, on the specific facts of the case, the required causal link between the three-year suspension and the objectives of protecting the integrity of Canada's Passport Program and the good reputation of Canada's passports had to be more explicitly explained for me to conclude that the Decision was reasonable.

[75] In short, given the extent of the submissions made by Mr. Alsaloussi and the evidence before the Decision-Maker, one would have expected a more expansive balancing assessment. Even paying respectful attention to the reasons, the Decision does not allow me to understand why a three-year suspension of passport services was imposed and how this specific outcome is justified. The reasons do not allow me to be satisfied that the Decision-Maker reasonably

balanced the values protected by the right to move in and out of Canada with the objectives underlying the *Passport Order*, including protecting the integrity of Canada's Passport Program and the good reputation of Canada's passports. Therefore, that aspect of the Decision was unreasonable under the Doré and Trinity Western framework.

[76] The AGC referred to the fact that Mr. Alsaloussi obtained UCCC Passports on four occasions since surrendering his passports in August 2018. The AGC submits that the availability of such travel documents in special circumstances mitigates the severity of the interference with Mr. Alsaloussi's mobility rights and alleviates the adverse consequences of the passport suspension (*Kamel 1* at para 46; *Abaida* at para 64; *Brar* at para 42). I do not dispute that. However, the availability of such travel documents is insufficient to render the Decision-Maker's conclusions on the three-year suspension reasonable. As stated in *Thelwell*, the availability of UCCC Passports does not address the infringement on the *Charter*-protected right to leave and re-enter Canada for other reasons: "the option of applying for a limited validity passport is not a safety valve that renders any refusal of passport services, imposed for any reason, of any duration, reasonable" (*Thelwell* at para 54). As I have determined that the three-year refusal of passport services was a disproportionate infringement of Mr. Alsaloussi's *Charter*-protected mobility rights, the possibility of applying for a limited validity travel document for urgent and compassionate reasons does not sufficiently mitigate this interference.

[77] For all the above reasons, I do not find that the portion of the Decision on the suspension was sufficiently justified, transparent and intelligible. I am not persuaded that it addressed the adverse consequences that a three-year suspension would have on Mr. Alsaloussi, that it

reasonably weighed those consequences against the legitimate objectives of Canada's Passport Program, that it established a satisfactory causal link between the three-year suspension and those objectives, and that it imposed a suspension of passport services that does not go further than necessary to achieve those objectives. In my view, the reasons provided by the Decision-Maker are unable to demonstrate that the Decision on this front was based on an internally coherent and rational chain of analysis and that it conforms to the relevant legal and factual constraints that bear on the Passport Division and the issue at hand (*Canada Post* at para 30; *Vavilov* at paras 105-107).

[78] I do not dispute that making a false statement in a passport application is a serious matter, but the sanction for such misconduct must reflect the gravity of the matter. *Doré* and its progeny require decision makers to balance the severity of the interference with the individual's *Charter*-protected rights against the objectives of the Passport Program. While this type of individualized assessment was not totally absent in this case, it cannot be said that the imposition of a three-year period of passport ineligibility reflects a proportionate restriction on Mr. Alsaloussi's *Charter*-protected mobility rights.

[79] An administrative decision maker has a responsibility "to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion" (*Vavilov* at para 96). A decision will not be reasonable if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (*Vavilov* at para 103). This is especially true where a decision has particularly harsh consequences for the affected individual, such as "decisions with consequences that

threaten an individual's life, liberty, dignity or livelihood" (*Vavilov* at para 133). Here, the consequences of a suspension of passport services are particularly severe and harsh for Mr. Alsaloussi's liberty and ability to travel for work, and such a situation called for the Decision-Maker to "explain why [his] decision best reflects the legislature's intention" (*Vavilov* at para 133). I find that, in the particular circumstances of this case, the Decision-Maker has not done so. The Decision repeats the Passport Division's mandate and the general objectives of the Passport Program, but lacks a proper analysis of Mr. Alsaloussi's situation.

[80] To once again echo the language of the Supreme Court in *Vavilov*, the omitted aspect of the analysis causes me "to lose confidence in the outcome reached" by the Decision-Maker on the three-year suspension of passport services imposed on Mr. Alsaloussi (*Vavilov* at para 122; *Canada Post* at paras 52-53).

C. Was there a breach of procedural fairness?

[81] Mr. Alsaloussi further asserts that, since he was denied the opportunity to make submissions on the three-year suspension imposed on him before the Decision was issued, his fundamental right to procedural fairness was breached and the Decision should therefore be quashed for that reason as well. He complains that the Passport Division never asked him to make submissions as to the "sentence" which should be imposed, were they to find him guilty. Mr. Alsaloussi relies on jurisprudence of the Supreme Court of Canada and the Quebec Court of Appeal in which the right to make submissions before a criminal sentence is imposed has been recognized. Mr. Alsaloussi maintains that, had he been given the opportunity to present submissions on the three-year suspension, he would have submitted to the Decision-Maker that:

1) he did not intend to mislead the Canadian government; 2) he deserved a lesser sentence since his false declaration was not so serious compared to other cases of suspension of passport services; 3) his personal circumstances require him to travel significantly more than the average Canadian; and 4) the sentence should be shorter because its impact is greater on himself than on other Canadian citizens.

[82] I disagree and do not find that any breach of procedural fairness occurred in the process followed by the Passport Division.

[83] Whether a decision is procedurally fair must be determined on a case-by-case basis. It is well recognized that the requirements of the duty of procedural fairness are “eminently variable” (*Vavilov* at para 77; *Dunsmuir* at para 79) and that they “[do] not reside in a set of enacted rules” (*Green v Law Society of Manitoba*, 2017 SCC 20 at para 53). The nature and scope of the duty of procedural fairness are flexible and will vary depending on the attributes of the administrative tribunal and its enabling statute, the specific context and the various factual situations dealt with by the tribunal, as well as the nature of the disputes it must resolve (*Baker* at paras 23-27; *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115; *Varadi v Canada (Attorney General)*, 2017 FC 155 at paras 51-52). The level and the content of the duty of procedural fairness are determined according to the context of each case (*Baker* at para 21). Its purpose is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully, and to have them considered by the decision maker (*Baker* at para 22).

[84] More generally, the process followed by a decision maker will be fair when it offers the affected parties a right to be heard and a full opportunity to know and to respond to the case against them. It is important to underline that, in any situation, procedural fairness relates to the process followed by the decision maker (*Baker* at para 26); it does not create substantive rights nor does it entitle a person to a given outcome. In other words, the duty to act fairly is not related to the merits or content of a decision, or to a particular result in the treatment of a matter. Mr. Alsaloussi therefore cannot claim a right to the Passport Division or the Decision-Maker agreeing with him on the revocation of his passport or on the ensuing duration of the suspension of passport services.

[85] I am ready to acknowledge that, where an individual is being investigated for false or misleading information under the *Passport Order* and where a potential suspension of passport services is at stake, the duty of procedural fairness is demanding and resides towards the higher end of the spectrum, since a person's mobility rights are in play. Therefore, an allegation of false and misleading information and possible suspension of passport services requires a high level of procedural fairness. However, in order to determine whether the Passport Division's process was procedurally fair, it suffices for the Court to be satisfied that Mr. Alsaloussi was informed of the case against him and of the evidence obtained by the Passport Division.

[86] In *Kamel v Canada (Attorney General)*, 2008 FC 338, at paragraph 72, Justice Noël summarized the requirements of procedural fairness in the context of the revocation of a passport and the suspension of passport services, and stated that “[i]t 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". The duty of fairness in the context of passport applications requires the disclosure of all material facts which led to the decision (*Lipskaia* at paras 15-17; *Gomravi v Canada (Attorney General)*, 2013 FC 1044 at para 32). This is exactly what the Passport Division offered to Mr. Alsaloussi in this case.

[87] In this case, Mr. Alsaloussi was well aware of the potential suspension of passport services he was facing, from the very start of the investigation. The record is clear that Mr. Alsaloussi knew the case against him, received all relevant documents and had a fair opportunity to respond to the allegations made against him and to the evidence gathered by the Passport Division as part of its investigation. He fully participated in the process before the Passport Division and provided extensive written submissions on two occasions, on September 6, 2018 and October 17, 2018. Indeed, the Decision expressly states that Mr. Alsaloussi was aware of the information gathered in the course of the investigation and was given an opportunity to respond to it.

[88] The reasons for the Decision and the information on file show that Mr. Alsaloussi was given the opportunity to provide information, explanations and submissions with regard to the refusal of passport services before a decision was made. He was explicitly informed of the possible refusal of passport services in the July 25, 2018 letter from the Passport Division, and again in their September 28, 2018 letter. The possibility to impose a period of refusal of passport services was also mentioned in the Passport Division's letter of August 27, 2018. In each of these three letters, the Passport Division informed Mr. Alsaloussi that the investigation could lead to a

suspension of passport services, and two of those letters referred specifically to the maximum potential suspension of ten years set out in the *Passport Order*.

[89] Through those letters, Mr. Alsaloussi was explicitly offered the possibility to make representations on all issues and all aspects of the investigation and on the decision to be issued, and this included the sanction that could possibly be imposed further to a finding that he obtained a passport by means of false or misleading information. From the start, he was informed that the decision to be issued further to the investigation could result in a revocation of his passport as well as in a suspension of passport services.

[90] In the submissions he provided on September 6, 2018 and on October 17, 2018, after having been expressly informed of the possible refusal of passport services and the maximum suspension of ten years, Mr. Alsaloussi elected not to address the issue of the duration of a possible suspension. In his last submissions of October 17, 2018, counsel for Mr. Alsaloussi even explicitly affirmed having no other comments, information or statements to make and requested that the Passport Division's decision be "rendered immediately". At no point was it suggested that the decision to be issued by the Passport Division could not or would not include the suspension element.

[91] In the circumstances, I do not detect any breach of the principles of procedural fairness in the way the investigation process leading to the Decision has been handled and in the decision-making process followed by the Passport Division. Quite the contrary. I am satisfied that Mr. Alsaloussi was well aware of the substance of the case against him, and that he had multiple

opportunities to respond to the evidence found by the Passport Division and to understand the case he had to meet, including the possible suspension to be imposed. Mr. Alsaloussi's contention, that he was not given a proper opportunity to be heard and to address the case against him, does not reflect the actual contents of the Decision or the facts surrounding the treatment of his investigation. I am convinced that the administrative process followed by the Passport Division achieved the level of procedural fairness required by the circumstances of this matter.

[92] Mr. Alsaloussi was offered repeated opportunities to respond to the allegations of the investigation, but chose not to make any submissions on the duration of the possible suspension. I am aware of no precedents standing for the proposition that, in the context of passport applications, procedural fairness requires that an applicant be given a separate, specific opportunity to make submissions regarding the sanction to be imposed by the Passport Division, once the Minister has concluded that a passport needs to be revoked.

[93] As a result, I am not persuaded by Mr. Alsaloussi's argument that the Decision or the Passport Division process was procedurally or otherwise unfair.

D. *Was there a breach of Mr. Alsaloussi's rights under section 12 the Charter?*

[94] Mr. Alsaloussi finally claims that section 12 of the *Charter* protects him against any cruel and unusual treatment or punishment, and that the three-year suspension amounts to a punishment that is grossly disproportionate compared to his alleged wrongdoing. Mr. Alsaloussi further asserts that the three-year suspension is too severe by enumerating cases where this Court found longer suspension periods reasonable, but for wrongdoings that were much more

egregious than the present case, and where an intention to mislead the government was either admitted or established by evidence.

[95] I am not persuaded by Mr. Alsaloussi's arguments on this front and find that that Mr. Alsaloussi's rights under section 12 of the *Charter* are not engaged on the facts of this case.

[96] The test for a breach of section 12 is that a treatment must be "abhorrent or intolerable" or so excessive as to "outrage [the] standards of decency" such that it is incompatible with human dignity (*R v Boudreault*, 2018 SCC 58 at para 126; *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651 at paras 613-614). This is not a situation where the suspension of passport services, though difficult, shocks the general conscience to the point where it can be considered as degrading to human dignity and worth. In this case, I agree with the AGC that Mr. Alsaloussi has failed to provide any evidence other than mere allegations regarding the cruelty of the harm he is suffering because of the Decision. Evidence had to demonstrate that the Decision concluding to his false and misleading information and refusing him passport services for three years involved "cruel and unusual punishment as that term is constitutionally understood" (*Shamir* at para 30; *Guérin v Canada (Attorney General)*, 2018 FC 94 at para 68). I find no such evidence in this case.

IV. Conclusion

[97] For the foregoing reasons, Mr. Alsaloussi's application for judicial review will be granted in part. The Decision-Maker's conclusion on the imposition of the three-year suspension fails to

meet the standard of reasonableness. In my view, the Decision does not explain how the three-year suspension is justified in light of the evidence and how it furthers the objectives of the Passport Program. In addition, the reasons do not allow me to conclude that the three-year suspension of passport services is a proportionate infringement of Mr. Alsaloussi's *Charter*-protected mobility rights. However, I am satisfied that the Decision-Maker's finding that Mr. Alsaloussi obtained his Passport AC588690 by means of false or misleading information is reasonable and amply justified by the evidence. Similarly, I am not persuaded that the Passport Division's process breached procedural fairness or that the suspension imposed on Mr. Alsaloussi amounts to a cruel and unusual punishment.

[98] Therefore, I must remit the Decision on Mr. Alsaloussi's April 2018 Passport Application to the Passport Division, for reconsideration of the issue of the period of refusal of passport services by another decision maker, in accordance with these reasons.

[99] In his submissions, Mr. Alsaloussi asked the Court to make the decision in lieu of the Passport Division, and to in fact determine the appropriate duration of suspension. I decline to do so and consider that, in the circumstances, the proper course of action is to return the matter to the Passport Division. On applications for judicial review, it is generally more appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the reviewing court's reasons. In reconsidering its decision, the decision maker may arrive at the same, or a different, outcome (*Vavilov* at para 141), and will have the opportunity to expand on its reasoning.

[100] I do not consider that this a situation where it has become evident to the Court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose (*Vavilov* at para 142, citing *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 at pp 228-230). The function of this Court is not to determine what the appropriate period of suspension of passport services ought to have been in any particular case. Determining the duration of suspension of passport services is highly discretionary and is an exercise that the Passport Division should itself conduct, with the benefit of these reasons.

[101] Given the divided success on this application for judicial review, no costs will be awarded.

JUDGMENT in T-2083-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted in part.
2. The November 28, 2018 decision of the Passport Division is set aside and the matter is remitted to a different decision maker for reconsideration and re-determination of the issue of the period of refusal of passport services, in accordance with these reasons.
3. The Passport Division shall make a decision within 60 days of the date of this judgment.
4. No costs are awarded.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2083-18

STYLE OF CAUSE: MOHAMMED ALSALOUSSI v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 23, 2019

JUDGMENT AND REASONS: GASCON J.

DATED: MARCH 13, 2020

APPEARANCES:

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ÉLAINE DUPÉRE-TREMBLAY,
SÉBASTIEN SERVANT-
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