

Federal Court



Cour fédérale

Date: 20180509

Docket: T-23-18

Citation: 2018 FC 490

Ottawa, Ontario, May 9, 2018

PRESENT: THE CHIEF JUSTICE

BETWEEN:

ADAM ABAIDA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The principal issue in this Application for Judicial Review is whether a five-year suspension of passport services imposed on Mr. Abaida was unreasonable. That suspension [**the Suspension**] was pronounced after it was determined that Mr. Abaida had likely forged the signature of his guarantor on his passport application, and after he failed to avail himself of several opportunities to acknowledge what he appears to have done. It was also determined that he had provided false or misleading information on his passport application.

[2] Mr. Abaida, who is self-represented, maintains that the Suspension was unreasonable, due to its disproportionate effect on his right pursuant to subs. 6(1) of 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 [the Charter]*. That provision states that “[e]very citizen of Canada has the right to enter, remain in and leave Canada.”

[3] It is readily apparent that the effect of the Suspension on Mr. Abaida is particularly harsh, as he has two minor children, as well as two parents in poor health, who currently live abroad.

[4] However, on the specific facts of this case, I consider that the Suspension is not disproportionate to the legitimate objectives of maintaining the integrity of the Canada’s passport program and the good reputation of Canadian passports.

[5] Having regard to the serious adverse impact of passport forgery on those objectives and to Mr. Abaida’s failure to acknowledge what he appears to have done, the Suspension is not outside “a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.” *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47 [*Dunsmuir*]; *Doré v Barreau du Québec*, 2012 SCC 12, at para 56 [*Doré*].

[6] Based on the foregoing, and on my determination that it was reasonably open to the decision-maker to conclude that Mr. Abaida had forged his guarantor’s signature, this Application will be dismissed.

[7] Mr. Abaida's desire to travel to see his children and his parents, and to attend a custody hearing abroad in September of this year, can still be pursued, at least to some extent, by seeking a limited validity passport, based on those compelling and compassionate considerations. To the extent that this safety valve is able to accommodate a consideration of the effects of the Suspension on innocent third parties, such as Mr. Abaida's minor children and his ill parents, it offers a realistic potential to alleviate the harsh effects of the Suspension. Should Mr. Abaida's request for such a limited validity passport be denied, judicial review would be available in this Court.

I. **Background**

[8] Mr. Abaida immigrated to Canada from Lebanon in 2000 and became a citizen in 2007. His two sons, aged seven and seventeen, live with his parents in that country. They are Canadian citizens who returned there with their mother, who is now divorced from Mr. Abaida.

[9] According to Mr. Abaida, a court order issued in Lebanon prevents his sons from leaving there until he attends a custody hearing in September of this year and a final determination has been made in those proceedings.

[10] On April 13, 2017, Mr. Abaida submitted a passport renewal application in Surrey, British Columbia. He did so after his previous passport, which expired on April 30, 2018, fell into the water and was damaged. That passport recently expired while it was in the possession of the passport office.

[11] In his passport application, Mr. Abaida's guarantor was indicated to be Mr. Abbas, a friend he has known for many years, and who assisted him to find accommodations after he landed in Vancouver last March.

[12] On April 18, 2017, the passport issuing office noticed a discrepancy between the information included in the Declaration of Guarantor section of Mr. Abaida's application and the information they had on record for Mr. Abbas, namely, his date of birth and passport details.

[13] Accordingly, an investigation was initiated. As part of that investigation, a representative of the passport office spoke with Mr. Abbas on April 27, 2017. Mr. Abbas confirmed that he and Mr. Abaida had been friends for more than two decades and that he had picked him up at the Vancouver International Airport and assisted him to find a place to live. However, he stated that he did not recall signing Mr. Abaida's passport application or the back of his photograph.

[14] That same day, Mr. Abaida went to the Passport Office and signed a declaration stating that Mr. Abbas had signed his passport application and the back of his photograph. He repeated that information in another declaration that he signed the following day, April 28, 2017.

[15] On May 26, 2017, at the request of the passport office, Mr. Abbas provided a formal statement indicating that he did not sign Mr. Abaida's passport application and that he was unaware prior to being contacted by that office, that Mr. Abaida had submitted a passport application. He added that "[i]f Mr. Abaida had asked me to sign his passport application form, I

would have signed it with no hesitation.” He also stated that he did not “believe that Adam ever intended to do any harm, not to me, and most definitely, not to anyone else.”

[16] On June 20, 2017, the Passport Entitlement and Investigations Division [**the Division**] sent Mr. Abaida a letter summarizing the foregoing information and informing him that it had been determined that he may have submitted an application for a passport containing a forged signature of the guarantor and that he may have submitted false or misleading information in his signed written statements. He was therefore invited to submit additional information that would “contradict or neutralize” the information he had previously provided.

[17] On July 23, 2017 Mr. Abaida’s lawyer at the time (Mr. James Lee) sent a letter to the Division, together with a signed affidavit from Mr. Abaida. In those materials, Mr. Abaida and his lawyer maintained that Mr. Abaida had personally witnessed Mr. Abbas complete and sign the passport application. In addition, they accused Mr. Abbas of having deliberately provided false information in that application, and of having lied when he stated that he did not recall whether or not he signed the application and when he subsequently denied having done so. Mr. Abaida added that Mr. Abbas has a history of fraud-related behaviour. He also stated that his brother had informed him that he had been told by Mr. Abbas that Mr. Abaida would not be able to find work due to his poor English and the likelihood that he would fail the course required to obtain his security worker licence. Mr. Abaida then attributed Mr. Abbas’ actions to his jealousy or displeasure upon learning that he (Mr. Abaida) had passed that course.

[18] On August 16, 2017, the Division responded in writing to Mr. Abaida’s submissions. After summarizing, once again, the relevant information that it had gathered, the Division’s letter

noted that it remained unclear why Mr. Abbas, who had travelled from Victoria to the Lower Mainland to assist him, would provide false or misleading information on the passport application. In addition, the letter stated that the handwriting in the Declaration of Guarantor section of the application form appeared to be consistent with the handwriting in the remaining sections of the form. It also noted that the signatures allegedly provided by Mr. Abbas on the form and on the back of one of the photographs were not consistent with the signatures on Mr. Abbas' statement and other documentation in the Division's files. Towards the end of the letter, Mr. Abaida was provided with a further opportunity to respond.

[19] On August 21, 2017, Mr. Lee submitted a second letter on behalf of Mr. Abaida stating that Mr. Abaida remains confused as to why Mr. Abbas would provide false or misleading information on his passport application. He reiterated that Mr. Abaida has no history of engaging in any fraudulent acts, while Mr. Abbas has been penalized in the past for activities that were virtually identical to what he believed had been done in the present case. He added that Mr. Abaida is quite shocked by the allegations that have been made against him and is concerned that he will not be able to visit his parents and two sons, if he is unable to obtain a renewal of his passport.

[20] On September 27, 2017, the Division wrote again to Mr. Abaida, summarizing the main points in dispute and advising that his file would be forwarded for a final decision.

II. The Decision Under Review

[21] In a letter dated December 13, 2017 [**the Decision**], Mr. Abaida was informed that it had been determined, on a balance of probabilities, that he had forged Mr. Abbas' signature and had provided false or misleading information on his passport application, contrary to s. 9(1)(a) of the *Canadian Passport Order*, SI/81-86 [**the Order**]. Accordingly, Mr. Abaida's passport application was refused.

[22] Mr. Abaida was also informed that a period of refusal of passport services of five years had been imposed, pursuant to s. 10.2(1) of the *Order*. That period began to run on April 13, 2017, and will expire on April 13, 2022. In this regard, the Decision stated that the following had been considered:

- the obligations of the Division to maintain the integrity of the passport issuing process and the reputation of Canadian travel documents in the international community;
- the significant hardship that will be caused to the individual whose passport services are refused;
- Mr. Abaida's claim that he requires a passport to visit members of his immediate family, including his parents and two sons; and

- Mr. Abaida's identification of his father as his emergency contact on his passport application, together with the Richmond, B.C. address that he provided for his father, appeared to contradict Mr. Abaida's stated need for a passport to visit him.

[23] The Decision concluded by noting that notwithstanding the Suspension, Mr. Abaida may still apply for a passport of limited validity, containing geographic limitations, based on urgent, compelling and compassionate considerations, such as life threatening illness or a death in the family.

III. Relevant Legislation

[24] Pursuant to subs. 3(b) of the *Order*, every Canadian passport remains at all times the property of Her Majesty in right of Canada.

[25] Further to subs. 4(3), nothing in the *Order* in any manner limits or affects Her Majesty's royal prerogative over passports.

[26] Pursuant to paragraph 4(4)(b), the royal prerogative over passports can be exercised on behalf of Her Majesty by the Minister.

[27] The Minister may refuse to issue a passport to applicants in a range of circumstances, including where the applicant "fails to provide the Minister with a duly completed application for a passport or with the information that is required or requested," either in the application itself or

pursuant to s. 8 (paragraph 9(1)(a)). Among other things, s. 8 describes information and declarations that may be requested by the Minister.

[28] If the Minister refuses to issue a passport on grounds that include those set forth in paragraph 9(1)(a), he may refuse on those same grounds to deliver passport services for a maximum period of 10 years (subs. 10.2(1)).

[29] Finally, as I have noted, s. 6(1) of the *Charter* provides that “[e]very citizen of Canada has the right to enter, remain in and leave Canada.”

IV. **Preliminary Issue**

[30] The Respondent has raised a preliminary issue regarding the admissibility of several paragraphs in an affidavit, dated January 16, 2018, that Mr. Abaida filed in this Application. In my view, nothing turns on the information contained in those paragraphs. Moreover, much of it was before the Division when the Decision was made.

[31] Nevertheless, for the record, I declined to strike Mr. Abaida’s denial of the allegations that he knowingly provided false or misleading information, or forged any signatures. In addition, I declined to strike Mr. Abaida’s statements regarding Mr. Abbas’ alleged history of fraud, as he maintains that he has personal knowledge of these facts (Rule 81(1), *Federal Courts Rules*, SOR/98-106). I also found the latter information to be general background information that is relevant to an assessment of whether it was reasonable for the decision-maker in the Division to have believed Mr. Abbas, rather than Mr. Abaida: *Association of Colleges of Canada*

v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22, at para 20.

However, I struck various allegations that Mr. Abaida made regarding Mr. Abbas in paragraphs 25, 29, 32 and 33 of his affidavit, as they were either speculative in nature, based on opinion or based on hearsay that has not been demonstrated to be reliable or necessary: *Canada (Attorney General) v Quadrini*, 2010 FCA 47, at para 18; *R v Smith*, [1992] 2 SCR 915, at 933-934.

V. Issues

[32] In his written submissions, Mr. Abaida identified four grounds for judicial review. The first three of those grounds were articulated in the precise terms set forth in paragraphs 18.1(4)(a)-(c) of the *Federal Courts Act*, RSC, 1985, c F-7. The fourth was simply a statement that the Decision contains an error of law. However, it appears from a reading of his submissions that he is in fact raising only the following two issues, which he and the Respondent confirmed during the hearing of this Application:

- Was it unreasonable for the decision-maker to conclude that Mr. Abaida had likely forged the signature of his guarantor and provided false or misleading information on his passport application?
- If so, was it unreasonable to impose a five-year suspension of passport services on Mr. Abaida?

VI. Standard of Review

[33] The first of the two issues set forth above is a question of fact or of mixed fact and law that is reviewable on a standard of reasonableness: *Dunsmuir*, above, at para 53.

[34] The second issue is also reviewable on a reasonableness standard, as it involves a highly discretionary exercise of Royal Prerogative in the context of a very fact-specific assessment: *Wong v Canada (Attorney General)*, 2017 FC 152, at para 16 [**Wong**]; *Brar v Canada (Attorney General)*, 2014 FC 763, at para 25 [**Brar**]. This standard applies equally to the decision-maker's balancing of Mr. Abaida's *Charter* rights with the objectives underlying the *Order: Doré*, above, at paras 57-58; *Thelwell v Canada (Attorney General)*, 2017 FC 872, at para 26 [**Thelwell**]. In this context, a decision that does not take an individual's *Charter* rights into account or that restricts them disproportionately is deemed to be unreasonable: *Kamel v Canada (Attorney General)*, 2013 FCA 103, at para 35 [**Kamel**].

[35] In assessing whether a decision is reasonable, the focus of the Court is upon whether the decision is appropriately intelligible, transparent and justified. In this regard, the Court's task is to assess whether it is able to understand why the decision was made and to ascertain whether the decision falls "within a range of acceptable outcomes which are defensible in respect of the facts and the law": *Dunsmuir*, above, at para 47; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para 16 [**Newfoundland Nurses**].

VII. **Analysis**

A. *Was it unreasonable to conclude that Mr. Abaida had likely forged Mr. Abbas' signature and provided false or misleading information on his passport application?*

[36] Mr. Abaida submits that it was unreasonable for the decision-maker to conclude that he had likely forged Mr. Abbas' signature and provided false or misleading information on his passport application. I disagree.

[37] In support of his position, Mr. Abaida states that shortly after he requested Mr. Abbas to be the guarantor on his passport application, Mr. Abbas requested that he loan him \$1,000 for one week. When Mr. Abaida refused, based on his belief that Mr. Abbas has not repaid loans in the past, Mr. Abbas became angry with him and stated that he was "not in the mood" to fill in the Guarantor section on the application. Nevertheless, Mr. Abaida maintains that Mr. Abbas signed his application after he (Mr. Abaida) filled in the information that Mr. Abbas verbally provided to him. He added that he was surprised that Mr. Abbas provided all of the information from memory. He nevertheless wrote down that information after being assured by Mr. Abbas that he had indeed memorized that information.

[38] This version of events was not before the decision-maker at the time the Decision was made. Indeed, it is inconsistent with information provided in Mr. Abaida's Statutory Declaration, dated July 23, 2017, where he stated: "I personally witnessed Mr. Abbas completing the Declaration of Guarantor section of my application and signing my passport application and photograph" (emphasis added). I note that this latter version of events was also provided in the

letter of the same date written by Mr. Lee, his former counsel. Mr. Abaida attributed the inconsistency between the two versions of events that he provided to a “misunderstanding” on Mr. Lee’s part. However, this does not explain why Mr. Abaida’s own declaration contained that same initial version of events.

[39] Mr. Abaida’s statement that Mr. Abbas became angry with him is also not entirely consistent with Mr. Lee’s statement, on August 21, 2017, that Mr. Abaida remains “confused as to why Mr. Abbas, who travelled from Victoria to the Lower Mainland to assist him, would provide false or misleading information on his passport application.”

[40] In concluding that it was more likely than not that Mr. Abaida had forged the signature of Mr. Abbas on his passport application, the decision-maker explicitly took into account the information that Mr. Abaida had provided. This included his statement that he had witnessed Mr. Abbas sign the application, his belief that Mr. Abbas had intentionally provided erroneous information on the application to cause him problems, and his allegations that Mr. Abbas has a history of fraud-related behaviour.

[41] However, the decision-maker also took the following information into account:

- Mr. Abbas’ verbal statement that he did not recall signing the application;
- Mr. Abbas’ written “Formal Statement” that he that he did not sign the application;

- Mr. Abbas' written statement that he had known Mr. Abaida for a long time and would have signed the application if he had been requested to do so, and that he did not believe that Mr. Abaida had intended to do any harm to anyone – the decision-maker observed that these statements were not consistent with the allegation that Mr. Abbas was trying to cause problems for Mr. Abaida.
- The signature in the Declaration of Guarantor section of the application and on the back of one of Mr. Abaida's photographs did not match the other signatures that the Division had in its records from Mr. Abbas.

[42] Having regard to the foregoing, I consider that it was not unreasonable for the decision-maker to conclude that Mr. Abaida had likely forged Mr. Abbas' signature on his passport application, and that he had likely provided false or misleading information on that application.

[43] My conclusion on this point is reinforced by the additional information upon which the decision-maker appears to have relied, as set forth in the letter dated August 16, 2017, which is summarized at paragraph 18 above. As noted in that letter, it remained unclear why Mr. Abbas, who had travelled from Victoria to the Lower Mainland to assist Mr. Abaida, would provide false or misleading information on the latter's passport application. Although Mr. Abaida has now provided a new explanation for why Mr. Abbas may have provided erroneous information, that information (concerning Mr. Abaida's refusal to loan Mr. Abbas \$1,000) was not before the decision-maker. Moreover, as noted in the August 16th letter, the handwriting in the Declaration of Guarantor section of the application form appeared to be consistent with the remaining

sections of the form, and the signatures allegedly provided on the form and on the back of one of the photographs were not consistent with the other signatures in the Division's files. Upon reviewing the application in question, and comparing the signature in question with another signature that Mr. Abbas provided to the Division, as set forth at page 112 of the Certified Tribunal Record, I consider that those observations were not unreasonable. Indeed, the difference between the signatures is quite striking.

B. *Was it unreasonable to impose a five-year suspension of passport services on Mr. Abaida?*

[44] Mr. Abaida submits that the decision to impose a five-year suspension of passport services on him was unreasonable, due to the harsh effects that it will have on him, his children and his parents.

[45] During the hearing of this Application, he explained that an order issued by a Lebanese court prevents his children, who are Canadian citizens, from leaving Lebanon until after he attends a custody proceeding that has been scheduled there in September of this year, and after the custody of his children has been finally determined. He further maintains that his parents are in ill-health and are not able to travel.

[46] I am very sympathetic to the situation in which Mr. Abaida finds himself. It is readily apparent that the consequences of the Suspension will be quite harsh for him, his children and his parents.

[47] However, passport application forgery strikes at the very heart of the integrity of Canada's passport program. In addition, despite several opportunities that were provided to him to acknowledge his apparent forgery, he has steadfastly maintained that he had personally witnessed Mr. Abbas sign his application. In so doing, he also provided inconsistent explanations for what he had witnessed Mr. Abbas do: first he stated that he witnessed Mr. Abbas complete the entire Guarantor Declaration section of the application, and later he stated to this Court that Mr. Abbas simply signed the application and one of his passport photographs, after verbally relaying to him the information that was required to be provided. In addition, he provided different explanations for why Mr. Abbas may have been motivated to provide erroneous information in the application: first he opined that Mr. Abbas was jealous and had a history of fraudulent behaviour, and later he maintained before this Court that Mr. Abbas was angry with him for not loaning him \$1,000 for a one week period.

[48] In this context, I do not consider that a five-year suspension of passport services is unreasonable or disproportionate to the very adverse consequences that such a suspension may have for Mr. Abaida or others who engage in similar conduct. As Mr. Abaida observed during the hearing of this Application, he could easily have asked his lawyer or another eligible person, including the person who signed his passport applications in 2008 and 2013, to be his guarantor. However, he made a conscious decision not to do so. He must now bear the consequences of his actions.

[49] In his written submissions, Mr. Abaida suggested that a one-year suspension of passport services would have been more appropriate.

[50] The function of this Court is not to determine what the appropriate period of suspension ought to have been in any particular case. Rather, it is to assess whether a particular suspension that has been imposed is unreasonable, having regard to the requirement that the suspension decision reflect a proportionate balancing of the values protected by s. 6 of the *Charter* and the objectives of Canada's passport program: *Doré*, above, at para 57; *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12, at para 37.

[51] In this regard, the Court must be satisfied that the decision-maker has properly balanced the values protected by the right to travel outside Canada with those objectives, including the implicit objective of protecting the integrity and good reputation of Canada's passports: *Doré*, above, at para 58; *Kamel*, above, at para 39; *Thehwell*, above, at paras 27 and 55; *Slaeman v Canada (Attorney General)*, 2012 FC 641, at para 50 [*Slaeman*]; *Mbala v Canada (Attorney General)*, 2014 FC 107, at para 21 [*Mbala*]. This exercise necessarily turns on the specific facts of each case, and requires the Court to consider whether a suspension decision interferes no more than is necessary with the values protected by s. 6 of the *Charter*: *Doré*, above, at paras 7 and 54.

[52] On the specific facts of this case, I do not consider that the decision to suspend passport services to Mr. Abaida for five years interferes more than is necessary with the values protected by s. 6 of the *Charter*. Passport application forgery is among the types of conduct that can have the most serious adverse impact on the integrity of Canada's passport program. In my view, this conduct was aggravated by Mr. Abaida's steadfast refusal to acknowledge what he appears to have done, and by the inconsistent information that he provided to the passport office and to the Court: *Mbala*, above, at para 22; *Slaeman*, above, at para 48. That information was provided in

relation to what he had allegedly witnessed Mr. Abbas do, as well as with respect to why Mr. Abbas may have been motivated to provide false information on the passport application.

Considering all of the foregoing, I am unable to conclude that a five-year suspension of passport services was more than what was necessary in the circumstances to maintain the integrity and good reputation of Canada's passports.

[53] In this regard, it is important to bear in mind that Parliament considered it to be appropriate to provide, in subsection 10.2(1) of the *Order*, for the possibility of imposing suspensions of passport services that extend to a maximum period of 10 years, including for the type of conduct in which Mr. Abaida engaged. In my view, this reflects Parliament's view of the seriousness of such conduct, and must be taken into account in considering the reasonableness of the five-year suspension that was imposed in this case.

[54] I acknowledge that the pernicious nature of Mr. Abaida's forgery was somewhat lessened by the fact that he provided a correct telephone number for Mr. Abbas, because this permitted the Division to contact Mr. Abbas to confirm whether he had in fact signed the application form. However, it appears that Mr. Abaida gambled that Mr. Abbas would support his version of events. Had he done so, the forgery would have gone undetected, with the consequent serious adverse implications for the integrity of Canada's passport program.

[55] Having regard to the serious adverse impact that forgery can have on Canada's passport program, and to the aggravating factors that I have discussed above, I consider that the decision

to suspend passport services to Mr. Abaida for five years was within the range of possible, acceptable outcomes in respect of the facts and the law: *Doré*, above, at para 56.

[56] In reaching this decision, I am mindful that this Court recently set aside a decision to impose a five-year suspension of passport services on an individual who had provided false or misleading information in a passport application: *Thelwell*, above. In that case, Justice Mactavish provided a very helpful summary of the passport cases decided by this Court and by the Federal Court of Appeal. In this regard, she observed that “almost without exception, a five-year period of passport ineligibility is imposed once it is determined that there has been misconduct, including providing false or misleading information in a passport application”: *Thelwell*, above, at para 39. Ultimately, she set aside the five-year suspension decision and remitted the matter to be reconsidered by a different decision-maker for reconsideration, after reaching several findings that distinguish that case from the present Application.

[57] Those findings include the fact that Ms. Thelwell’s conduct was far less serious than the conduct in the other cases that she reviewed; the decision-maker failed to address the impact that the suspension decision would have on her mobility rights and failed to balance her interests against the objectives of Canada’s passport program; and the suspension decision failed to show a causal link between the five-year suspension and the need to preserve the integrity of the Canadian passport system: *Thelwell*, above, at paras 36, 40, 50-51 and 55.

[58] By contrast, in the present Application, Mr. Abaida’s conduct involved forgery of his guarantor’s signature and the provision of false information in respect of his guarantor. As I have

noted, such conduct strikes at the very heart of the integrity of Canada's passports. I consider it to be materially more serious than Ms. Thelwell's failure to advise the passport office that her passport had been seized by the police when she applied for a new passport. Indeed, forgery of a guarantor's signature is similar in nature to forgery or fraud in relation to the identity of the applicant for a passport. I note that there have been a number of cases involving such conduct in which a five-year suspension of passport services was imposed by the passport office: e.g. see *Brar*, above; *Wong v Canada (Attorney General)*, 2017 FC 152; *Lipskaia v Canada (Attorney General)*, 2016 FC 526. In addition, a four-year suspension was found to be reasonable in *Mbala*, above, where it appears that a five-year period was reduced to reflect the applicant's transparency and admission of wrongdoing – something that Ms. Thelwell also conceded, but something that Mr. Abaida has yet to do.

[59] Turning to the other distinctions between the present Application and *Thelwell*, above, the decision-maker in this case did in fact address the impact that the decision would have on Mr. Abaida's mobility rights. In addition, he balanced Mr. Abaida's interests against the objectives underlying the *Order*. These things are apparent from the following passage of the Decision:

Pursuant to section 10.2(1) of the *Order*, when a decision is made to refuse to issue or revoke a passport, passport services may be refused for a period of up to ten years. When considering whether or not to impose a period of refusal of service, and if so, the duration of such a period, the following was taken into consideration:

- The obligations of the [Division], given our mandate from the Minister to render decisions on his behalf pursuant to the *Order* 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.

- The [Division] understands that refusing passport services to an individual for a period of time is a serious matter that can cause significant hardship for an individual, and this must be weighed against the [Division's] obligations as mentioned in the previous paragraph.
- You claim that you require a passport to visit members of your immediately family who do not live in Canada – you specifically mention our mother, father and two sons. Although you indicate that these individuals all live outside of Canada, on your application dated April 13, 2017 you listed your father as your emergency contact and noted his address as 8360 Williams Road, Richmond, BC, which appears to contradict your stated need of a passport to visit him.

Therefore, the decision is to impose a period of refusal of passport services in your name for 5 years, pursuant to section 10.2(1) of the *Order* ... (emphasis added)

[60] It is readily apparent that the foregoing passage is not a model for what one would expect in these types of decisions. Given the extent of detail provided elsewhere in the Decision and given the expanded treatment of the relevant facts set forth in other letters that were sent to Mr. Abaida, one would have expected a more expansive balancing assessment.

[61] Nevertheless, the text quoted immediately above allows the Court to understand why a five-year suspension of passport services was imposed, and to ascertain whether that suspension falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and the law: *Newfoundland Nurses*, above, at para 16; *Doré*, above, at para 56.

[62] In addition, the passages that I have underlined in that text permit me to satisfy myself that the decision-maker properly balanced the values protected by the right to travel outside Canada with the objectives underlying the *Order*, including protecting the integrity of Canada's

passport program and the good reputation of Canada's passports. In brief, those passages reflect that the decision-maker considered the latter objectives. They also reflect a recognition that a suspension would prevent Mr. Abaida from visiting his parents and two sons, and that this could cause significant hardship. In addition, they reflect an appreciation of the need to weigh these adverse effects against the objectives mentioned immediately above. It is reasonable to infer from the explicit reference to the need to conduct that balancing exercise, that it was in fact conducted.

[63] In my view, the decision-maker's recognition of the things that I have described immediately above implicitly demonstrated the required causal link between the five-year suspension and the objectives of protecting the integrity of Canada's passport program and the good reputation of Canada's passports. That link did not have to be more explicitly made: *Kamel*, above, at para 48.

[64] In reaching my conclusion that the Decision does not interfere more than is necessary with the rights and values protected by s. 6 of the *Charter*, I have taken into account that Mr. Abaida may apply for a passport of limited validity, containing geographic limitations, based on urgent, compelling and compassionate considerations. Indeed, this was conveyed to him at the end of the Decision. Given that there are a number of compelling, compassionate and arguably urgent considerations in his favour, this option would appear to offer a realistic potential to alleviate the adverse consequences of the Decision: *Kamel*, above, at para 46; *Brar*, above, at para 42. Those considerations include the fact that he has not seen his minor children for three

years, his parents are in poor health in Lebanon, and must attend the custody hearing there before his children may be permitted to leave that country.

[65] I acknowledge that the availability of this option may not permit Mr. Abaida to attend to the many urgent family issues that he maintains require him to have a full passport. However, it nevertheless should provide some relief from the Suspension, which now has four years to run. To the extent that this safety valve is sufficiently flexible to accommodate a consideration of the harsh effects of the Suspension on Mr. Abaida's innocent minor children and his ill parents, it offers realistic potential to alleviate what would otherwise be the adverse consequences of the Suspension.

[66] In summary, the decision to impose a five-year suspension of passport services on Mr. Abaida was not unreasonable. That decision was sufficiently justified, transparent and intelligible. Although it was very brief, it did what it was required to do to fall within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law. That is to say, it addressed the adverse consequences that it would have on Mr. Abaida, it weighed those consequences against the objectives of maintaining the integrity of Canada's passport program and the good reputation of Canada's passports, it imposed a suspension of passport services that did not go further than necessary to achieve those objectives, and it implicitly made the causal link between the five-year suspension and those objectives. The availability of a limited validity passport, upon a demonstration of compelling and compassionate considerations, will assist to ensure that the Suspension does not in fact go further than necessary to achieve those objectives, and to ensure that it is proportionate in the specific circumstances of this case.

VIII. **Conclusion**

[67] For the reasons set forth in parts VII.A and VII.B above, this Application will be dismissed.

JUDGMENT in T-23-18

THIS COURT'S JUDGMENT is that this Application is denied.

“Paul S. Crampton”

Chief Justice

APPENDIX 1 — Relevant Legislation

CANADIAN PASSPORT ORDER, SI/81-86

Issuance of Passports

3 Every passport

(b) shall be issued in the name of the Minister on behalf of Her Majesty in right of Canada;

[...]

4(3) Nothing in this Order in any manner limits or affects Her Majesty in right of Canada's royal prerogative over passports.

[...]

4(4) The royal prerogative over passports can be exercised on behalf of Her Majesty in right of Canada by

(b) the Minister;

[...]

8 (1) In addition to the information and material that an applicant is required to provide in the application for a passport or in respect of the delivery of passport services, the Minister may request an applicant and any representative of the applicant to provide further information, material, or declarations respecting any matter relating to the issue of the passport or the delivery of passport services.

(2) The further information, material and declarations referred to in subsection (1) and the circumstances in which they may be requested include the information, material, declarations and circumstances set out in the

DÉCRET SUR LES PASSEPORTS CANADIENS, TR/81-86

Délivrance des passeports

3 Chaque passeport

b) doit être délivré au nom du ministre agissant au nom de Sa Majesté du chef du Canada;

[...]

4(3) Le présent décret n'a pas pour effet de limiter, de quelque manière, la prérogative royale que possède Sa Majesté du chef du Canada en matière de passeport.

[...]

4(4) La prérogative royale en matière de passeport peut être exercée au nom de Sa Majesté du chef du Canada par :

b) le ministre;

[...]

8 (1) En plus des renseignements et des documents à fournir avec une demande de passeport ou à l'égard de la prestation de services de passeport, le ministre peut demander au requérant ou à son représentant de fournir des renseignements, des documents ou des déclarations supplémentaires à l'égard de toute question se rapportant à la délivrance du passeport ou à la prestation des services.

(2) Les renseignements, les documents et les déclarations supplémentaires visés au paragraphe (1) et les circonstances qui justifient leur demande comprennent ceux mentionnés à l'annexe.

schedule.

[...]

Refusal of Passports and Revocation

9 (1) Without limiting the generality of subsections 4(3) and (4) and for greater certainty, the Minister may refuse to issue a passport to an applicant who

(a) fails to provide the Minister with a duly completed application for a passport or with the information and material that is required or requested

(i) in the application for a passport, or

(ii) pursuant to section 8;

[...]

10.2 (1) If the Minister refuses to issue or revokes a passport, on any grounds other than the one set out in paragraph 9(1)(g), he or she may refuse on those same grounds to deliver passport services for a maximum period of 10 years.

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

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

[...]

Refus de délivrance et révocation

9 (1) Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que le ministre peut refuser de délivrer un passeport au requérant qui :

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

(i) dans la demande de passeport, ou

(ii) selon l'article 8;

[...]

10.2 (1) Dans le cas où le ministre refuse de délivrer un passeport ou en révoque un pour un motif autre que celui visé à l'alinéa 9(1)g), il peut refuser, pour le même motif, de fournir des services de passeport pendant une période d'au plus dix ans.

CHARTRE CANADIENNE DES DROITS ET LIBERTÉS, PARTIE I DE LA LOI CONSTITUTIONNELLE DE 1982, CONSTITUANT L'ANNEXE B DE LA LOI DE 1982 SUR LE CANADA (R-U), 1982, C 11

6. (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

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SOLICITORS OF RECORD

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