

Federal Court



Cour fédérale

**Date: 20180720**

**Docket: T-112-18**

**Citation: 2018 FC 769**

**Toronto, Ontario, July 20, 2018**

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

**BETWEEN:**

**ROSSI HOSANNA SHAMIR**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Rossi Hosanna Shamir, brings this application under subsection 18.1(1) of the *Federal Courts Act*, RSC, 1985, c F-7. Mr. Shamir challenges the December 21, 2017 decision [Decision] of a decision-maker [Decision-Maker] of the Passport Entitlement and Investigations Division [Passport Division] of Immigration, Refugees and Citizenship Canada, which denied his passport applications and imposed a 3.5 year period of refusal of passport services against him under paragraph 9(1)(a) and subsection 10.2(1) of the *Canadian Passport Order*, SI/81-86.

[2] I held from the Bench that the Decision was both reasonable and fair, thus dismissing Mr. Shamir's application, and promised to issue written reasons. Those reasons follow.

I. Background

[3] The Decision was rendered in response to two of Mr. Shamir's passport applications, dated September 26, 2016 and December 6, 2016.

[4] First, the Decision-Maker found that in Mr. Shamir's September 2016 passport application, filed under the name "Ahmen Muhiadin Hassan", Mr. Shamir had improperly listed his wife, Erika Muller, and daughter, as references, declaring they were his "friends". On this basis, the Decision-Maker concluded that the September 2016 passport application contained false or misleading information, and refused it under paragraph 9(1)(a) of the *Canada Passport Order*.

[5] Second, regarding the December 2016 passport application, filed under the name "Rossi Hosanna Shamir", the Decision-Maker found that Mr. Shamir had (a) failed to declare his previous name or provide any information or documentation with respect to his name change, and (b) indicated that he had never been issued a Canadian travel document, notwithstanding that several such documents had been issued to him in his former name. Thus, the Decision-Maker refused the December 2016 passport application for not having been "duly completed", again under paragraph 9(1)(a) of the *Canada Passport Order*.

[6] Under subsection 10.2(1) of the *Canada Passport Order*, following a decision to refuse a passport, a decision-maker may also refuse passport services to the applicant for a period of up to ten years. In Mr. Shamir's case, the Decision-Maker concluded that a passport services refusal period of 3.5 years was warranted.

## II. Preliminary Issue

[7] The Respondent asserts that the proper name for the respondent should be "The Attorney General of Canada", pursuant to Rule 303(2) of the *Federal Courts Rules*, SOR/98-106. I agree, and will order that the style of cause be amended accordingly.

## III. Standard of Review

[8] The Decision is to be assessed on a standard of reasonableness (*Gomravi v Canada (Attorney General)*, 2015 FC 431 at para 24; *Villamil v Canada (Attorney General)*, 2013 FC 686 at para 30 [*Villamil*]). In other words, it must be justified, transparent, and intelligible, and fall within the range of acceptable outcomes defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). Procedural fairness breaches, on the other hand, are to be reviewed on a correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79).

## IV. Analysis

[9] Mr. Shamir, who is self-represented, contends that the Decision (a) is unreasonable and ought not to have been reached on the evidence before the Decision-Maker, and (b) is procedurally unfair. These arguments were the focus of Mr. Shamir's oral submissions.

However, in written submissions, Mr. Shamir also argues that the Decision (c) violates the *Canadian Charter of Rights and Freedoms* [*Charter*], and (d) should result in damages from this Court.

A. *Is the Decision reasonable?*

[10] Mr. Shamir submits that he has been unfairly and unjustifiably denied a Canadian passport. He admits in his written materials that there were errors in his passport applications, but submits that it was not his intention to be misleading, and that he was suffering from a “stress related health condition” and wanted a passport in order to go back to South Sudan as soon as possible, where he states that he lives and works as a medical doctor.

[11] Mr. Shamir further submits that the Decision cannot stand, because the Passport Division’s investigation turned up no Canadian or international offences or charges against him, and that there was therefore insufficient information to support a denial of his passport applications, or a refusal of passport services.

[12] Mr. Shamir deposes that (a) he filed his September 2016 passport application under his former name because a name change takes time, and he wanted to travel for work; (b) he was legally single at the time of the first passport application and that the Decision-Maker failed to verify his marital status; (c) in October 2016, once his legal name change was complete, and he married his wife, his Canadian Citizenship Certificate was changed from “Ahmed Hassan Muhiadin” to his new name, “Rossi Hosanna Shamir”; (d) he then went to the Passport Office in Edmonton to inquire as to how to withdraw his September 2016 application, given his name

change, but was told to file a new application instead; and (e) when he filed his December 2016 application under his current name, he forgot to include the file number of his September 2016 application, or his previous name, but that he had no intention to mislead.

[13] Distilling Mr. Shamir's arguments, I find that his objections are threefold. First, he stresses that he never intended to mislead anyone. Second, he appears to submit that, in order to have been reasonable, the Decision had to have been based on a Canadian or international offence or charge against him. Finally, he argues that he was "legally single" at the time he completed his September 2016 application, and that the Decision-Maker unreasonably failed to verify this fact.

(1) Lack of Intent to Mislead

[14] With respect to Mr. Shamir's first point, the Respondent submits that intent is not relevant, insofar as sections 9 and 10 of the *Canada Passport Order* do not require proof of an intention to defraud or mislead (*Mbala v Canada (Attorney General)*, 2014 FC 107 at para 20; *Villamil* at para 28). The Respondent specifically relies on *Xie v Canada (Citizenship and Immigration)*, 2016 FC 434, in which Justice Bell upheld a decision to revoke the applicant's passport notwithstanding that the applicant admitted he had "made a mistake" in his passport applications.

[15] Having regard to these authorities, I conclude that the innocent intentions to which Mr. Shamir now deposes do not render the Decision unreasonable. Further, the Decision-Maker

also considered Mr. Shamir's various explanations for the omissions and misrepresentations in his passport applications, including his stated medical condition.

(2) No Offence or Charge

[16] I turn to Mr. Shamir's argument that the investigation unearthed "no offence charges" against him in Canada or otherwise. First, I note that Mr. Shamir disclosed during the investigation that he had pled guilty in Kampala, Uganda to offences relating to the mutilation of a Canadian passport issued to him — an admission which, at the hearing, he argued was a direct result of his mental illness and for which a conviction did not exist. However, the Decision-Maker in this case did not base the Decision on any provision of the *Canada Passport Order* which entitles the Minister to refuse to issue a passport where an applicant stands charged or has been convicted of an offence. As a result, Mr. Shamir's arguments on this point do not assist him.

[17] Rather, the Decision was based on paragraph 9(1)(a), under which a passport application may be refused where the applicant fails to provide the Minister with a duly completed application (the Respondent submitted at the hearing, and the Applicant did not contest, that providing false or misleading information in a passport application would also engage this section). In my view, the Decision-Maker based the Decision on reasonable grounds, as I will now explain.

(3) Marital Status

[18] With respect to the September 2016 passport application, the Decision-Maker found that Mr. Shamir had improperly listed his wife and daughter as references, indicating that they were his “friends”. In this application for judicial review, Mr. Shamir argues that he was “legally single” at the time he submitted his first passport application — he deposes that he did not legally marry Ms. Muller until October 2016 — and that the Decision is thus unreasonable on this point. However, Mr. Shamir did not make this argument to the Decision-Maker. Instead, in a July 31, 2017 letter to the Passport Division, Mr. Shamir submitted as follows:

Mentioning my wife and child on my passport application as my friends was a typo I made at the time of filling in my application. I had no intention of misleading IRCC with this information but I continuously suffered from a confused and forgetful state of mind due to the mental trauma I suffered when I was working in South Sudan area. The medical description provided in objection number one would help explain why there were errors on my forms.

[19] Further, as noted by the Passport Division in its correspondence to Mr. Shamir in response to his submissions, Mr. Shamir had submitted a previous passport application in March 2016, in which he also listed Ms. Muller as his reference, and indicated that she was his “manager”. However, reference checks at that time revealed to the Passport Division that Mr. Shamir was married to Ms. Muller. The Passport Division had then informed him that he was required to provide a new reference. Thus, by the time of the September 2016 application, Mr. Shamir was well aware that Ms. Muller was not an appropriate reference.

[20] Finally, although Mr. Shamir submitted to the Passport Division that he and Ms. Muller legally married in October 2016, the record does not disclose that he at any time contested the Passport Division’s understanding that he was married to Ms. Muller as of March 2016. As a

result, the Decision-Maker's conclusions with respect to the September 2016 passport application were reasonable.

(4) Other Considerations

[21] I also find that the Decision was reasonable insofar as it relates to the December 2016 passport application. It will be recalled that Mr. Shamir failed to disclose his previous name, or the fact that he had held a prior Canadian travel document. These omissions provided a reasonable basis for the Decision-Maker to conclude that the passport application was not duly completed.

[22] I note that Mr. Shamir did give the passport office his name change documentation on or around October 14, 2016, when he completed a questionnaire following his first passport application. Thus, he argues in this judicial review that it was unfair or unreasonable for the Decision-Maker to hold it against him that he failed to declare his former name in his second passport application. However, Mr. Shamir did not submit to either the Decision-Maker or this Court that he omitted information in his second passport application based on the mistaken belief that he had already disclosed his name change in the course of the investigation that followed his first passport application. Instead, he deposes that he simply forgot to include this information. As a result, I do not accept his arguments on this point.

[23] In conclusion, I agree with the Respondent that the Decision was amply justified, and thus reasonable, given the information before the Decision-Maker, namely that Mr. Shamir: (a) commenced his name change application by at least April 2016, but did not disclose in



September 2016 that such a process was ongoing or that he was born under a different name; (b) did not declare his former name when submitting the December 2016 application or indicate his ongoing application; (c) stated that he had never held another Canadian travel document, though he had held a passport under the name Ahmed Muhiadin Hassan (and he provided no explanation to the Passport Division for this error); (d) disclosed during the investigation that he had only travelled three times in the past six years, when his previous passport (which he admitted to mutilating) contained many travel stamps and visas; (e) listed Ms. Muller and his daughter as references in March 2016 and again in September 2016, despite knowing in September 2016 that these references were not appropriate, and explained these errors as “typos”; (f) submitted to the Passport Division that he had no intent to travel to the South Sudan, but included a letter in his submissions from his previous employer in the South Sudan asking him to return; and (g) provided information regarding his medical condition that appeared to conflict with his other evidence.

B. *Was the Decision procedurally fair?*

[24] Mr. Shamir argues that his right to procedural fairness was breached, which, as mentioned above is an issue reviewable on a standard of correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 33-56). Chiefly, Mr. Shamir submits that the sixteen-month period that it took for the Passport Division to conduct its investigation, and ultimately render the Decision, was procedurally unfair.

[25] However, in this case, I agree with the Respondent that the delay did not cause Mr. Shamir any prejudice, since the period of refusal of passport services ran from the date of Mr.

Shamir's second application, and not the Decision itself. Neither did the delay impair Mr. Shamir's ability to make his case (see *Johnson v Canada (Attorney General)*, 2018 FC 582 at para 56 [*Johnson*]).

[26] Ultimately, to the extent that Mr. Shamir is arguing that the delay amounted to an abuse of process, I am satisfied that such an argument is not made out on the facts of his case as he has adduced no evidence of prejudice (see *Johnson* at paras 57-58, citing *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 133). Further, in my view the investigation was not overly long. From the CTR, it is apparent that some of this period was understandably spent investigating Mr. Shamir's admission that he mutilated a passport in Uganda.

[27] In terms of other aspects of fairness in the process, Mr. Shamir was at all times provided a full opportunity to respond to the case against him (see *Abdi v Canada (Attorney General)*, 2012 FC 624 at para 21). Indeed, the Decision expressly states that Mr. Shamir was aware of the information gathered in the course of the investigation and given an opportunity to respond to it.

[28] As a result, I am not persuaded by Mr. Shamir's argument that the Decision or investigation process was procedurally or otherwise unfair.

C. *Does the Decision reflect a proportionate balancing of Charter protections and the statutory mandate?*

[29] In his written materials, Mr. Shamir — mistakenly relying on section 1 instead of section 15 of the *Charter* — argues that he is entitled to equal benefit of the law. He also submits,

implicitly in reliance on *Charter* section 12, that the Decision constitutes a “cruel unusual punishment”. The Respondent has not addressed these *Charter* arguments in its memorandum.

[30] I disagree with Mr. Shamir that his rights under either sections 12 or 15 of the *Charter* are engaged on the facts of his case. There is no evidence that the Decision, in denying his passport applications and refusing him passport services for 3.5 years, involved discrimination on an enumerated or analogous ground (*R v Kapp*, 2008 SCC 41 at para 17), or “cruel and unusual punishment” as that term is constitutionally understood (see *Guérin v Canada (Attorney General)*, 2018 FC 94 at para 68). Neither has Mr. Shamir put forward sufficient facts to ground his *Charter* arguments (*Johnson* at para 40).

[31] However, in *Canada (Attorney General) v Kamel*, 2009 FCA 21 [*Kamel*], the Federal Court of Appeal determined that the refusal of passport services infringes mobility rights under subsection 6(1) of the *Charter* (at paras 15 and 68; see also *Thelwell v Canada (Attorney General)*, 2017 FC 872 at para 23 [*Thelwell*]). Thus, and although this was not expressly raised by Mr. Shamir, I will consider Mr. Shamir’s *Charter* arguments under subsection 6(1).

[32] In *Trinity Western University v Law Society of Upper Canada*, 2018 SCC 33 [*Trinity Western*], the Supreme Court of Canada recently confirmed the proper approach for judicially reviewing administrative decision that engage the *Charter*, as originally established in *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*]. The Decision will be reasonable only if it “reflects a proportionate balancing of the Charter protection with the statutory mandate” (*Trinity Western* at para 35). The Decision must give effect as fully as possible to the *Charter* protection at stake

given the particularly statutory mandate (*Trinity Western* at para 35). In other words, if the Decision has a disproportionate impact on a *Charter* right, then it is not reasonable (*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 Mr. Shamir's rights under subsection 6(1) of the *Charter* (*Trinity Western* at para 36).

[33] First, I note that the Decision-Maker expressly set out the obligations of the Passport Division under the *Canada Passport Order* 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”. The Decision-Maker also acknowledged that the objectives under the *Canada Passport Order* had to be weighed against the “significant hardship” that a refusal of passport services causes to an individual.

[34] The Decision-Maker determined that a period of 3.5 years (running from December 6, 2016, the date of Mr. Shamir's second passport application) was warranted — this is well below the maximum period of 10 years permitted under the *Canada Passport Order*, and also falls well below the 5 year period that has been deemed to have been appropriate in certain other cases (see, for instance, *Mikhael v Canada (Attorney General)* 2013 FC 724 at paras 24-29 *Brar v Canada (Attorney General)* 2014 FC 763 at para 27, and *Villamil* at paras 29-30, and 34).

[35] In addition, the Decision-Maker acknowledged and weighed Mr. Shamir's personal circumstances, including his medical condition, and the fact that he provided his name change documents to the passport issuing office prior to his December 2016 passport application. In

sum, and particularly given that longer refusal periods were found to be reasonable in similar situations, I am satisfied that the Decision-Maker's assessment was sufficiently individualized to reflect a proportionate restriction on Mr. Shamir's *Charter*-protected mobility rights (see *Thelwell* at para 50). The Decision thus withstands scrutiny under *Doré* and *Trinity Western*.

D. *Is Mr. Shamir entitled to the other relief he seeks?*

[36] Mr. Shamir asks this Court for what amounts to damages, by seeking "reimbursement" for the cost of living expenses for himself and his wife and costs arising from his period of refused passport services. However, subject to a very limited and unusual exception, which does not apply here, damages cannot be sought in a judicial review (*Canada (Attorney General) v Oshkosh Defense Canada Inc*, 2018 FCA 102 at para 33).

E. *Are costs warranted in this application?*

[37] The Respondent seeks costs. As I explained during the hearing, and taking into account the various factors under Rule 400(3) of the *Federal Courts Rules*, I have decided to exercise my discretion not to award costs to either party.

V. Conclusion

[38] The application is dismissed, without costs.

**JUDGMENT in T-112-18**

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

1. The style of cause is amended, with immediate effect, to name "The Attorney General of Canada" as Respondent.
2. This application for judicial review is dismissed.
3. There is no award as to costs.

"Alan S. Diner"

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Judge

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

**DOCKET:** T-112-18

**STYLE OF CAUSE:** ROSSI HOSANNA SHAMIR v THE ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** JULY 10, 2018

**REASONS FOR JUDGMENT  
AND JUDGMENT:** DINER J.

**DATED:** JULY 20, 2018

**APPEARANCES:**

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ON HIS OWN BEHALF

Kathleen Pinno

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