Federal Court  Cour fédérale

Date: 20180726

Docket: T-28-18

Citation: 2018 FC 789

Toronto, Ontario, July 26, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

JASON JANE LIPSKAIA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review [Application] brought by the Applicant under the name Jason Jane Lipskaia [Lipskaia], pursuant to subsection 18.1(1) of the *Federal Courts Act*, RSC, 1985, c F-7. The Applicant challenges a January 2, 2018 decision [Decision] of a decision-maker [Decision-Maker] of the Passport Entitlement and Investigations Division [Passport Division] of Immigration, Refugees and Citizenship Canada, which (a) revoked a

passport issued in the Lipskaia identity and (b) imposed a seven-year period of refusal of services. For the reasons below, I am dismissing the Application.

II. Background and Position of the Applicant

[2] The history of this matter includes *Lipskaia v Canada (Attorney General)*, 2016 FC 526 [*Lipskaia*], an application also brought by the Applicant. In that proceeding, the Applicant successfully challenged an April 28, 2015 decision, which had determined that that (a) the Applicant's true identity was Randall Robert Wiese [Wiese], (b) he had obtained, by false or misleading information, a passport in the assumed identity of Lipskaia, and (c) he stood charged of the commission of an indictable offence. As a result, the passport issued in the identity of Lipskaia had been revoked and a period of refusal of passport services imposed against the Applicant for five years.

[3] However, on judicial review, Justice Roussel found in *Lipskaia* that the Applicant had been denied procedural fairness and sent the matter back to be decided. On redetermination, the new Decision-Maker again concluded that, on a balance of probabilities, the Applicant's true identity was Wiese, and he had obtained a passport in the name of Lipskaia by means of false or misleading information. As a result, pursuant to the *Canadian Passport Order*, SI/81-86, the Decision revoked the Lipskaia passport and imposed a seven year period of refusal of passport services against the Applicant, running from the date of the application for the Lipskaia passport. However, the Decision-Maker did not base the Decision on the Applicant having been charged of the commission of an indictable offence.

[4] The Applicant, who is self-represented, maintains that he is legally entitled to the identity of Lipskaia and argues that the Decision should be set aside on that basis. In support of his position, the Applicant principally relies on an order of Justice Lee of the Court of Queen's Bench of Alberta dated August 7, 2008, which directed Alberta Vital Statistics to accept an application brought in the Lipskaia identity for a delayed registration of birth.

[5] The Respondent, conversely, asserts that the Decision-Maker reasonably concluded that the identity of Lipskaia had been fraudulently assumed by the Applicant, who is in fact Wiese, and that, accordingly, the Decision should not be disturbed.

[6] While the Applicant asks in his notice of application that this Court allow him to "get on with his life" as Lipskaia, I am not here to determine the Applicant's identity. I reiterate now, as I did at the hearing, that the Court's task on judicial review is purely to assess whether the Decision was fair and reasonable having regard to the information before the Passport Division and its statutory mandate.

[7] I understand the Applicant to raise three arguments. First, he submits that by addressing correspondence to Wiese rather than Lipskaia, the Passport Division breached his procedural fairness rights. Second, he argues that the Decision-Maker ignored or misconstrued the evidence in the record — including evidence supporting his position that he is Lipskaia. Third, he submits that the Decision has caused him tremendous personal and financial prejudice. Based on these arguments, the Applicant asks that the Decision be set aside, and that he be awarded compensation.

[8] Having considered these Applicant's arguments in the context of the substantial Certified Tribunal Record [CTR], I find that the Applicant was afforded procedural fairness and that the Decision was reasonable. Furthermore, there is no basis to grant the Applicant any compensation.

III. Preliminary Issue

[9] At the request of the Respondent, and without objection from the Applicant, the style of cause in this proceeding will be amended to name the Attorney General of Canada as the proper respondent, pursuant to Rule 303(2) of the *Federal Courts Rules*, SOR/98-106.

IV. Analysis

A. Was the Decision arrived at following a procedurally fair process?

[10] Matters of procedural fairness are assessed on the standard of correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 33-56). The Applicant contends that his right to procedural fairness has been violated, since letters to him from the Passport Division were addressed to Wiese, and not Lipskaia. Further, as mentioned above, Justice Roussel held in *Lipskaia* that the Applicant had been denied procedural fairness as a result of the non-disclosure of material information. However, I have not been persuaded that there was a breach of procedural fairness.

(1) ***Summary of Investigation Correspondence***

[11] The Passport Division's initial letter dated December 2, 2016, was sent by priority courier to Wiese, but was returned as unclaimed.

[12] As a result, on January 31, 2017, an investigator [Investigator] with the Passport Division wrote an email addressed to Wiese at a "Lipskaia" email address, requesting permission to communicate with the Applicant by email. The investigator indicated that, if the Applicant wished to receive correspondence by email, he was to reply by stating: "I wish to receive correspondence from the Passport Investigations Division via email, and understand that this information will not be transmitted over a secure line".

[13] The Applicant responded that day by writing, "Not my name. My name is Jason Lipskaia", and then "Two federal and one provincial judge seem to know how to address me", attaching a number of documents, including Justice Roussel's judgment in *Lipskaia*. However, shortly afterwards, he replied with the required authorization language reproduced above.

[14] On February 1, 2017, the Investigator wrote an email addressed to Lipskaia, attaching the December 2, 2016 letter. This letter, authored by a senior investigator [Senior Investigator], notified the Applicant that a new investigation had been commenced into his purported involvement in providing false or misleading information to obtain a passport in the assumed identity of Lipskaia. The Senior Investigator wrote that the available information had indicated

that the Applicant was in fact Wiese, and would therefore be known to the Passport Division by that name, until sufficient evidence was provided to prove otherwise.

[15] The Senior Investigator then described the information that the investigation had thus far revealed, namely:

- a passport had been issued in May 1991 in the name of Randall Wiese, following a passport application in which a "John C. Wiese" was listed as an emergency contact and indicated as the applicant's father;
- another passport had been issued in April 1997 in the name of Randall Wiese, with "John C. Wiese" again listed as father and emergency contact;
- in November 2008, a passport had been issued in the name of Lipskaia, following a passport application supported by an Alberta birth certificate (issued in September 2008) and Alberta Health Card in that name. "John Charles Weise" signed as guarantor and Wiese was listed as a reference and employer;
- in November 2010, the Passport Division had received information from Service Canada that the Applicant had assumed the identity of Lipskaia. An investigation had thus been commenced by the Passport Division to confirm the Applicant's true identity;
- in October 2011, Alberta Vital Statistics had been contacted to verify the birth record of Lipskaia, and the response received was that the "identity of Jason Jane Lipskaia is fraudulent and no identification should be issued under this name";
- the Passport Division's investigation was temporarily suspended around this time following unsuccessful attempts to communicate with the Applicant by mail;

- in October 2013, a second passport had been issued in the name of Lipskaia following a simplified renewal passport application;
- in November 2010, the Passport Division had been informed by Service Alberta that the Applicant's home had been searched pursuant to a warrant, and fraudulent identification documents in the Lipskaia identity had been located;
- at that time, Service Alberta had also provided the Passport Division with a photograph from an Alberta identification card issued in the name of Lipskaia, which Service Alberta stated was an alias of Wiese;
- the Passport Division had then enrolled the photograph received from Service Alberta in its facial recognition software, which revealed that photographs from the passports issued to Lipskaia matched the photograph provided by Service Alberta. The photographs from the passports issued to Wiese could not be enrolled in the facial recognition software due to the age of those passport records;
- in December 2013, the Lipskaia passport was invalidated and subsequently seized in August 2014 at the Pierre Elliot Trudeau International Airport;
- in January 2015, Service Alberta had informed the Passport Division that (a) the Applicant had been charged with 57 counts of multiple indictable offences, including a charge under subsection 57(2) of the *Criminal Code*, RSC, 1985, c C-46 for submitting a passport application under the false identity of Lipskaia, and (b) within that proceeding, the Applicant had pled guilty to making a false statement that he was born as Lipskaia;
- Service Alberta had also indicated that (a) an original registration of live birth confirmed the birth of Wiese on May 22, 1968, (b) there were no records of a name

change for Wiese to any other name, and (c) there was a record of a delayed registration of birth for Lipskaia;

- Service Alberta had also indicated that, in support of Lipskaia's application for a delayed registration of birth, Wiese had provided a statutory declaration in his own name, as well as a fraudulent affidavit sworn by Lipskaia;
- in September 2016, the Passport Division had received two letters from Alberta Vital Statistics, dating back to November 2011, which indicated that (a) the proof submitted to create the delayed registration of birth for Lipskaia was fraudulent, and (b) that the delayed registration of birth was to be cancelled and placed into "delete" status to ensure that no documents or certificates were issued in the future. Alberta Vital Statistics had also requested that the birth certificate issued in the name of Lipskaia be returned for cancellation;
- the Passport Division had then received information from the Royal Canadian Mounted Police [RMCP] that, in April 2010, an individual had been arrested in Alberta for impaired driving and had provided a Saskatchewan driver's licence in the name of Lipskaia. However, the Applicant had been fingerprinted and photographed in relation to these charges and his fingerprints had positively identified him as Wiese;
- the Passport Division had then enrolled the photograph from the April 2010 impaired driving incident in its facial recognition software, which matched positively with the photographs from the passports issued in the name of Lipskaia; and

- in September 2016, the Service de Police de la Ville de Montréal had then informed the Passport Division that warrants for arrest in Quebec had been issued in the name of Wiese for (a) failing to appear in court in relation to a previous charge under paragraph 129(a)(d) of the *Criminal Code*, and (b) offences under subsection 56.1(4)(a) and paragraph 402.2(1)(5)(a) of the *Criminal Code*, relating to possessing the identification of another individual and having information to be used for committing fraud.

[16] The Applicant was invited to provide information that would "contradict or neutralize" the information held by the Passport Division. In response, the Applicant sent multiple reply emails between February 1 and February 7, 2017. Although many of these emails stated that the Applicant would not accept the Passport Division's correspondence, he nonetheless responded to the substance of the letter through this series of emails. In particular, the Applicant stated that (a) he honestly believed he had been born as Lipskaia, (b) the Passport Division's letter had "alerted" him to "problems" that he thought had been resolved, (c) he had never pled guilty to making a false statement, (d) he had been told by "Judge Anderson" in open court that he was legally "Jason" and had a transcript of this statement, and (e) Justice Lee's 2008 order was "still law". Further, the Applicant sent the Passport Division an "Undertaking Given to a Justice or a Judge" Saskatchewan in the name of Lipskaia, and copies of Lipskaia identification cards issued, stating in the body of his email "I didn't notice any mention of this in your letter".

[17] The Senior Investigator responded by letter dated May 11, 2017, advising that (a) it had been confirmed with Service Alberta that the Applicant had indeed pled guilty to making a false

statement that he was Lipskaia on or about April 10, 2008, and (b) that information had been received from the RCMP that a recognizance of bail, issued in the name of Wiese had been issued relating to charges in Westlock, Alberta on April 5, 2017, which had included the condition to remain in Alberta [Westlock Charges].

[18] As a result, the Senior Investigator indicated that, pursuant to paragraph 9(1)(d) and subsection 10(1) of the *Canadian Passport Order*, under which the Minister can revoke a passport from a person who was forbidden to leave Canada or the territorial jurisdiction of a Canadian court, might apply to the Applicant's case. The Applicant was again provided with an opportunity to respond.

[19] In a series of emails sent between May 11 and July 8, 2017, the Applicant reiterated that he would not accept any letters that were not addressed to Lipskaia. However, again he responded to the information in the Senior Investigator's letter. For instance, with regard to the recognizance of bail noted by the Senior Investigator, the Applicant stated that he had "certified court documents" showing that the impaired driving charges in Regina against Lipskaia had been dismissed in February 2017. The Applicant also again argued that his guilty plea had been in relation to mischief and not to the making of any false or misleading statements, referring the Passport Division to paragraph 24 of Justice Roussel's judgment in *Lipskaia*.

[20] The Senior Investigator wrote back to the Applicant on August 2, 2017, summarizing the materials and information received from the Applicant between May 11 and July 8, 2017. The

Senior Investigator also disclosed additional information held by the Passport Division, namely that:

- Service Albert had been contacted again, and had this time confirmed that the Applicant had not pled guilty to making a false statement, on or about April 10, 2008, that he was Lipskaia. The Applicant's file with the Passport Division had been clarified accordingly;
- in July 2017, Service Alberta had provided the Passport Division with documents issued by the Provincial Court of Alberta on June 23, 2009 indicating that the Applicant had been pulled over in June 2008 for driving erratically, and had given the police a licence issued in the name Lipskaia. The Applicant's representative had then, in that proceeding, submitted a guilty plea on the Applicant's behalf for obstructing a peace officer by giving a false name under section 129 of the *Criminal Code*;
- Service Alberta had also informed the Passport Division that an individual had contacted an investigator of the Program Compliance and Investigations Unit of the Ministry of Advanced Education and Technology, asking to have his education records transferred from the name of Wiese to Lipskaia as a result of a legal name change. However, that person had refused to provide a copy of the purported name change documents to the investigator. The investigator was also in possession of employment records where an employee had applied as Wiese but asked to be paid as Lipskaia;
- Service Alberta had determined that Alberta operator's licences existed for both Wiese and Lipskaia with different birth dates, and that the images related to both

identities appeared to be of the same individual. The Wiese licence had been suspended between 2005 and 2007, and then indefinitely in 2010. The first operator's licence application in the name of Lipskaia was submitted in 2006, when the licence issued to Wiese was suspended;

- the Passport Division had received information from the RCMP that the Applicant also went by the alias "Jason Sgfusion", and that during a search of the Applicant's residence in 2013, several pieces of identification in the name of "Jason Lipskaia" were seized; and
- the RCMP had been contacted in relation to recognizance of bail issued on April 5, 2017, and had confirmed that the condition to remain in Alberta was still valid.

[21] The Senior Investigator acknowledged that the Applicant had provided court documents from Saskatchewan in the name of Lipskaia, but stated that these documents did not prove the Applicant's true identity and did not prove that the Lipskaia identity was not assumed. Again, the Applicant was given an opportunity to respond to the information in the Senior Investigator's letter.

[22] The Applicant replied with another series of emails sent between August 2 and November 9, 2017, stating, among other things, that (a) the second Lipskaia passport had been issued after Judge Anderson told him he was legally entitled to be Lipskaia, (b) Alberta was "not a good place" for him, given the "bizarre" charges against him there, (c) the "Westlock" problem was gone (referring to the Alberta recognizance of bail), and the "Quebec problem" was soon to

be gone, and (d) he had "paid a heavy price" and had not been able to drive for several years. The Applicant also sent the Passport Division a copy of the Alberta recognizance of bail and the documents relating to his impaired driving charges in Saskatchewan.

[23] By reply letter dated November 23, 2017, the Senior Investigator again summarized the information and materials submitted by the Applicant between August 2 and November 9, 2017. The Senior Investigator indicated that the Passport Division had confirmed that the Westlock Charges had been resolved and that, accordingly, paragraph 9(1)(d) no longer applied to the Applicant's case. Further, the Montreal Police had been contacted, and had confirmed that the warrant issued under paragraphs 56.1(4)(a) and 402.2(1)(5)(a) of the *Criminal Code* was no longer valid, but that the warrant issued under paragraph 129(a)(d) remained valid.

[24] The Senior Investigator concluded that the Applicant had not provided information that contradicted or neutralized the investigation's findings, and that the Applicant's file was therefore being forwarded for a decision.

(2) ***Analysis of Procedural Fairness Issues***

(a) Was it a breach of procedural fairness to address letters to Wiese?

[25] As is evident from the CTR, following Justice Roussel's Judgment in *Lipskaia,* the Passport Division commenced a new investigation into the Applicant's case. Subsequent letters to the Applicant were addressed to Wiese. These letters were sent as email attachments to a

Lipskaia email address. However, many of the emails sent by the Passport Division addressed the Applicant as "Mr. Lipskaia" in the body of the email.

[26] In his reply emails, the Applicant repeatedly conveyed to the Passport Division that he would not accept correspondence addressed to Wiese. For instance, he wrote in an email dated July 7, 2017 that: "My understanding of Madame Roussel's Judgement is that in refusing to accept Honourable Lee's order and not addressing me correctly you violated procedural fairness in effect ignoring the court order".

[27] I do not agree with the Applicant's interpretation of Justice Roussel's judgement in *Lipskaia*. Rather, Justice Roussel held that the Applicant had not been afforded procedural fairness on the basis that material information before the Passport Division had not been disclosed to him. Further, I refer the Applicant to Justice Roussel's remarks on his identity:

> [28] I recognize that one could be tempted to conclude that Randall Robert Wiese and Jason Jane Lipskaia are in fact the same person on the basis of the information found in the CTR, in addition to the statements made by the Applicant at the hearing regarding whether he knew Randall Robert Wiese and why he was listed as a reference on the 2008 passport application. However, the Applicant was entitled to procedural fairness and it is not open to this Court to deny him that right. It is also not open to this Court to speculate as to what the result might have been had the Applicant been apprised of the information before the Passport Program.

[28] Returning to the issue as argued by the Applicant in the judicial review before me — namely, that all correspondence ought to have been addressed to Lipskaia — I find that there was no breach of procedural fairness.

[29] Again, although the Applicant repeatedly asserted that he would not accept correspondence addressed to Wiese, he substantively responded to the Senior Investigator's letters, providing argument and materials. He also expressly authorized correspondence to his email. On this basis, I am satisfied that the Applicant received the Senior Investigator's letters and was aware of their contents. Indeed, he has not argued anything to the contrary in this application. His procedural fairness argument is one of form and not substance.

[30] It is noteworthy that the Decision-Maker expressly dealt with the Applicant's position that he would not accept correspondence addressed to Wiese, and considered the issue of whether the Applicant's right to procedural fairness had been breached. The Decision-Maker observed that, although the Applicant had objected to receiving letters addressed to Wiese, he had nonetheless responded on various occasions to the Senior Investigator's correspondence. Based on this, the Decision-Maker concluded that the Applicant had in fact reviewed the letters and was aware of the information in them and that, as a result, procedural fairness requirements had been met. I agree.

[31] In sum, as (a) the material facts discovered in the investigation were disclosed to the Applicant (including the Senior Investigator's rationale for addressing him as Wiese), (b) he was given a full opportunity to respond, and (c) he did indeed respond, notwithstanding his stated objection to doing so, I find that the Applicant was afforded procedural fairness (see *Abdi v Canada (Attorney General)*, 2012 FC 642 at para 21).

(b) Were the procedural fairness concerns identified by Justice Roussel remedied?

[32] As this issue was raised only at the hearing, I will address it briefly for the sake of completeness.

[33] In *Lipskaia*, Justice Roussel held that the Passport Division wrongly failed to disclose: (a) the results of its facial recognition analysis, (b) an email from the RCMP dated January 13, 2015, stating that several pieces of ID in the name of Lipskaia were seized at Wiese's residence in 2013, and that he was also known to use the alias of "Jason Sgfusion", (c) an investigative report from another agency containing information that an individual had tried to transfer his education records from the name of Wiese to Lipskaia, but had refused to provide evidence of a name change, and (d) an email exchange concerning the Applicant's guilty plea to the fraudulent use of the identity Lipskaia, which was inconsistent with other materials in the record.

[34] All of this information was disclosed to the Applicant in the course of the current proceeding under review, and is contained in the CTR. The Applicant has not argued, and I have found no reason to conclude, that any other material information before the Passport Division was not disclosed to him. Further, the Senior Investigator summarized and considered the Applicant's responses and materials. Each time new information was presented, the Applicant was given a chance to respond.

[35] Therefore, I find that the process followed by the Passport Division was fair.

B. Was the Decision reasonable?

[36] The Applicant's remaining arguments centre on the Decision-Maker's and Senior Investigator's treatment of the evidence before the Passport Division. In particular, he argues that (a) the Decision was based on a "non-existent" guilty plea, (b) the Decision dealt unreasonably with the materials that, in the Applicant's view, establish his identity as Lipskaia, and (c) the Decision was based, unreasonably, on the Westlock Charges — which were, in turn, without foundation.

[37] In this regard, the Decision is to be assessed on a standard of reasonableness (*Gomravi v Attorney General of Canada*, 2015 FC 431 at para 24; *Villamil v Canada (Attorney General)*, 2013 FC 686 at para 30). In other words, the Decision 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).

(1) ***Summary of the Decision***

[38] In the January 2, 2018 Decision, the Decision-Maker described the central issue as whether the Applicant had provided the Passport Division with sufficient information that would support his use of the name Lipskaia. In concluding that, on a balance of probabilities, the Applicant's true identity was Wiese, the Decision-Maker noted that information had been taken into account from:

- the Passport Division's own facial recognition analyses, which were based on photographs provided by Service Alberta and the RCMP;

- the RCMP, stating that while the Applicant had identified himself to them as Lipskaia, his fingerprints were those of Wiese;
- Service Alberta, stating that (a) the Applicant had requested that his education records be changed from Wiese to Lipskaia, and that an employee who had applied in the name of Wiese had requested to be paid as Lipskaia, (b) the delayed registration of birth in the Lipskaia identity had been based on fraudulent proof of identity, which resulted in its recall, and prohibition of further identity issuance in that name, and (c) in 2009, the Applicant's lawyer had admitted on his behalf that he was Wiese, although he had presented himself to police as Lipskaia; and
- Alberta Vital Statistics, which showed no legal name change for Wiese.

[39] The Decision-Maker then concluded that there were grounds to revoke the Lipskaia passport, based on the following considerations: (a) the Lipskaia passport was a renewal based on a prior passport issued in the Lipskaia identity, (b) that prior passport application had been supported by an Alberta birth certificate, which Service Alberta reported had been obtained by fraud, (c) the Applicant had not declared "Wiese" as his former surname or surname at birth, and (d) the Applicant had not refuted the information in the possession of the Passport Division, other than to argue that previous court decision had recognized his entitlement to the Lipskaia identity.

[40] Thus, the Decision-Maker found that, on a balance of probabilities, the Lipskaia passport had been obtained by means of false or misleading information and would thus be revoked under paragraph 10(2)(d) of the *Canada Passport Order*, which reads:

Refusal of Passports and Revocation	**Refus de délivrance et révocation**
[…]	[…]
10 (1) Without limiting the generality of subsections 4(3) and (4) and for the greater certainty, the Minister may revoke a passport on the same grounds on which he or she may refuse to issue a passport.	**10 (1)** Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que le ministre peut révoquer un passeport pour les mêmes motifs que ceux qu'il invoque pour refuser d'en délivrer un.
(2) In addition, the Minister may revoke the passport of a person who	**(2)** Il peut en outre révoquer le passeport de la personne :
[…]	[…]
(d) has obtained the passport by means of false or misleading information…	**d)** qui a obtenu le passeport au moyen de renseignements faux ou trompeurs…

[41] Also, subsection 10.2(1) of the *Canadian Passport Order* permits refusal of services for up to ten years where a passport has been revoked:

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.	**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.

[42] Here, the Decision-Maker determined that a seven-year refusal of services was merited, given the Applicant's lack of cooperation during the investigation process, and the fact that identity fraud was a particular concern for the Passport Division, and in light of the Passport

Division's mandate to maintain the integrity of the passport issuing process and the international reputation of Canadian travel documents. In thus denying the Applicant access to passport services until October 10, 2020, the Decision-Maker weighed hardship to the Applicant against the Passport Division's obligations.

(2) ***Analysis of Reasonableness Issues***

(a) Was the Decision supported by a "non-existent" guilty plea?

[43] In his notice of application, the Applicant asserts that the Passport Division has been untruthful and that it relied on falsehoods to support the Decision. The Applicant also argues that letters from the Senior Investigator indicate that he pled guilty to making "false statements", which he denies. He refers in particular to the Senior Investigator's letter of May 11, 2017, which stated that Alberta Services had confirmed that the Applicant had "pled guilty to making a false statement, on or about April 10, 2008" that he was born as Lipskaia.

[44] The Applicant relies on paragraph 24 of *Lipskaia*, in which Justice Roussel found that there appeared to be contradictory information in the CTR in that case with respect to whether anyone named Wiese had entered a guilty plea in relation to the use of the identity of Lipskaia:

> The CTR also contains an email exchange between the RCMP, Service Alberta and the Passport Program between January 13 and 20, 2015, to the effect that Randall Robert Wiese pled guilty in Provincial Court in Edmonton for utilizing the identity of Jason Jane Lipskaia (CTR, 80). This particular allegation is inconsistent with other information found in the CTR which indicates that the charge upon which Randall Robert Wiese is said to have pled guilty is one of mischief in relation to the destruction or damage of property under paragraph 430(1)(a) of the *Criminal Code* (CTR, 96).

[45] To understand this issue, some further background is necessary. First, the CTR from *Lipskaia* is contained within the CTR of this proceeding. As a result, I have reviewed the email dated January 20, 2015 noted by Justice Roussel, which indicates that Wiese had "plead guilty to the amended Count 1, Mischief utilizing the identity of Jason/Jane LIPSKIA" [sic]. "Count 1" in this email evidently refers to an information sworn November 16, 2011, containing 57 counts pertaining to "Randall/Robert WIESE", in which count 1 is:

> On or about April 10, 2008 in the City of Edmonton, Province of Alberta being specifically permitted by law to make a statement by affidavit, to wit an Affidavit in The Court of Queen's Bench of Alberta, Judicial District of Edmonton did make false statement to wit that he was board as Jason/Jane, LIPSKAIA date of birth May 12, 1968 knowing that such a statement was false contrary to Section 13(1) of the Criminal Code of Canada.

[46] However, as is evident from the Endorsement of Judge Anderson of the Provincial Court of Alberta dated July 4, 2013, Wiese pled "not guilty to the charge as stated" in count 1, but "guilty to the other offence" of mischief contrary to paragraph 430(1)(a) of the *Criminal Code*, which relates to the destruction of property. Counts 2-57 were withdrawn at the request of the Crown. Thus, the Applicant is correct in observing that the Senior Investigator's May 11, 2017 letter, which postdates Justice Roussel's judgment, again misunderstood the nature of the Applicant's July 4, 2013 guilty plea, which did not pertain to the making of false statements.

[47] However, subsequent to the May 11, 2017 letter, the Applicant argued to the Passport Division that he had not pled guilty to making any false statement. As a result, the Passport Division further investigated the matter. The investigation notes contained in the CTR indicate as follows:

> Service Alberta Senior Investigator … contacted at [REDACTED] on July 5, 2017. I explained what the subject was stating concerning the Mischief charge and he agreed that the plea was for mischief and not making a false statement.

[48] In its August 2, 2017 letter to the Applicant, the Senior Investigator indicated that it had been confirmed with Service Alberta that the Applicant's July 4, 2013 guilty plea was not in regards to the making of a false statement, and that his file had been accordingly clarified. Further, the Decision itself did not make any reference to the 2013 guilty plea.

[49] Thus, although the Applicant argues in this proceeding that the Passport Division relied on "a non-existent" guilty plea in revoking the Lipskaia passport, I find that the Decision was not based, either expressly or implicitly, on any erroneous conclusion relating to the Applicant's July 4, 2013 guilty plea.

[50] Rather, as indicated in the Senior Investigator's August 2, 2017 letter, Service Alberta provided the Passport Division with documentation issued by the Provincial Court of Alberta on June 23, 2009, which disclosed that the Applicant's counsel had, at that time, admitted on his behalf that the Applicant had given the false name of "Jason Lipskaia" to a police officer. It is this information that was repeated and relied on in the Decision letter dated January 2, 2018.

[51] The CTR contains an official transcript of the June 23, 2009 proceeding, in which Wiese is named as the accused, represented by counsel R. J. Gregory, with prosecutor T. W. Buglas appearing for the Crown. The transcript indicates as follows:

> MR. GREGORY: Your Honour, – the one with process then, I have instructions to enter a plea of guilty to Count 3, which is

> dangerous driving, and also Count 5, to an amended charge contrary to section 129 of the *Criminal Code*, being obstructing a peace officer by giving a false name, and I believe that is with the consent of the Crown.
>
> […]
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> MR. BUGLAS: About 2:15 in the early morning hours, sir, of July – sorry, June 18, 2008, a motor vehicle was driven – being driven in a way, on the number one highway, as to attract attention to the police. It was swerving from lane to lane, and – and most significantly, sir, it was driving the wrong way in –
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> MR. GREGORY: It was –
>
> MR. BUGLAS: – in – on the number one. It was – it was driving south – sorry, it was driving west on the eastbound number one lane. A traffic stop was commenced by the police and it was noticed that there was also alcohol involvement in the driving. So, he was driving poorly, the wrong way, down the number one, sir, with alcohol involvement.
>
> THE COURT: Admitted?
>
> MR. GREGORY: Yes.
>
> THE COURT: The guilty plea is accepted.
>
> MR. BUGLAS: Then, sir, when he was pulled over, he was – he provided a drivers license that has the name Jason Lipscaya (phonetic) with – with a date of birth, and presented himself as that person. Later in the investigation it was found that his – his name was Randall Robert Wiese, the name that he's – appears before the court here today.
>
> MR. GREGORY: Those facts are admitted.
>
> THE COURT: The plea is accepted to 129 on Count 5 pursuant to section 606 of the *Criminal Code*.

[52] Thus, I find that the Decision reasonably relied on facts admitted by the Applicant in the June 23, 2009 proceeding, and did not erroneously rely on the July 4, 2013 guilty plea.

(b) Did the Decision-Maker reasonably consider the materials corroborating the Applicant's identity?

[53] In his written materials and oral submissions, the Applicant asserts that his lawful identity is Lipskaia, and that this identity was (a) "given" to him in the August 7, 2008 order of Justice Lee, which had, a decade ago, directed Alberta Vital Statistics accept the application of Lipskaia for a delayed registration of birth, (b) confirmed by an Information sworn October 23, 2015, stating there were reasonable grounds to believe that Lipskaia had operated a vehicle while impaired in Regina [Regina Charges], another Saskatchewan court document dated February 23, 2017, which the Applicant states shows that the Regina Charges were dismissed, and an Undertaking dated October 26, 2015 at Regina, Saskatchewan, stating that Lipskaia would, in order to be released from custody, not occupy the driver's seat of any motor vehicle, among other conditions. The Applicant submits in his written materials that the documents relating to the Regina Charges, which are in the CTR, demonstrate that he is not trying to conceal his identity, and that neither are there "any problems in Saskatchewan Law Enforcement or Court system" as to his identity.

[54] In this case, the Decision-Maker concluded that, on a balance of probabilities, the Applicant's true identity was Wiese. It is clear from the CTR and the Senior Investigator's correspondence that the documents relating to the Regina Charges were not sufficient to prove that the Applicant's legitimate identity was Lipskaia. I find that the treatment of these materials was reasonable, in light of the volume of evidence tending against the Applicant's position.

[55] With respect to Justice Lee's order of August 7, 2008, I disagree with the Applicant that this order "gave" him the identity of Lipskaia. Rather, the order was made following an unopposed application, supported by an apparently paper record that was subsequently determined to have been fraudulent. As a result, I find that it was reasonable for the Decision-Maker to prefer the more recent information of the Alberta government agencies that the delayed registration of birth issued pursuant to Justice Lee's order was no longer valid.

(c) Was the Decision based on unsubstantiated criminal charges?

[56] On April 5, 2017, a recognizance of bail was issued in relation to charges that Wiese had, on April 1, 2017, operated a motor vehicle in Westlock, Alberta while being disqualified from doing so. As I understand it, the Applicant argues that the Westlock Charges arose from the undertaking given by Lipskaia in connection with the Regina Charges, even though those charges were dismissed in February 2017. The Applicant now alleges that this information was improperly used to revoke the Lipskaia passport, referring to the May 11, 2017 letter, which states:

> …information has been received from the Royal Canadian Mounted Police that you were released on a Recognizance of Bail, issued in the name of Randall Wiese, in the city of Edmonton, on April 5, 2017, by the provincial court of Alberta, under file number 170366546P1-01-001, that includes the condition to remain in the province of Alberta.

[57] In his reply email dated May 14, 2017, the Applicant stated: "I have certified court documents from regina that show the dismissal of impaired charges in regina feb23/2017 for Jason lipskaia so it is a mystery as to why in April someone May have been charged with breaching a none existant recog sounds like more flim flam". Later that day, the Applicant

wrote: "…Then you have some Randall being charged with breeching Jason's condition's from Regina after the fact and then if he was Jason he was charged with obstruction for having his own ID ?? How does this work?? Everyone know who I am . ??"

[58] In correspondence dated August 2, 2017, the Senior Investigator addressed this issue as follows:

> Finally, although you have indicated that court documents from Regina show that the February 23, 2017, impaired charges for Jason Lipskaia were dismissed and that, as the charges were dismissed, you do not understand how you have been charged with "breaching a none existant recog"; the Passport Entitlement and Investigations Division contacted the RCMP on July 28, 2017, who confirmed that the charges stand and that the recognizance of bail, issued in your name on April 5, 2017, under file number 170366546P1—01-001, is still valid; as is the condition to remain in the province of Alberta.

[59] Subsequently, in an email dated August 7, 2018, the Applicant wrote:

> I saw a mention of Westlock charges. Remember the Regina resolution Dated Feb23/2017 guess what on april1/2017 I was charged 5Xwith breaching a nonexistent recog namely the Regina impaired charge conditions months after it was resolved??? with the Police being fully aware of this(almost certainly even before being charged)??? […]

[60] A note in the CTR entered on October 10, 2017 states that:

> Subject responded to our second proposal via email on 2017-10-04. Subject states that Westlock RCMP charges have been dealt with and submits documentation that he has already submitted in the past. Upon verification in CPIC, the Westlock RCMP charges have indeed been removed. I also called Westlock RCMP and they confirmed that the charges were dropped and the Recognizance is no longer valid. That being said, 9(1)(d) will be removed from the Applicant's applicable sections.

[61] Thus, in the November 23, 2017 letter, the Senior Investigator amended the Passport Division's position as follows:

> Please note that, following the receipt of your emails, the Passport Entitlement and Investigations Division conducted a verification and confirmed that the Westlock, Alberta, RCMP charges have been resolved. That being said, section 9(1)(d), as mentioned in our letter dated May 11, 2017, no longer applies to this investigation.

[62] It will be recalled from my summary of the correspondence sent to the Applicant during the investigation, that paragraph 9(1)(d) of the *Canada Passport Order*, in connection with subsection 10(1), permits the Minister to revoke a passport where a person is forbidden to leave Canada or the territorial jurisdiction of a Canadian court. That is the significance of the April 2017 recognizance of bail, which required the Applicant to stay in Alberta.

[63] However, I disagree with the Applicant's contention that the Westlock Charges, or the conditions imposed by the recognizance of bail, were a basis for the Decision, either expressly or implicitly. To the contrary, the Passport Division followed up on the information supplied by the Applicant and amended its position appropriately. It also expressly informed the Applicant that the investigation was not proceeding under paragraph 9(1)(d) of the *Canada Passport Order*.

[64] The role of this Court is not to comment on whether the Westlock Charges were substantiated or not, which appears to be the Applicant's principal complaint. Rather, when a decision-maker's treatment of the evidence is impugned on judicial review, the Court's role is limited to determining the reasonableness of that treatment, and the reasons given for the decision. Here, for the reasons outlined above, I find that the Senior Investigator carefully

considered the evidence surrounding the Westlock Charges, and that they did not form a basis for the ultimate Decision.

C. Does the Decision reflect a proportionate balancing of subsection 6(1) of the Charter with the objectives of the Canada Passport Order?

[65] Attached as exhibits to his affidavit filed in support of this application, the Applicant provided materials relating to his employment, including a certificate from the Canadian Welding Bureau issued in the name of Lipskaia, and emails relating to the Applicant's employment as a Welding Inspector. At the hearing, the Applicant explained that these documents helped to illustrate the personal and financial prejudice he has suffered as a result of the Decision. In his affidavit, the Applicant also deposes that his personal losses are in excess of one million dollars.

[66] The Applicant did not explicitly raise the *Canadian Charter of Rights and Freedoms* in either his written or oral submissions. However, as I mentioned at the hearing of this application, the Applicant's assertions of prejudice speak to his right to mobility, as guaranteed under subsection 6(1) of the *Charter*. Indeed, it has been recognized that the refusal of passport services infringes constitutionally-protected mobility rights (*Canada (Attorney General) v Kamel*, 2009 FCA 21 [*Kamel*] at paras 15 and 68; *Thelwell v Canada (Attorney General)*, 2017 FC 872 at para 23 [*Thelwell*]).

[67] In *Trinity Western University v Law Society of Upper Canada*, 2018 SCC 33 [*Trinity Western*], the Supreme Court of Canada recently confirmed the approach established in *Doré v*

Barreau du Québec, 2012 SCC 12 [*Doré*] for judicially reviewing an administrative decision that engages the *Charter*. Such a decision will be reasonable 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, or stated in the negative — where an administrative decision has a disproportionate impact on a *Charter* right, it will be unreasonable (*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).

[68] In this case, I find that the Decision-Maker took into account the Applicant's personal circumstances in arriving at the Decision, and that the Applicant's submissions and materials provided in the investigation process were appropriately considered (see *Thelwell* at para 50; see also *Shamir v Canada (Attorney General)*, 2018 FC 769 at para 35). Further, I find that the Decision-Maker reasonably weighed both the gravity of identity fraud and the Applicant's lack of cooperation in the investigation as factors in setting a seven-year refusal period.

[69] Although the following comments of Justice Gleason (as she then was) in *Slaeman v Canada (Attorney General)*, 2012 FC 641 were not made in the context of a *Doré* analysis, I find that they are nevertheless apposite:

> [49] …The imposition of a penalty is a highly discretionary element of the decision…
>
> [50] As the adjudicator rightly noted in his decision, misuses of passport services are "serious matters". Canada is required to ensure that its passports are not misused to deter illegal migration and meet foreign governments' expectations regarding the reliability of Canadian travel documents. Failure to do so may have serious consequences, including the facilitation of illegal entries

> and exits from countries by unidentified individuals and the consequential security risks and impairment to the ability of legitimate Canadian travelers to travel to other countries without undue impediment…

[70] Here, I find that the objectives of the *Canada Passport Order*, viewed through the lens of the Applicant's conduct as found by the Decision-Maker, were reasonably balanced against the infringement of the Applicant's subsection 6(1) *Charter* rights. Therefore, the Decision was reasonable under the *Doré* and *Trinity Western* framework.

D. Is the Applicant entitled to compensation?

[71] The Applicant seeks compensation in his notice of application. However, subject to a rare and narrow exception, damages cannot be sought in a judicial review (see *Canada (Attorney General) v Oshkosh Defense Canada Inc*, 2018 FCA 102 at para 33). No exception applies here. As a result, the Applicant's request for compensation is denied.

V. Costs

[72] Having regard to the factors set out under Rule 400(3) of the *Federal Courts Rules*, and particularly the personal circumstances asserted by the Applicant in this proceeding, I will order that each party bear their own costs.

VI. Conclusion

[73] The application is dismissed without costs.

JUDGMENT in T-28-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. The style of cause is amended to reflect "The Attorney General of Canada" as the Respondent, with immediate effect.

3. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-28-18
STYLE OF CAUSE:	JASON JANE LIPSKAIA v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	EDMONTON, ALBERTA
DATE OF HEARING:	JULY 11, 2018
JUDGMENT AND REASONS:	DINER J.
DATED:	JULY 26, 2018

APPEARANCES:

Jason Jane Lipskaia	FOR THE APPLICANT ON HIS OWN BEHALF
Robert Drummond	FOR THE RESPONDENT

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