

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250124

Docket: A-359-23

Citation: 2025 FCA 22

**CORAM: WOODS J.A.
LEBLANC J.A.
MONAGHAN J.A.**

BETWEEN:

OLEG BRYZZHEV

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on January 23, 2025.

Judgment delivered at Ottawa, Ontario, on January 24, 2025.

REASONS FOR JUDGMENT BY:

LEBLANC J.A.

CONCURRED IN BY:

**WOODS J.A.
MONAGHAN J.A.**

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REASONS FOR JUDGMENT

LEBLANC J.A.

[1] This is an appeal of a decision of the Federal Court (*per* Kane J.), dated November 28, 2023 (2023 FC 1577). In its decision, the Federal Court dismissed the appellant's application for judicial review of a decision of Passport Canada to close his passport application on the ground that the appellant refused to submit a new application with the name of a new guarantor, which Passport Canada had requested.

[2] Passport Canada's decision was prompted by a telephone call, made by the appellant to a passport officer, in which, according to that officer, the appellant attempted to impersonate his own guarantor whom Passport Canada had attempted to contact in order to obtain additional information on the appellant's passport application.

[3] The appellant challenged Passport Canada's decision, claiming that disqualifying his guarantor was wholly unreasonable, and that the whole decision violated his rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the *Charter*) and under the *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), and the *International Covenant on Civil and Political Rights*, Can. T.S. 1976 No. 47.

[4] The Federal Court found the impugned decision bears the hallmarks of a fair process and a reasonable decision, underscoring the importance of maintaining the integrity of the passport application process. In doing so, it rejected the appellant's submission that it was appropriate for him to impersonate his guarantor in order to expedite his passport application or to alleviate the requirement for his guarantor to fulfill his role. According to the Federal Court, such a proposition, if accepted, would "completely defeat the purpose of providing a guarantor to confirm the identity of an applicant" (Federal Court decision at paras. 42–44).

[5] With respect to the appellant's constitutional and human rights arguments, the Federal Court noted that he had failed to serve his Notice of Constitutional Question on provincial Attorneys General as required by subsections 57(1) and (2) of the *Federal Courts Act*, R.S.C.,

1985, c. F-7 and had not pursued these arguments before it. In any case, the Federal Court found these arguments meritless.

[6] As a preliminary matter, the Federal Court refused to allow into the record a letter from the appellant's guarantor that was not before Passport Canada when it made the impugned decision.

[7] Before us, the appellant essentially reiterates the arguments made before the Federal Court. Dealing first with the Federal Court's preliminary ruling, I agree with it that none of the recognized exceptions permitting the filing of new evidence on judicial review apply in this case (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, at paras. 19–20). I agree as well that there are relevancy issues with that evidence because, as correctly pointed out by the Federal Court, this case is not about whether or how quickly Passport Canada should be able to respond to a high volume of inquiries from passport applicants; it is about the closing of the appellant's passport application. Therefore, I see no basis to interfere with this ruling.

[8] It is trite that in an appeal to this Court of a Federal Court decision on judicial review, this Court is required to determine whether the Federal Court selected the appropriate standard of review, and if so, whether it correctly applied that standard (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45–47). In this second regard, we step into the shoes of the Federal Court and consider the administrative decision at issue. In so doing, this Court is entitled to consider the record that was before the administrative decision-maker and

must take into account the “institutional context in which the decision was made” (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 91 and 94 (*Vavilov*)).

[9] I am satisfied the Federal Court selected the appropriate standard of review, that of reasonableness. I am satisfied as well that it applied it correctly. Stepping into the shoes of the Federal Court, I see no basis to interfere with the impugned decision. Maintaining the integrity of the passport application and issuing process is clearly in the public interest for a number of reasons, namely (i) preventing and redressing the misuse of passports for domestic and international security purposes; (ii) meeting foreign governments’ expectations regarding the reliability of Canadian travel documents; and (iii) maintaining the good reputation of the Canadian passport (*Canada (Attorney General) v. Dias*, 2014 FCA 195 at para. 9; *Alsaloussi v. Canada (Attorney General)*, 2020 FC 364 at paras. 24, 58, 61 and 66; *Abaida v. Canada (Attorney General)*, 2018 FC 490 at para. 4). This is very much part of the institutional context in which the impugned decision was made.

[10] Here, Passport Canada found that the applicant had attempted to impersonate his guarantor. This is a serious matter that undermines the integrity of the passport issuance process. In such circumstances, Passport Canada was entitled, pursuant to paragraph 8(1) of the *Canadian Passport Order*, SI/81-86, to request from the appellant “further information, material, or declarations respecting any matter relating to the issue of the passport”. The appellant views the evidence very differently and asks this Court to come to a different conclusion from that of Passport Canada. However, our role is not to re-weight the evidence but to assess whether

Passport Canada's analysis and conclusions regarding the evidence were reasonably open to it (*Vavilov* at para. 83). I find that it was. It is worth reminding that an administrative decision-maker's evidentiary findings are entitled to a high degree of deference and can only be set aside if "fundamentally" flawed (*Vavilov* at para. 126). There is no such flaw here.

[11] The appellant asserts that he contacted Passport Canada as representative of his guarantor to expedite his passport application given the alleged difficulties of his guarantor in reaching Passport Canada. Even if I was to accept the appellant's version of events, this would not alleviate concerns regarding the integrity of the passport issuance process, as such conduct would also defeat the whole purpose of providing a guarantor to confirm the identity of a passport applicant.

[12] Further, I see no merit whatsoever to the appellant's constitutional and international human rights claims. With respect to the mobility rights guaranteed by section 6 of the *Charter*, it is trite that these rights are only engaged where the passport applicant meets the requisite conditions to warrant the issuance of a passport (*Volkov v. Canada (Attorney General)*, 2015 FC 41, at para. 16). This is not the case here. On all other counts, I agree with the Federal Court that the requirements to obtain a passport, waiting hours in phone cues and, generally, unsatisfactory customer service are inconveniences that do not rise to the level of *Charter* breaches or of international human rights violations, assuming these rights are part of Canadian law. This is certainly not cruel and unusual treatment or punishment, as contended by the appellant. To rise to the level of cruel and unusual treatment or punishment, the impugned state action must be so excessive as to outrage the standards of decency and human dignity. Although the

inconveniences described by the appellant may have been annoying, they do not amount to the type of treatment that engages *Charter* protection.

[13] I find this whole claim devoid of any merit. I would add that the appellant's passport application was not refused; it was closed because of his lack of cooperation, despite having been given the opportunity to provide the further information that Passport Canada was reasonably justified to seek from him. I agree with the Federal Court that the appellant created the situation in which he now finds himself.

[14] Finally, the appellant seeks a refund of his passport application fee (in the amount of \$160). The Federal Court did not address that request in its reasons. In any event, the appellant has provided no legal justification as to why this fee should be returned to him. His passport application was simply processed and closed for his failure to provide the requested information. The governing regulatory instrument—the *Passport and Other Travel Document Services Fees Regulations*, SOR/2012-253—does not say that fees are returnable if an application is refused or closed (*Saibu v. Canada (Attorney General)*, 2015 FC 255 at para. 37). This request is denied.

[15] For all these reasons, I would dismiss the appeal. Since the respondent does not seek costs, I would award none.

“René LeBlanc”

J.A.

“I agree.

Judith Woods J.A.”

“I agree.

K.A. Siobhan Monaghan J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	WOODS J.A. MONAGHAN J.A.
DATED:	JANUARY 24, 2025

APPEARANCES:

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