

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140910

Docket: A-102-14

Citation: 2014 FCA 195

**CORAM: PELLETIER J.A.
STRATAS J.A.
WEBB J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

JOSE S. DIAS

Respondent

Heard at Toronto, Ontario, on September 10, 2014.

Judgment delivered from the Bench at Toronto, Ontario, on September 10, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 10, 2014).

STRATAS J.A.

[1] The Attorney General appeals from the judgment dated January 21, 2014 of the Federal Court (*per* Justice Phelan): 2014 FC 64. The Federal Court granted Mr. Dias' application for judicial review and quashed the decision of the Director of the Investigation Division of the Safety Bureau of Passport Canada.

[2] Relying upon *Canadian Passport Order*, SI/81-86, the Director decided to deny Mr. Dias passport services for five years because he knowingly organized, induced, aided or abetted his wife to travel using a counterfeit New Zealand passport. Mr. Dias was using a valid Canadian passport.

[3] Under paragraph 10(2)(b) of the *Canadian Passport Order*, Passport Canada may “revoke the passport of a person who...uses the passport to assist him in committing an indictable offence in Canada or any offence in a foreign country or state that would constitute an indictable offence if committed in Canada.” When the conditions in that paragraph apply, Passport Canada has the power under section 10.3 to deny a person passport services for a period of time.

[4] Before he made his decision, the Director wrote Mr. Dias setting out his view of the facts and proposed course of action. The Director invited Mr. Dias to respond. In this letter, the Director did not put to Mr. Dias the indictable offence he had allegedly committed.

[5] However, in another letter dated November 2, 2011, the Director did inform Mr. Dias of the offence, namely the offence under section 117 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27: “knowingly, organiz[ing], induc[ing], aid[ing] or abet[ting] the coming into Canada” of a person, Mr. Dias’ wife, who is “not in possession of a...[valid] passport.”

[6] It follows that the Federal Court was in error when it found (at paragraph 18) that the Director acted in a procedurally unfair manner by failing to put the alleged offence to Mr. Dias for response. It was put to him.

[7] However, we note that the facts relied upon by the Director could not lead to his conclusion that Mr. Dias committed the offence under section 117 of the *Immigration and Refugee Protection Act*. The Federal Court accurately summarized those facts at paragraph 8 of its reasons. None of those positively support a finding that Mr. Dias – as opposed to his wife – used *his* passport to knowingly aid, organize, induce or abet his wife to come to Canada with a counterfeit passport contrary to the section. Only by unreasonably assuming guilt by association could the Director conclude from those facts alone that Mr. Dias committed the section 117 offence.

[8] The Director did disbelieve what Mr. Dias told him in response to his letter of invitation to make submissions. But disbelief in what Mr. Dias said, without more, does not support a finding that Mr. Dias himself committed the section 117 offence, *i.e.*, that all elements of the section 117 offence are present. In some circumstances, disbelief might cause the Director to have reasonable grounds to believe or to develop suspicions that a section 117 offence has been committed. But the *Canadian Passport Order* does not allow the Director to act on the basis of reasonable grounds or suspicions.

[9] The appellant urged upon us the very great importance of preventing and redressing the misuse of passports and maintaining the integrity of the passport system. That is true: see, *e.g.*,

Kamel v. Canada (A.G.), 2008 F.C. 338 at paragraph 41. But regulatory powers such as this can be exercised only to the extent authorized and permitted by law.

[10] For the foregoing reasons, we agree with the result reached by the Federal Court.

Therefore, despite the able submissions of Ms. Tausky, we will dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-102-14

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE PHELAN
DATED JANUARY 21, 2014, DOCKET NO. T-1344-12**

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. JOSE S. DIAS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 10, 2014

REASONS FOR JUDGMENT OF THE COURT BY: PELLETIER J.A.
STRATAS J.A.
WEBB J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

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