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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY ANA MARIA EMERY

IN THE MATTER OF A DECISION BY HM PASSPORT OFFICE

Ms Ana Maria Emery appeared as a litigant in person
Ms MC McDermott (instructed by the Crown Solicitor's Office) for the Respondent

RULING ON APPLICATION FOR LEAVE

FOWLER J

Introduction

[1] This is an application for leave to apply for judicial review of a decision by HM Passport Office to issue the applicant with a temporary Restricted Validity Passport (RVP) of one year duration. The respondent's case is that it refused to issue a Full Validity Passport (FVP) with a standard ten year duration due to the applicant's history of having lost or had stolen 4 previous passports between 2020 and 2024. The applicant claims her passports were stolen and not lost.

The applicant's case

[2] The applicant applied for a replacement passport on 8 April 2024 and was issued a temporary RVP limited for one year on 9 October 2024. This passport expired on 9 October 2025 and there is no evidence that since the expiry date she has made application for a new passport.

[3] In her supporting affidavit dated 25 November 2025 she states that she paid for a fast-track passport service on 8 April 2024 following the theft of her previous passport. She makes the case she required a replacement passport to take up employment abroad on 17 April, 2024. It is claimed that on 18 September 2024 as no

passport had been delivered to her a member of staff at a Citizens Advice Bureau wrote to HM Passport Office on her behalf.

[4] From papers submitted with the applicant's Grounds for Judicial Review, there is a letter from HM Passport Office, dated 10 October 24 from Mr Jaman, thanking her for her application for a replacement passport and confirming that her passport will only be valid for 12 months and explaining the reason for this was because checks within HM Passport Office indicated that she had been issued with three passports in the last seven years, which have been declared lost.

[5] On 11 October 2024, she collected her passport in person in London. No application was made to appeal the decision to issue an RVP and claims that she attempted at this time to obtain legal advice/representation in connection with an appeal but this was unsuccessful.

[6] However, she did issue pre-action protocol correspondence dated 12 October 2024 concerning the decision to issue an RVP. In this correspondence she also made a number of other ancillary complaints which included the following:

- A failure to issue fast-track applications and final decisions on her passport applications in 2020, 2021 and 2022.
- A failure to issue a passport to her on compassionate grounds in 2020.
- The rejection of her counter signatory on a previous application.
- Additional request for payment.
- The claim that failure to deliver her passport applied for in 2024 cost her a job opportunity.
- A request for copies of all correspondence held by HM Passport Office relating to her passport applications/interview.

[7] This correspondence was replied to on 18 October 2024 by HM Passport Office litigation team. It was noted in this correspondence that there has been a long history of numerous emails and complaints raised by the applicant against HM Passport Office over recent years. Dealing specifically with the RVP which had been issued to the applicant on 9 October 2024, it was explained that if any applicant has multiple losses of their passport within a 10-year period, a one year restricted validity passport will be issued in line with HM Passport Office policy. The rationale being to prevent any potentially fraudulent activity associated with a lost or stolen passport.

[8] The correspondence sets out a breakdown of the applicant's recent passport history to give context as to why an RVP of one year duration was issued to her. The correspondence identified the following relevant history:

- (i) passport number 509354951 issued 2012 reported lost in 2017;
- (ii) passport number 547425183 issued 2017 reported lost in 2020;
- (iii) passport number 121448019 issued 2021 reported stolen in 2022;
- (iv) passport number 138025966 issued in 2023 reported lost in 2024.

[9] In the applicant's grounds for judicial review, she makes the case that her 2012 passport was stolen in 2017 by a Moroccan woman who befriended her. That she reported this to police, but they were not able to enter the property where she had been living with others to retrieve her passport. In relation to her 2020 passport it is alleged that this was stolen when all her belongings were taken by Eastern Europeans who ran a bed-and-breakfast establishment. Again, she claimed that this was reported to the authorities in the UK and the management of the bed-and-breakfast. Regarding her 2022 passport it is her case that it was stolen from her hotel room in a Holiday Inn in England and again this was reported to the management. Finally, her 2023 RVP is alleged also to have been stolen. Concerning this passport she indicates that she was due to leave the UK and move abroad to start new employment. Just before this she had gone into a hotel in London for lunch and this was where she last recalls having it. It disappeared according to her having possibly fallen out of her backpack. She discovered it was not on her person when she left the hotel. Again, it is reported by her to police and the management of the hotel.

[10] Specifically dealing with issues arising in relation to the applicant's 2024 passport application. The October reply from HM Passport Office litigation team confirmed that the records indicated a fast-track application was submitted with a return date requested for 16 April 2024. This appears to be only one day before the applicant was due to travel abroad to take up her new employment. However, because of the alleged multiple losses/theft of previous passports further investigations were required before a new passport could be issued. It is further set out in the correspondence that the applicant attended in person at HM Passport Office in London on 16 April 2024 when it was explained why a fast-track application would not be possible and the need for further checks. Subsequently, an interview was arranged for the applicant on 13 June 2024 which regrettably had to be cancelled due to the applicant being in hospital, having been assaulted. A further interview was rearranged for 24 September 2024, and on 11 October 2024 the applicant collected her RVP passport from HM Passport Office London.

[11] Then on 14 November 2025, the month after her 2024 RVP expired, the applicant issued proceedings ex parte seeking leave to judicially review the decision of 10 October 2024 by Mr Jaman of HM Passport Office who had granted (her now expired) RVP. It is this decision of October 2024 she seeks to challenge. In her application she seeks the quashing of this RVP, disclosure of the record of her interview with Mr Jaman, the return of her fast track/premium fee paid for delivery of her passport and damages.

[12] In terms of failing to bring the present proceeding within three months of the date of decision, she indicates in her affidavit that she did not waive her right to challenge this determination as she had not been informed of her right to do so. That delay was further incurred by failure of HM Passport Office to reply to her pre-action protocol correspondence from July 2024 to October 2024.

[13] In addition, her affidavit claims that there are other exceptional reasons why her application for judicial review was delayed. It is stated that, in April 2024, due to having secured employment abroad she left her previous “live-in employment’ in London. As a result of a failure by HM Passport Office to progress her passport application she was unable to travel and take up her new employment and became homeless. While homeless she alleges she was violently assaulted, required surgery, was in pain and unable to attend to urgent business. That because she had no passport she was denied assistance from local authorities. She submits to the court that delay should not be a bar to her application for leave proceeding. However, she stated unwillingness to disclose information concerning her medical records to the Court unless “... requested to do so, and if forced to do so...” That if such were required she would only submit basic information and redact information she considered a violation of her rights under statute and Convention provisions.

[14] From her affidavit, exhibits and submissions to the court it appears that in summary she seeks an order from the court to quash the RVP and direct HM Passport Office to issue her with an unrestricted validity passport of ten years duration without delay, together with damages. It is argued by her that the decision to issue a RVP in the circumstances was unlawful, irrational and procedurally unfair.

The respondent's case

[15] The respondent argues that this application is without merit. It is significantly out of time for judicial review and due to the RVP having expired and the need for a renewed passport application any quashing of the RVP would be ineffective, academic and absent utility. Accordingly, in these circumstances leave should be refused. It is the respondent’s case that the applicant’s account of how her passports have gone missing is inconsistent with explanations given in her affidavit and attached exhibits and lacks candour.

[16] The respondent sets out in argument the applicant's history of passport applications as follows: On 13 June 2000, the applicant applied for and was granted a FVP. Subsequently, she applied on 4 July 2012 for a passport and was granted a FVP which she reported lost on 20 April 2017 in Geneva while moving house. She made application for a replacement passport on 5 May 2017 and was issued a further FVP which she reported lost on 1 May 2020 in Scotland, it apparently being located in 'unavailable storage.' On 8 July 2021, she again applied for and was granted a FVP which was reported as stolen on 1 December 2022 from her hotel room at a Travel Lodge.

[17] The applicant on 8 February 2023 applied for and was on this occasion granted a one-year RVP due to having lost or had stolen three previous ten year FVPs and an RVP reported on 1 April 2024 as lost by the applicant in the UK when moving house. Shortly after the report of this passport being lost, the applicant made a further application to HM Passport Office on 16 April 2024 for an urgent/compassionate replacement passport. It is the respondent's case that on examination of the passport application it was noted there had been multiple passport losses and staff attempted to contact the applicant by phone to explain that further checks in this regard were required. The applicant attended the London Passport Office on an occasion but left as staff tried to explain the process regarding application where there had been multiple lost/stolen passports. Ultimately, a further one-year RVP was issued due to three previous FVPs and one previous RVP having been reported as lost or stolen between 20 April 2017 and 1 April 2024.

[18] It is the issue of the 2024 RVP which is the subject of challenge. It appears from the correspondence exhibited by the applicant that fraught issues arose concerning the delivery of this passport and the respondent's case is that the applicant refused to confirm her address and was challenging to deal with and difficult with HM Passport Office staff. Eventually, this RVP was issued on 9 October 2024 and collected by the applicant at the Passport Office in London on 11 October 2024. A chronology of events occurring over the course of this application was provided by the respondent covering the period from application on 16 April 2024 to issue and collection of the RVP on 11 October 2024. I have considered this in conjunction with the contrary account and submissions of the application. However, it is not necessary for the purposes of resolving the leave application to set this out in detail.

[19] The respondent observed that the applicant has issued pre-action protocol letters every year from 2020-2025 in respect of issues arising from her passport applications. Dealing specifically with the PAP correspondence and challenges to the decisions by the applicant concerning her 2024 passport application the respondent, in summary, makes the following points: In terms of the challenge to the issue of the RVP it is argued that given the number of lost and/or stolen passports this was entirely lawful, rational and proportionate. An order for disclosure of any passport application interview(s) with the applicant held by the Passport Office

should be made to the appropriate department, the necessary contact details having been forwarded to the applicant. The fast-track process did not apply to this application and therefore there are no grounds for payment from HM Passport Office in this regard.

[20] Of significance the respondent makes the argument that in any event, this application is considerably out of time for the purposes of judicial review. The event being complained of having occurred more than one year prior to the application for judicial review being made. The passport the subject matter of this application has expired, and no present decision is now capable of being quashed with no consequent effective relief available. The application is academic and without utility. That the passport interview records sought have been lawfully destroyed under the UK GDPR provisions and in any event the applicant appears to have recorded this interview herself without the knowledge or consent of HM Passport Office.

[21] For the above reasons, the respondent argues that this application for leave should be refused.

Grounds for refusing leave

[22] The Judicature (Northern Ireland) Act 1978, section 18(2)(a) and the Rules of the Court of Judicature Order 53, rule 3(1) provide that a judicial review claim requires leave/permission of the court in all cases other than where an application for certiorari is made by the Attorney General acting on behalf of the Crown. The test to be applied is to be found in *Sharma v Brown-Antoine* [2006] UKPC 57, where it was stated that:

“(4) the ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy”.

[23] More recently, in *Attorney General of Trinidad and Tobago v Ayers-Caesar* [2019] UKPC 44 Lord Sales at para 2 stated:

“The test to be applied is the usual test for the grant of leave for judicial review. The threshold for the grant of leave to apply for judicial review is low. The board is concerned only to examine whether [the applicant for judicial review] has an arguable ground for judicial review which has a realistic prospect of success... Wider questions of the public interest may have some bearing on whether leave should be granted, but the Board considers

that if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed, it would usually be appropriate for the court to dispose of the matter at this stage.”

[24] Lord Sales went on to say that the function of the leave stage was to operate as a filter to exclude cases which are unarguable subject to a statutory or procedural bar such as delay, lack of utility or otherwise subject to a “knockout blow” The obvious benefit of this is to safeguard decision-makers from unnecessary legal proceedings.

[25] The burden of proof is on the applicant and must be discharged on the balance of probabilities. They must also act with promptitude - within three months of the date of the impugned decision, and candour when bringing an application. The decision in *Peerless Ltd v The Gambling Regulatory Authority* [2015] UKPC 29 and the recent decision in *National Bank of Anguilla (private banking and trust) Ltd (in admin) and another v Chief Minister of Anguilla and others (Anguilla)* [2026] 1 ALL ER 1097, confirm the above approach and that the duty of candour applies at the stage of an application for leave. In *Re D’s Application* [2003] NI 295, it is also made clear that the duty of candour applies “from the inception of the proceedings until their ultimate conclusion.”

Consideration

[26] There is no entitlement to a passport of whatever description. The decision to issue, withdraw, or refuse a British passport whether it is a FVP or RVP is at the discretion of the Secretary of State for the Home Department (SSHD) under the Royal Prerogative. This was set out in written ministerial statement (WMS) of the then SSHD, Theresa May MP, on 25 April 2013. So far as relevant, it is as follows:

“There is no entitlement to a passport and no statutory right to have access to a passport. The decision to issue, withdrawal or refuse a British passport is at the discretion of the Secretary of State for the Home Department (the Home Secretary) under the Royal Prerogative.

The written ministerial statement updates previous statements made to Parliament from time to time and the exercise of the Royal Prerogative and sets out the circumstances under which a passport can be issued, withdrawn, or refused. It redefined the public interest criteria to refuse or withdraw a passport.

A decision to refuse or withdraw passport must be necessary and proportionate...”

[27] A passport is an official document of significant importance, both as a means of travel and for identity/citizenship purposes. The securing of its integrity as such is a core responsibility of HM Passport Office, which is required to manage potential risks of misuse, fraud and identity compromise in the public interest.

[28] I agree with the respondent that where an adult applicant reports the loss and/or theft of multiple passports in their possession within a relatively short defined period, HM Passport Office is entitled to respond by conducting an enhanced risk assessment. The decision to issue an RVP of limited duration, commonly for one year rather than the standard ten, pursues the legitimate aim of protecting the integrity of the passport system and maintaining public and indeed international confidence in it.

[29] The measure adopted in the present case of issuing an RVP is in my view rationally connected to that aim. Repeated losses or thefts of passports, or indeed a combination of both, increase the objective risk of misuse of the passport by others and a reduced period of validity limits the potential consequences of any further loss/theft while allowing the applicant continued access to a passport for travel and work.

[30] This approach is also no more than is necessary to achieve the stated objective. The applicant is not denied a passport altogether and is subject only to a temporary and proportionate restriction. Enhanced scrutiny, which may include an interview and/or a referral to a fraud department is targeted at the identified risk factors and reflects the particular circumstances of the present case.

[31] In assessing proportionality, HM Passport Office is also entitled to take account of the inherent risks to the holder arising from possession of a passport. Where unusual features are present, including as here, a pattern of frequent reported losses/thefts, with two reported losses and one theft occurring within a four-year period, it is legitimate to consider whether the applicant may be vulnerable.

[32] Legitimate consideration includes, but is not limited to, whether repeated losses/thefts may be indicative of coercion, exploitation, trafficking, or other circumstances in which the security of the passport or the safety of the holder may be compromised. Such enquiry forms a proportionate element of HM Passport Office's safeguarding and risk-management functions. It does not involve, nor imply any adverse finding against the applicant, and is confined to what is necessary to address and mitigate the identified risks.

[33] For these reasons alone I would have refused leave. However, there are further fundamental difficulties in the present application of leave.

Delay

[34] The Rules of the Court of Judicature (NI) 1980 Order 53, rule 4(1) as amended provides that:

“An application for leave to apply for judicial review shall be made within three months of the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.”

[35] The RVP was issued on 9 October and collected by the applicant at the London Passport Office on 11 October 2024. It was obvious this was a one year RVP. The following day the applicant sent pre-action protocol correspondence to HM Passport Office indicating an intention to challenge the decision to issue a RVP. Proceedings were not issued in respect of this challenge until 14 November 2025, Over one year after the RVP was issued and after it had expired. There has been considerable delay, and proceedings were issued very significantly outside the three month period starting from when the grounds to challenge the decision arose.

[36] Given that the present case does not concern a series of acts but rather a specific decision on 9 October 2024 when the RVP was issued, the principles governing when the time limit provided for in Order 53 rule 4(1) arises is clear. In *R (Badmus) and others v Secretary of State for the Home Department* [2020] EWCA Civ 657, a challenge to the rate of pay fixed for work carried out by immigration detainees, the issue was when the grounds to make the claim “first arose.” The court held that the correct principle was that the grounds for making a judicial review challenge first arose when the person is affected by the application to him or her of the challenged policy or practice. In the present case the grounds for the purpose of making a claim arose on the 9 October 2024 when the RVP issued.

[37] The leading case in this jurisdiction on the question of delay and the extension of time is *Re Laverty's Application* [2015] NICA 75. The Court of Appeal stated:

“If there has been delay, the application for leave should include (a) an application to extend time stating the grounds relied on and (b) an affidavit explaining all aspects of the delay.”

[38] No application to extend time was included in the application albeit the applicant did mention in her affidavit that she had good reasons and exceptional circumstances to explain the delay. She claimed to being homeless, in April 2024, was assaulted and seriously injured in June 2024 while being street homeless. As a result of her injuries, she required surgery and was thereafter in significant pain.

[39] She did, however, manage to attend HM Passport Office for interview and to collect her passport after being assaulted and having surgery. She also engaged in pre-action protocol correspondence after having received her RVP. It appears she also left London and relocated to Ireland. No medical evidence from the applicant was made available to the court to establish on a balance of probabilities that she was medically unfit or otherwise impacted to such an extent that she could not have issued proceeding within the three-month time limit.

[40] The time limit for applying for judicial review can be extended where there is “good reason” to do so. This will be highly fact specific with the need for there to be reasonable and objective justification for the late application. That the granting of any extension of time would not be prejudicial to third parties and more relevant in the present case, not prejudicial to the interests of good administration.

[41] In the circumstance, I find this case had been brought significantly out of time, no sufficiently objective and cogent reasons have been given for the delay occasioned. No application for an extension of time has been applied, and I consider the interests of good administration has been prejudiced given the considerable time and resources expended on this case to the detriment of other passport applicants.

Is the challenge to the RVP academic and lacking utility?

[42] The leading authority on the proper approach to applications or challenges said to have become academic is the decision of the House of Lords in *R v Secretary of State for the Home Department, ex parte Salem* [1999] 2 All ER 42. In that case, Lord Slynn of Hadley articulated the principles governing the exercise of the court’s discretion in such circumstances, stating:

“My Lords, I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to a question of public law, Your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se....

The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or

are anticipated so that the issue will most likely need to be resolved in the near future.”

[43] In considering whether the issue of the expired passport is academic and of no utility it is recognised that the onus of establishing this issue rests with the party who asserts it. The factual position now is that the RVP has expired. However, I must go on to consider whether to exercise my discretion to hear an academic issue where no effective remedy is available. In accordance with the views expressed in *Salem*, I have concluded that I should not hear this application unless there is good reason in the public interest to do so. An example of such good reason would be where there are many like cases to be heard and there will likely be a need to resolve such an issue in the near future.

[44] I accept the argument put forward by the respondent that the RVP the subject of challenge has expired and, in such circumstances, there is no extant decision capable of being quashed and no effective remedy capable of grant. In such circumstances the application is to all intents and purposes academic and devoid of utility. This case is very much fact specific and having regard to the examples given in *Salem* there are unlikely to be numerous cases of this type to be decided and it is not a discrete issue of statutory interpretation which does not involve detailed consideration of facts.

[45] In these circumstances, I regard the issue of the expired RVP to be academic. The applicant can apply for a new passport and await a decision in that regard. This is not a case where I should exercise my discretion for sound public interest reasons.

Conclusion

[46] Given the above reasons, I refuse leave and do not need to further consider whether or not there was any lack of candour on the part of the applicant or the procedural irregularities in her application.

[47] I make no order as to costs.