

Federal Court



Cour fédérale

Date: 20150806

Docket: IMM-1282-14

Citation: 2015 FC 950

Ottawa, Ontario, August 6, 2015

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**NADER AHMAD HERMAS
LAMA ALMAGHATHAH**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Nader Ahmad Hermas arrived in Canada from Israel in 2008. He successfully claimed refugee status on the basis of his fear of political persecution as a Palestinian. The Israeli army had arrested him and his brother in 2004. Mr Hermas was released after 18 days, but his brother was kept in custody for 28 months. Mr Hermas also alleged persecution by Hamas.

[2] After Mr Hermas applied for permanent residence, an immigration officer concluded that Mr Hermas was inadmissible to Canada for having been a member of a group that engaged in terrorism (under s 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] – see Annex). In particular, the officer found there were reasonable grounds to believe that Mr Hermas had been a member of the Popular Front for the Liberation of Palestine [PFLP].

[3] Mr Hermas argues that the officer's decision is unreasonable because there was no evidence showing that he was actually a member of the PFLP. At the time of his arrest at his home, there were alleged members of the PFLP who were present and were also arrested. However, Mr Hermas consistently claimed that he was blindfolded at the time and did not know who else was arrested. Further, given that he was released from custody by Israeli authorities and never charged with any offence, he suggests that there was obviously no evidence that he was a member of the PFLP. Finally, Mr Hermas points out that his brother, on the same evidence, was found not to be a member of the PFLP and not inadmissible to Canada.

[4] Mr Hermas asks me to quash the officer's decision and order another officer to reconsider the question of his inadmissibility. Having considered the evidence before the officer, I can find no basis for overturning the officer's decision and must, therefore, dismiss this application for judicial review.

[5] The sole issue is whether the officer's decision was unreasonable.

II. The Officer's Decision

[6] The officer reviewed the events giving rise to Mr Hermas's refugee claim. The officer went on to note that when Mr Hermas and his brother were arrested, so were four others – one neighbour, and three men who were staying at Mr Hermas's home. Media reports at the time stated that senior members of PFLP were arrested.

[7] The officer considered Mr Hermas's response to this evidence. Mr Hermas said he did not remember who was present at the time of his arrest. He was asleep, and then was handcuffed and blindfolded. He claimed to have been arrested by mistake and released quickly. As far as he knew, only family members were present in the house, and he was unaware that others had been arrested. He did not know whether his brother knew the other arrestees; they never discussed the situation. At another point, he said that the arrested persons were friends of his brother who were more politically active. He was aware of the media reports cited by the officer, but did not consider them to be reliable. In fact, he thought the arrestees might actually have been staying in a neighbouring house. He denied any involvement with the PFLP.

[8] The officer also noted that Mr Hermas's brother acknowledged that the persons arrested at the home were members of the PFLP.

[9] The officer considered the broad definition given to the term "member" and concluded that Mr Hermas fell within it. Mr Hermas was aware that the arrested persons were wanted by Israeli authorities and gave them safe haven in his home. In doing so, according to the officer,

Mr Hermas knowingly furthered the cause of the PFLP. The officer also noted that Mr Hermas had not been forthright with Canadian authorities, sometimes giving contradictory evidence and other times providing implausible answers.

[10] Finally, the officer found that the PFLP was a terrorist organization and, therefore, that Mr Hermas was inadmissible to Canada as a member of it.

III. Was the Officer's decision unreasonable?

[11] Mr Hermas contends that the officer's decision was unreasonable because there was little evidence showing that he was a member of the PFLP. The evidence in respect of his brother, he says, was stronger and yet he was found not to be inadmissible.

[12] I disagree. The officer's conclusion represented a defensible outcome based on the facts and the law.

[13] As noted above, the officer found a number of inconsistencies and implausibilities in Mr Hermas's evidence. This provided grounds for doubting Mr Hermas's claim not to have had any involvement with the PFLP.

[14] Further, Mr Hermas's evidence was distinct from the evidence underlying his brother's application. His brother admitted his contact with PFLP members but claimed to be unaware of their status, and he showed that he had not undergone the screening that prospective members must usually pass.

[15] In other words, in Mr Hermas's brother's case, credibility did not appear to be an issue.

[16] Therefore, I cannot conclude that the officer's finding – that there were reasonable grounds to believe that Mr Hermas had a sufficient connection to the PFLP to be considered a member – was unreasonable on the evidence.

IV. Conclusion and Disposition

[17] The officer's conclusion that there were reasonable grounds to believe that Mr Hermas was inadmissible to Canada for having been a member of the PFLP, a terrorist organization, represented a defensible outcome based on the facts and the law. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question of general importance is stated.

"James W. O'Reilly"

Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27
Security

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

- (a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;
- (b) engaging in or instigating the subversion by force of any government;
- (b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;
- (c) engaging in terrorism;
- ...
- (f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch. 27
Sécurité

34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

- a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;
 - b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
 - b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
 - c) se livrer au terrorisme;
- [...]
- f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1282-14

STYLE OF CAUSE: NADER AHMAD HERMAS, LAMA ALMAGHATHAH
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MAY 4, 2015

JUDGMENT AND REASONS: O'REILLY J.

DATED: AUGUST 6, 2015

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