Federal Court  Cour fédérale

Date: 20151028

Docket: IMM-1232-14

Citation: 2015 FC 1220

Ottawa, Ontario, October 28, 2015

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ZEID ABU RAYAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Zeid Abu Rayan, seeks judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act* [the Act] of the decision of a Citizenship and Immigration Officer [the Officer] which refused his application for permanent residence as a protected person on the basis that he is a person described under paragraph 34(1)(c) of the Act and is, therefore, inadmissible to Canada on security grounds because he engaged in acts of terrorism.

[2] For the reasons that follow, the application is dismissed. The applicant has not established that there was a breach of procedural fairness arising from any abuse of process. The Officer reasonably found that there were reasonable grounds to believe that the applicant had engaged in acts of terrorism.

Background

[3] The applicant's efforts to seek permanent residence in Canada date back to 1999. To provide the necessary context for the decision, a description of the key events is provided, based on both the applicant's and respondent's account.

[4] The applicant is Palestinian and a citizen of Israel. The applicant recounts that he became an informant for the Israeli security and intelligence service, Shabak. He investigated other Palestinians and provided false statements in court to convict other Palestinians. Due to his role as an informant, he was released from prison after serving three years of a six year sentence imposed following his conviction for security-related offences. Shabak then helped him resettle and become a permanent resident and citizen of Israel.

[5] The applicant arrived in Canada in January 1999 and made a claim for refugee protection. He was interviewed by the Canadian Security Intelligence Service [CSIS] in May 2000. His claim for refugee protection was refused in January 2002.

[6] The Refugee Protection Division of the Immigration and Refugee Board [the Board] noted that the applicant had claimed that he was detained in 1984 for political activities. He then

provided information to Israeli intelligence about Palestinians trying to produce explosives. He was arrested along with those he provided information about and sentenced to six years of imprisonment. However, he served only three years due to his role as an informant. The Board also noted a document regarding a request for an arrest warrant in Israel in 1996. Although that document refers to the applicant's conviction for his role in laying explosives and security-related offences, the Board only referred to the fact that the indictment was not pursued (i.e., it remains unclear what the Board knew about his involvement with the explosives).

[7] The Board found that the applicant faced a serious possibility of persecution in the West Bank, but that he could live in Israel and benefit from its state protection. The Board denied his claim for refugee protection.

[8] The Court refused the applicant's application for leave and for judicial review in May 2002.

[9] The respondent notes that the applicant's account of the events underlying his conviction varied between interviews. The applicant claims he was arrested and convicted for engaging in demonstrations. The respondent asserts that the applicant was convicted due to his participation in the laying of explosives near Israeli military patrols and his participation in demonstrations. The applicant admits that he was involved with other youth who let off explosives consisting of matches in pipes to scare soldiers as a form of psychological warfare. He also admits to using explosives to scare animals.

[10] Following the refusal of refugee protection, a negative Pre-Removal Risk Assessment [PRRA] was rendered in July 2003 and a deportation order was issued. He left Canada in August 2003.

[11] The applicant later returned to Canada in July 2005 and again claimed refugee protection. Pursuant to paragraph 101(1)(b) of the Act he was ineligible because his claim had previously been heard and rejected and he did not have Ministerial Consent to return, as required by subsection 52(1) of the Act. However, he was entitled to a PRRA.

[12] The PRRA decision, dated August 29, 2005, found that he was a person in need of protection pursuant to paragraph 97(1)(b) of the Act. The PRRA officer found that new evidence, arising from the applicant's return to Israel in 2003, established that state protection would not be provided to him by Israel. The applicant was granted status as a protected person in Canada. He was advised that he could apply for permanent resident status and did so.

[13] On February 24, 2009, the applicant was advised by the Officer that his application for permanent residence may be refused because he may be inadmissible to Canada under paragraphs 34(1)(c) and 36(1)(b) of the Act. The Officer invited the applicant to an interview and requested that he provide several documents. The applicant provided the requested documents, along with written submissions, and attended the interview on March 25, 2009.

[14] On April 1, 2009, the Officer sent the applicant a letter regarding an application for Ministerial Relief from inadmissibility, noting that this was raised at the interview. A separate

letter, also dated April 1, 2009, set out the provisions for Ministerial Relief and invited the applicant to make submissions.

[15] On April 4, 2009, the applicant responded in a six page letter indicating that he did not wish to be considered for Ministerial Relief because he had not committed any criminal or terrorist acts. His letter reiterated his earlier submissions and also suggested that he was being discriminated against.

[16] The Officer provided a memorandum to the Canada Border Services Agency [CBSA] Director of Security Review on December 17, 2009, which reviewed the applicant's immigration history and the information gathered. The Officer referred to section 34 of the Act and the standard of "reasonable grounds to believe." The Officer set out the full definition of "terrorist activity" in section 83.01 of the *Criminal Code*, RSC 1985, c C-46, and noted that one of the elements described in the definition states that terrorist activity means an act "that intentionally causes a serious risk to the health or safety of the public or any segment of the public." The Officer also referred to the definition set out in the Supreme Court of Canada's decision in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3 [*Suresh*]. The Officer provided background information on the applicant's conviction for "security-related offences" in 1984; reviewed the applicant's submissions about his experiences in Israel; and, reviewed the evidence regarding Shabak and the treatment of Palestinians who work as collaborators with the Israeli government.

[17] The Officer noted that there is evidence that the applicant was incarcerated for laying explosives and being a security threat to Israel. The Officer also noted that the applicant stated during his CSIS interview in 2000 that he associated with youths who made pipe bombs to scare Israeli soldiers but, in his more recent statements, he admitted that he made these devices only to scare small animals and as "childrens' games" [sic].

[18] The Officer concluded that there were reasonable grounds to believe that the applicant participated in acts of terrorism and is, therefore, inadmissible pursuant to paragraph 34(1)(c).

The Decision Under Review

[19] The decision letter, dated December 12, 2013, was communicated to the applicant on February 11, 2014.

[20] The decision letter reiterates verbatim the conclusion of the Officer's 2009 memorandum. The Officer noted the applicant's conviction in Israel for security-related offences, his six year sentence, his release after three years due to his collaboration with Shabak and that he became an Israeli citizen in 1994.

[21] Considering all of the evidence and the applicant's varying explanations, the Officer found that there are reasonable grounds to believe that the applicant was involved in acts of terrorism, specifically, the lighting of explosives. The Officer refused the application for permanent residence based on finding that the applicant is inadmissible to Canada on security grounds pursuant to paragraph 34(1)(c) of the Act.

[22] The applicant acknowledges that the 2009 memorandum is part of the Officer's reasons for the decision.

The Issues

[23] The applicant argues:

- The delay in rendering a decision on the applicant's inadmissibility is an abuse of process and a breach of procedural fairness;
- The Officer erred in law by failing to address and apply the correct definition to determine inadmissibility for "engaging in terrorism" and by failing to conduct the appropriate analysis; and,
- The Officer ignored relevant evidence and submissions.

The Standard of Review

[24] Questions of fact and of mixed law and fact are reviewed on the standard of reasonableness.

[25] It is well settled that where the standard of reasonableness applies, the role of the Court is to determine whether the Board's decision "falls within 'a range of possible, acceptable outcomes which are defensible in respect of the facts and law' (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339, citing

Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]). The Court cannot reweigh the evidence or remake the decision.

[26] A reasonable decision has also been described as one that can stand up to a somewhat probing examination (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 63, 174 DLR (4th) 193, citing *Canada (Director of Investigation and Research) v Southam Inc*, [1997] 1 SCR 748 at para 56, 144 DLR (4th) 1).

[27] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland Nurses*], the Supreme Court of Canada elaborated on the requirements of *Dunsmuir*, noting that the reasons for a decision are to "be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" and that courts "may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome" (at paras 14-16). The Court summed up its guidance in para 16:

> In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[28] Issues of procedural fairness are reviewed on the standard of correctness and no deference is owed (*Khosa* at para 43; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53, [2006] 3 FCR 392).

The delay does not amount to an abuse of process

[29] The applicant submits that the delay in rendering the decision regarding his inadmissibility is an abuse of process which is a breach of procedural fairness and, as a result, the decision should be set aside and redetermined. The applicant does not seek a stay of proceedings due to the allegation of abuse of process.

[30] The applicant submits that the respondent had all the information regarding his involvement in security-related offences in Israel in 1999, the time of his application for refugee protection, and in 2000, at his first interview with CSIS, yet it did nothing with that information until 2009. Moreover, the Officer did not communicate the decision regarding the applicant's inadmissibility to Canada until 2014. The applicant also submits that the respondent cannot rely on its change of policy, which previously held applications for Ministerial Relief in abeyance, for any part of the delay because the applicant did not ask for Ministerial Relief.

[31] The applicant argues that this inordinate delay was caused by the respondent and, as a result, he suffered prejudice, including increased stress due to the uncertainty of his status. He submits that he would not have returned to Canada in 2005 if he had known he would face such a delay in resolving his status. The results of his inadmissibility finding are severe, including his inability to obtain a passport and the need for constant renewal of work permits, among other consequences. The applicant adds that due to the passage of time, it is increasingly difficult, or perhaps impossible, for him to obtain information to defend against the allegations.

[32] Although there was a delay in making the determination that the applicant is inadmissible to Canada, I do not agree that the delay was either inordinate in the circumstances or that the applicant has been prejudiced by the delay to the extent that it constitutes an abuse of process.

[33] The jurisprudence has established that delay, without more, does not amount to abuse of process. The threshold for finding an abuse of process for delay is extraordinarily high and few cases amount to the "clearest of cases" that meet the threshold (*Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 101, [2000] 2 SCR 307 [*Blencoe*]).

[34] In *Canada (Minister of Citizenship and Immigration) v Parekh*, 2010 FC 692, [2012] 1 FCR 169, Justice Tremblay-Lamer summarized the principles regarding abuse of process with reference to *Blencoe*, noting:

> [24] Generally speaking, a court will find that an attempt to apply or enforce legislation has become an abuse of process when the public interest in the enforcement of legislation is outweighed by the public interest in the fairness of administrative or legal proceedings; see *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, at par. 120, […]
>
> [25] Such a situation can arise as a result of undue delay in the enforcement of legislation. This will often be so when delay causes the hearing of the matter to become unfair (for example, because memories of witnesses have faded or evidence has otherwise become unavailable). However, Justice Bastarache, speaking for the majority of the Supreme Court in *Blencoe*, above, at par. 115, was "prepared to recognize that unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised." Justice Lebel, dissenting in part, but not on this issue, put the point more forcefully, at par. 154: "[a]busive administrative delay is wrong and it does not matter if it wrecks only your life and not your hearing."
>
> [26] In order for delay to amount to abuse of process, "the delay must have been unreasonable or inordinate." (*Blencoe*, above, at

> par. 121.) Delay must not only be greater than normal, but also have caused the defendant a substantial prejudice. In other words, it must be "unacceptable to the point of being so oppressive as to taint the proceedings." (*Ibid*.)

[35] Justice Tremblay-Lamer also referred to the principles from *Blencoe* that the analysis of the reasonableness of the delay must be factual and contextual (at paras 27-28), and include consideration of the nature of the case, its complexity, whether the respondent contributed to the delay, the causes of the delay and its impact.

[36] Although the applicant contends that all the information relied on by the respondent to find him inadmissible was provided by him and available to the respondent and to the Board prior to the applicant's failed refugee claim in 2002, the record does not conclusively confirm what information was known to the Board at what date. As noted above, the Board's decision refers to the applicant's involvement in political activities, but the Board's reference to the Israeli arrest warrant application in 1996 does not note the basis of the previous conviction.

[37] The applicant referred to the provision of information to the Board and the information from CSIS and CBSA. However, it remains unclear what the applicant disclosed, to whom and when. Therefore, it is not clear that the respondent had the information at the time of the applicant's arrival in Canada in 1999 that it later relied on to find him inadmissible.

[38] The applicant's submission that he would not have returned to Canada had he known the uncertainty he would face is not persuasive given that he had been deported from Canada in 2003

and would or should have been aware of the impediments to claiming refugee protection if he returned.

[39] The applicant returned to Canada in 2005 without the required consent of the Minister to do so. In my view, the delay that would be relevant to any abuse of process argument would only arise from his return to Canada in 2005. This almost nine year delay in making the decision is, in part, attributable to the assumption by the respondent, whether correct or not, that the applicant had requested Ministerial Relief.

[40] As the applicant notes, in his submissions in April 2009, he stated that he was not asking for Ministerial Relief as he claimed that his conduct was not criminal. However, he provided extensive submissions which the Officer could have reasonably interpreted as a request for such relief despite his initial statement, particularly since the applicant was not represented by counsel and the issue of Ministerial Relief had been raised with the applicant at the in-person interview. In addition, the applicant did not follow-up with a demand for a decision despite his statement that he did not seek Ministerial Relief.

[41] As the respondent notes, its policy was to hold applications for permanent residence in abeyance when an application for Ministerial Relief from inadmissibility was pending. This policy changed in 2013.

[42] Whether or not the delay was caused by the assumption that the applicant had asked for Ministerial Relief, the delay is not unreasonable or inordinate when the context is taken into account.

[43] The respondent has an obligation to determine whether the applicant is admissible. While the information sharing between CSIS, CBSA and Citizenship and Immigration does not appear to be seamless, given the importance of the issues at stake and of ensuring that the Act is respected, such decisions will take time. Moreover, in the present case, the information provided by the applicant was not consistent.

[44] In addition, the applicant has not established that he suffered substantial prejudice as a result of the delay. The prejudice alleged regarding the difficulties he would have collecting information from the Israeli authorities about his conviction would have also existed between 2006 and 2009 and even in 2000, if that period were taken into account. Once he sought the protection of another country, as he did in Canada in 1999 and 2005, it may have been difficult to obtain necessary documents or other information from Israel from that time on.

[45] It is understandable that uncertainty in the outcome of the applicant's permanent residence has increased the stress he previously claimed to have suffered. However, there is no documentary evidence from the applicant to support his condition. Moreover, he returned to Canada as an inadmissible person and some stress should have been anticipated in his efforts to obtain status in Canada. Despite this, he was granted protected person status and he was not returned to Israel.

[46] The decision to not to pursue inadmissibility proceedings between 2000 and 2002 did not bar the respondent from pursuing them later, as no decision was made or communicated to the applicant.

[47] Nor did the decision of the PRRA officer prevent the Officer from considering the applicant's admissibility. I agree with the respondent that there is no clear evidence that the information from the 2000 CSIS interview was before the PRRA officer who determined the applicant's claim.

[48] The applicant has not established that the respondent's conduct amounts to an abuse of process.

Did the Officer properly consider and analyze whether the applicant had engaged in terrorism?

The Applicant's Submissions

[49] The applicant argues that the Officer did not identify or apply the proper definition of terrorism and that the reasons do not show how the Officer analyzed the facts to reach the determination that the applicant engaged in terrorism.

[50] The applicant submits that the Officer's December 2009 memorandum reiterates the test established in *Suresh*, which establishes the legal parameters for an assessment under paragraph 34(1)(c) of the Act, but the Officer did not apply this test. In particular, the Officer did not consider that the allegations against the applicant did not involve harm to civilians.

[51] The applicant adds that even if the *Suresh* definition is not definitive and the Officer was entitled to apply the *Criminal Code* definition, he failed to address the three elements of the test, because he referred only to the element of "intentionally caus[ing] a serious risk to the health or safety of the public", and not to the requisite intention or purpose, and failed to analyze how the applicant's conduct met the definition.

[52] The applicant argues that finding that a person has engaged in terrorism has extremely serious consequences and the Court has intervened where such findings have not met the established definition in *Suresh* (*Fuentes v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 379, [2003] 4 FC 249 (FCTD) [*Fuentes*], *Zarrin v Canada (Minister of Citizenship and Immigration)*, 2004 FC 332, 129 ACWS (3d) 579 [*Zarrin*], *Naeem v Canada (Minister of Citizenship and Immigration)*, 2007 FC 123, [2007] 4 FCR 658 [*Naeem*]). The applicant submits that *Pizarro Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 623, 434 FTR 69 [*Gutierrez*], where the Court noted that there is no single definition of terrorism, is out of step with other jurisprudence of the Court.

[53] The applicant argues that there was no evidence before the Officer that demonstrated his intention to harm civilians or anyone else. Although the applicant provided two different explanations for his activities, the Officer did not state which explanation he believed or how either explanation constituted terrorism.

[54] The applicant acknowledges that he associated with others who detonated explosives to scare Israeli soldiers and that he informed the Israeli authorities about these activities, but states

that he has always disputed that he participated in the detonation of explosives. He adds that he consistently stated that these devices were small and noisy but were not capable of causing harm.

The Respondent's Submissions

[55] The respondent notes that section 34 of the Act does not require proof of engagement in acts of terrorism; rather, section 33 of the Act provides that facts that constitute inadmissibility may be facts arising from omissions or, unless otherwise provided, facts for which there are reasonable grounds to believe occurred, are occurring or may occur. The Supreme Court of Canada described the "reasonable grounds to believe" standard as "something more than a mere suspicion, but less than the standard applicable in civil matters of the balance of probabilities […] where there is an objective basis for the belief which is based on compelling and credible information" (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114, [2005] 2 SCR 100).

[56] The respondent submits that the Officer reasonably found that the evidence of the applicant's activities fell within the definition of terrorism. There were reasonable grounds to believe that the applicant intentionally laid explosives and participated in bombings in public areas near military patrols, which would put the safety of civilians at serious risk. The applicant does not dispute that he was against the Israeli occupation of the West Bank and that he intentionally engaged in the laying of explosives. He told immigration officials that he laid explosives and associated with others who used explosives to scare Israeli soldiers.

[57] The Officer relied on the information from Israeli authorities that the applicant was previously convicted for laying explosives and was sentenced to six years in prison, he admitted to associating with youths who stuffed match heads into pipes near Israeli military patrols in his May 2000 CSIS interview, he admitted to scaring small animals with explosives in his March 4 and April 4, 2009 statements, and he admitted to playing with matches and aluminum pipes in his March 25, 2009 interview.

[58] The respondent submits that the Officer understood the definition of terrorism as described in *Suresh* and in the *Criminal Code*. The definition in *Suresh* is not the only possible definition of terrorism and that there is no single definition that must be applied (*Gutierrez* at paras 27-28). The Officer reasonably relied on the *Criminal Code* in his analysis.

The Decision is Reasonable

The Officer addressed the definitions of terrorism, analyzed the facts and reasonably found that there were reasonable grounds to believe that the applicant had engaged in in terrorism

[59] The Officer's 2009 memorandum provides the more detailed reasons for the decision. The Officer cited the relevant provisions in *Suresh* and the full definition of "terrorist activity" in subsection 83.01(1) of the *Criminal Code*.

[60] In *Suresh*, the Supreme Court of Canada provided the following inclusive definition of terrorism at para 98:

> [98] In our view, it may safely be concluded, following the *International Convention for the Suppression of the Financing of Terrorism*, that "terrorism" in s. 19 of the Act includes any "act

> intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". This definition catches the essence of what the world understands by "terrorism". Particular cases on the fringes of terrorist activity will inevitably provoke disagreement. Parliament is not prevented from adopting more detailed or different definitions of terrorism. The issue here is whether the term as used in the *Immigration Act* is sufficiently certain to be workable, fair and constitutional. We believe that it is.

[61] Subsection 83.01(1) of the *Criminal Code* provides definitions for several terms, including:

"terrorist activity" means	« activité terroriste »
(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:	a) Soit un acte — action ou omission, commise au Canada ou à l'étranger — qui, au Canada, constitue une des infractions suivantes :
[…]	[…]
(b) an act or omission, in or outside Canada,	b) soit un acte — action ou omission, commise au Canada ou à l'étranger :
(i) that is committed	(i) d'une part, commis à la fois :
(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and	(A) au nom — exclusivement ou non — d'un but, d'un objectif ou d'une cause de nature politique, religieuse ou idéologique,
[…]	[…]
(B) endangers a person's life,	(B) met en danger la vie d'une personne,

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(C) compromet gravement la santé ou la sécurité de tout ou partie de la population,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(D) cause des dommages matériels considérables, que les biens visés soient publics ou privés, dans des circonstances telles qu'il est probable que l'une des situations mentionnées aux divisions (A) à (C) en résultera,

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

(E) perturbe gravement ou paralyse des services, installations ou systèmes essentiels, publics ou privés, sauf dans le cadre de revendications, de protestations ou de manifestations d'un désaccord ou d'un arrêt de travail qui n'ont pas pour but de provoquer l'une des situations mentionnées aux divisions (A) à (C).

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of

Sont visés par la présente définition, relativement à un tel acte, le complot, la tentative, la menace, la complicité après le fait et l'encouragement à la perpétration; il est entendu que sont exclus de la présente définition l'acte — action ou omission — commis au cours d'un conflit armé et conforme, au moment et au lieu de la perpétration, au droit international coutumier ou au droit international conventionnel applicable au conflit ainsi que les activités menées par les forces armées d'un État dans l'exercice de

their official duties, to the extent that those activities are governed by other rules of international law.	leurs fonctions officielles, dans la mesure où ces activités sont régies par d'autres règles de droit international.

[62] The Officer was not required to apply the definition set out in *Suresh*. *Zarrin*, relied on by the applicant, does not establish that the definition in *Suresh* must be followed, rather, Justice Mosley found that the reasons and evidence in that case did not provide any insight into how the Officer made a decision and that *Suresh* would have provided guidance about how the determination should be made (at para 14). There is also no clear statement in *Fuentes* or *Naeem* that *Suresh* is the only definition that should be applied.

[63] In *Gutierrez*, Justice de Montigny noted that there is no definition of terrorism in the Act and while the Court has relied on the definition in *Suresh*, that is not the only possible definition (at paras 27-28). Justice de Montigny explained:

> [28] The fact remains that this is not the only possible definition of terrorism, as shown by the variety of wording in international instruments and various national statutes. The Supreme Court, moreover, recognized in *Suresh*, above, at para 95, that one searches in vain for an authoritative definition of terrorism. In choosing not to define terrorism in the *IRPA*, the Canadian Parliament refused to restrict itself to a narrow, rigid view of the term and left it to administrative decision-makers and ultimately to the courts to develop the concept flexibly, taking the circumstances into account. Consequently, the reasonableness of an inadmissibility finding related to terrorism will depend not on the decision-maker's application of a precise definition of this concept to the facts of the case but on the fit between the definition chosen (as long as it is reasonable and can be justified in principle) and the evidence on file. See, to the same effect, *Daud* at para 11; *Jalil* at para 32.
>
> [29] In this case, the officer chose to apply the definition of "terrorism" in section 83.01 of the *Criminal Code*. She certainly cannot be faulted for that, and the applicant did not present any

> arguments to that effect. It is possible that this definition is a little broader than the description of terrorism that the Supreme Court gave in *Suresh*, above. However, that is not sufficient to make her decision unreasonable. On the one hand, it must be noted that the Supreme Court indicated that the notion of terrorism in section 19 of the *Immigration Act*, RSC 1985, c I-2 "includes" the description set out at paragraph 27 of these reasons. On the other hand, it was certainly open to the officer to refer to the definition of terrorism inserted into the *Criminal Code* through the *Anti-Terrorist Act*, SC 2001, c 41, to the extent that the *IRPA* states in its preamble (s 3(1)(*i*)) that one of its objectives is to "promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks". Last, no one could argue that the acts of violence identified by the officer and committed by the MIR, the FPMR and the Milices rodriguistes are not acts of terrorism, even by adopting a narrower definition of terrorism than the one adopted by Parliament in the *Criminal Code*.

[64] The applicant contends that both the *Suresh* approach and the *Criminal Code* definition require that the act be intended to intimidate the public and the Officer did not analyze how the applicant's actions and intention did so. The applicant also argues that the Officer's memorandum does not show that the Officer assessed how the applicant's actions intentionally endangered a person's life or caused a serious risk to the health or safety of the public or any member of the public, which is one of the elements of the *Criminal Code* definition cited by the Officer.

[65] As noted above, in accordance with *Newfoundland Nurses*, the Court will look to the record to assess the reasonableness of the outcome. In the present case, the record supports the reasonableness of the decision.

[66] I do not agree that the Officer failed to assess how the applicant's actions led to the Officer's reasonable grounds to believe that the applicant engaged in terrorism. The Officer's 2009 memorandum is thorough. The Officer noted the complete definition provided in the *Criminal Code* as well as the *Suresh* definition. The Officer also noted that the reasonable grounds to believe standard requires an objective basis and the Officer reviewed the facts which support that objective basis. The Officer considered all the information and noted the applicant's admissions of his own conduct in participating with other youth in the setting of explosives and their purpose of scaring Israeli soldiers, as well as the applicant's conviction for security-related offences. The applicant stated that he demonstrated against the Israeli occupation and that the pipe bombs to scare soldiers were a form of psychological warfare.

[67] The Officer was justified in connecting the dots and finding that there were reasonable grounds to believe that the applicant's conduct reflected an intention to cause a serious risk to the health or safety of the public. Even if soldiers were the intended target, finding that this posed a risk to others is reasonable. The applicant's conduct was admitted to be for a political or ideological purpose and he admitted to participating, either as a party or directly.

[68] With respect to the applicant's argument that the Officer should have disclosed his independent research on pipe bombs, there was no breach of procedural fairness. The applicant had described the devices he had made with the youths he associated with and as such, he conveyed that he had some knowledge of pipe bombs.

The Officer did not ignore the applicant's evidence or submissions

[69] The applicant submits that the Officer did not take into account that: he was a youth at the time of the events; he only associated with other youth and did not actively participate in laying explosives except to scare animals; he was coerced to secure his cooperation with the Israeli authorities; and, he would not have been granted Israeli citizenship if the Israeli authorities had considered him to be a terrorist or a danger to the public.

[70] As noted above, the Officer's 2009 memorandum canvassed all the relevant information and noted the inconsistencies between the applicant's accounts. The Officer specifically noted the two different accounts regarding his participation in the laying of explosives. The memorandum notes that the applicant admitted to immigration authorities that he associated with Palestinian youth who laid pipe bombs near Israeli military patrols. He also admitted that he demonstrated against the Israeli occupation of the West Bank in 1984. He was subsequently convicted on a security-related charge. In 1996, the Israeli police unsuccessfully sought a warrant for his arrest on security grounds.

[71] The Officer considered the applicant's age at the time of the alleged offences and made several references to his age in the report. While the Officer does not specifically explore whether the applicant had the requisite knowledge or mental capacity to understand the nature and effect of his actions, there was no evidence before the Officer to suggest that the applicant lacked capacity at that time.

[72] The applicant also argues that his conviction should not be relied on because it was the result of coercion. The Officer referred to the Board's decision (in 2002) which noted Shabak's recruitment methods but found that this did not provide a basis for a well-founded fear of persecution. The applicant did not dispute that he received a reduced sentence, resettlement assistance, and permanent resident status and citizenship in Israel due to the information he provided to Shabak. Even if the applicant's conviction and sentence were not relied on, the Officer reasonably relied on the applicant's own admissions regarding his activities and their purpose.

[73] The Officer's finding that there are reasonable grounds to believe that the applicant participated in acts of terrorism is a reasonable finding which provides the justification for the Officer's finding that the applicant is a person described in paragraph 34(1)(c) of the Act. The findings which provide justification for the decision are "defensible in respect of the facts and law" (*Dunsmuir* at para 47).

JUDGMENT

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

No question was proposed for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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