

Federal Court



Cour fédérale

**Date: 20180306**

**Docket: IMM-846-17**

**Citation: 2018 FC 256**

**Ottawa, Ontario, March 6, 2018**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**HUSSEIN ALI SUMAIDA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr Hussein Ali Sumaida has at various times worked to overthrow the Iraqi regime of Saddam Hussein, informed on his fellow rebels to the Iraqi secret police, the Mukhabarat, spied on behalf of the Israeli intelligence service, Mossad, and acted as a double-agent for the Mukhabarat and Mossad. He recounts his personal history in his autobiography, *Circle of Fear*.

[2] Mr Sumaida first arrived in Canada in 1990 claiming refugee status. A panel of the Immigration and Refugee Board found that Mr Sumaida had a well-founded fear of persecution in the Middle East, but concluded that he was excluded from refugee protection for having committed crimes against humanity. The Board's decision was eventually upheld by the Federal Court of Appeal: [2000] 3 FC 66.

[3] In 2002, Mr Sumaida applied for permanent residence on humanitarian and compassionate grounds (H&C), and for a pre-removal risk assessment (PRRA). Both applications were dismissed. Mr Sumaida attempted to evade deportation, but he was eventually arrested and removed from Canada to Tunisia in 2005.

[4] However, with a forged passport, Mr Sumaida returned to Canada in 2006. He was found inadmissible to Canada and guilty of using a fraudulent travel document. He was subsequently released from custody on terms and conditions.

[5] Mr Sumaida submitted a second PRRA application in 2006, which was successful. The PRRA officer found that Mr Sumaida would likely be tortured if he returned either to Iraq or Tunisia. However, in 2009, his application for permanent residence in Canada was dismissed.

[6] In 2014, Mr Sumaida filed a second H&C application, which was dismissed. The H&C officer reviewed Mr Sumaida's background and his justifications for the various roles he had played over the years. The officer characterized Mr Sumaida's actions as espionage and found that Mr Sumaida downplayed his involvement in the Mukhabarat. The officer concluded that Mr

Sumaida was inadmissible to Canada as a member of the Mukhabarat, and was therefore ineligible for an H&C.

[7] Mr Sumaida challenges this latest H&C decision on the basis that the officer's finding that he was a member of the Mukhabarat was unreasonable, and because the officer had failed to define "espionage." He asks me to quash the officer's decision and order another officer to reconsider his application.

[8] I can find no basis for overturning the officer's decision. The officer reasonably concluded that Mr Sumaida's activities on behalf of the Mukhabarat amounted to membership in an organization involved in espionage. Therefore, I will dismiss his application for judicial review.

[9] There are two issues:

1. Was the officer's conclusion that Mr Sumaida was a member of the Mukhabarat unreasonable?
2. Was the officer obliged to define "espionage"?

## II. The Officer's Decision

[10] The officer reviewed Mr Sumaida's past and summarized the situation in Iraq under Saddam Hussein. Regarding the Mukhabarat, the officer quoted a passage from the US Central Intelligence Agency's library website in which a division of the Mukhabarat was described as being responsible for monitoring and targeting anti-Hussein groups outside of Iraq.

[11] The officer also considered Mr Sumaida's own description of his activities. Mr Sumaida stated that:

- He informed on opponents to Saddam Hussein while he was living in the UK because they were planning to commit acts of terrorism.
- He was merely an unpaid informant for the Mukhabarat.
- He assisted Mossad because he hated the religious fanatics he encountered in the UK.
- After his association with Mossad became known in Iraq, he was sent back there and sentenced to death. He avoided execution by promising to spy on Mossad for the Mukhabarat.
- He deliberately sabotaged his mission against Mossad and returned to Iraq, where he became involved in recruiting informants.
- He fled the Mukhabarat at the first opportunity.

[12] The officer doubted some of these claims. For example, the officer found that Mr Sumaida was more than an unpaid informant; he willingly contacted the Mukhabarat to expose opponents of the Hussein regime. In doing so, he was involved in espionage within the UK, an important Canadian ally. He also acted for an Iraqi regime with which Canada went to war in 1990.

[13] Based on this evidence the officer found that there were reasonable grounds to believe that Mr Sumaida was inadmissible to Canada as a member of a group engaged in espionage against Canada's interests, and ineligible for an H&C, based on ss 34(f) and 25(1) of the *Immigration and Refugee Protection Act, 2001, c 27* (see Annex).

III. Was the officer's conclusion that Mr Sumaida was a member of the Mukhabarat unreasonable?

[14] Mr Sumaida acknowledges that the term “member” has a broad meaning in the jurisprudence, but submits that the officer failed to apply the recognized criteria, such as the nature of a person's involvement in the group, the length of time he or she was involved, and the person's degree of commitment to the group's objectives (citing *Nassereddine v Canada (Minister of Citizenship and Immigration)* 2014 FC 85, and *Sinnaiah v Canada (Minister of Citizenship and Immigration)* 2004 FC 1576). Mr Sumaida maintains that the officer found membership in the Mukhabarat solely on the basis of his voluntary involvement in efforts to protect Iraq from violent attacks. There was no evidence, says Mr Sumaida, that he supported the objectives of the Mukhabarat. Further, he points out that the officer discounted the fact that he was an unpaid informant, contrary to the requirement to consider the nature of his involvement. In short, Mr Sumaida contends that he was no more than a human source for the Mukhabarat, not a member of it.

[15] I disagree with Mr Sumaida's submissions. There was evidence before the officer supporting a conclusion that he was a member of the Mukhabarat.

[16] The officer considered the nature of Mr Sumaida's activities on behalf of the Mukhabarat, the duration of his involvement, and his role in furthering the objectives of the group, including monitoring the activities of opponents of the Hussein regime. While Mr Sumaida may not have been paid for his role, that factor was merely one of many to consider. An unpaid informant may still be a member of a group.

[17] As for the definition of membership, in a somewhat different context, Justice David Stratas of the Federal Court of Appeal has stated that membership in a terrorist group may be inferred from “certain activities that materially support a terrorist group’s objectives, such as providing funds, providing false documents, recruiting or sheltering persons, . . . even though the activities do not directly link to terrorist violence” (*Mahjoub v Canada (Citizenship and Immigration)* 2017 FCA 157 at para 92). In other words, mere passive membership may be insufficient for the purposes of s 34(1)(f) but, on the other hand, proof of actual complicity is not required (see *Mahjoub v Canada (Citizenship and Immigration)* 2017 FCA 157 at paras 96-97).

[18] Here, Mr Sumaida knowingly carried out activities that materially supported the objectives of the Mukhabarat. This was sufficient evidence to support a finding that there were reasonable grounds to believe Mr Sumaida was a member.

IV. Was the officer obliged to define “espionage”?

[19] Mr Sumaida contends that the officer had a duty to define espionage before finding that the Mukhabarat met the definition of a group engaged in espionage contrary to Canada’s interests for the purposes of s 34(1)(f).

[20] I disagree.

[21] Espionage is defined in the case law as surreptitious or covert information gathering (*Qu v Canada (Minister of Citizenship and Immigration)* [2000] FCJ No 518 at para 48). The officer had no obligation to provide a more specific definition (*Afanasyev v Canada (Minister of*

*Citizenship and Immigration*) 2012 FC 1270 at para 20). While s 34(1)(a) was amended somewhat in 2013, the change in wording does not suggest a departure from previous case law.

[22] The evidence showed that Mr Sumaida covertly gathered information on instructions from the Mukhabarat, an Iraqi organization devoted to intelligence gathering. This evidence was sufficient to meet the definition of espionage. The officer's conclusion was not unreasonable.

[23] Mr. Sumaida also says that he was not specifically notified that the officer was considering the issue of espionage and, therefore, that he did not have a proper opportunity to address that issue. I note that the officer informed Mr. Sumaida that he may be inadmissible to Canada under s 34(1)(f), but did not specify that he based that concern on activities amounting to espionage under s 34(1)(a). However, the officer did inform Mr. Sumaida that the concern arose from Mr. Sumaida's association with the Mukhabarat. In all the circumstances, and given the role Mr. Sumaida played in that organization, I am satisfied that this amounted to adequate notice that espionage was a live issue.

#### V. Conclusion and Disposition

[24] The officer's conclusion that there were reasonable grounds to believe Mr Sumaida was a member of the Mukhabarat, and that the Mukhabarat was involved in espionage contrary to Canada's interests, was not unreasonable. Therefore, I must dismiss this application for judicial review. The parties requested an opportunity to make submissions on a possible question of general importance for me to certify; I will afford them that opportunity.

**JUDGMENT IN IMM-846-17**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. The parties may make submissions regarding certification of a question of general importance within 10 days.

"James W. O'Reilly"

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Judge



## Annex

Immigration and Refugee Protection Act, 2001, c 27	Loi sur l'immigration et la protection des réfugiés, LC 2001, c 27
Humanitarian and compassionate considerations — request of foreign national	Séjour pour motif d'ordre humanitaire à la demande de l'étranger
<p><b>25</b> (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.</p>	<p><b>25</b> (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.</p>
<b>Security</b>	<b>Sécurité</b>
<p><b>34</b> (1) A permanent resident or a foreign national is inadmissible on security</p>	<p><b>34</b> (1) Emportent interdiction de territoire pour raison de</p>

grounds for

(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;

...

(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).

sécurité les faits suivants :

a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;

[...]

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-846-17

**STYLE OF CAUSE:** HUSSEIN ALI SUMAIDA v THE MINISTER OF  
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**APPEARANCES:**

Jared Will FOR THE APPLICANT

Judy Michaely FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

JARED WILL & ASSOCIATES FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Deputy Attorney General of FOR THE RESPONDENT  
Canada  
Toronto, Ontario