

Federal Court



Cour fédérale

**Date: 20231130**

**Docket: IMM-5679-21**

**Citation: 2023 FC 1606**

**Ottawa, Ontario, November 30, 2023**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**SALEM MOHAMED SALEM AQEEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, a citizen of Yemen, is a protected person in Canada. In his claim for refugee protection, the Applicant reported that, between 2007 and 2014, he was a member of the Southern Peaceful Movement/Al-Hirak Al-Janoubi [Southern Movement]. His participation in political protests led to him becoming a target of the Yemen's National Security Bureau in 2009.

[2] The Applicant applied for permanent residence in April 2018. In April 2021, he received a procedural fairness letter [PFL] raising the concern that he might be inadmissible pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for being a member of an organization engaged in acts referred to in paragraphs 34(1)(b) and (c) of the IRPA (subversion by force and terrorism).

[3] The PFL described the Southern Movement as an umbrella movement of factions in favour of an independent Southern Yemen that was initially non-violent, but was believed to have transitioned into a pro-secession movement that had been accused by the Yemeni government of militarization with the support of Iran.

[4] In response to the PFL, the Applicant argued he had never participated in any violent activities and was targeted by Yemen for participating in four peaceful protests while working at a university. He also argued the Southern Movement was not a single organization with many branches, but rather a collection of distinct organizations.

[5] In a decision dated August 16, 2021, a Senior Immigration Officer [Officer] found the Applicant was a member of an organization that had engaged in or instigated subversion by force of a government, or had engaged in terrorism, and refused his permanent residence application on the basis that he is inadmissible to Canada.

[6] The Applicant applies under subsection 72(1) of the IRPA for judicial review of the August 16, 2021 decision. The Applicant argues the Officer erred in finding the Southern

Movement in Yemen to be an “organization” within the meaning of paragraph 34(1)(f) of the IRPA. The Respondent argues the decision is reasonable; although the Movement is made up of various factions, they share a common identity and organizational structure.

[7] The Officer’s decision is reviewable against the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 23-25 [*Vavilov*]; *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 at para 11).

## II. Decision under review

[8] After summarizing the Applicant’s refugee claim, the Officer reviewed the objective country documentation to determine whether the Southern Movement is an organization.

[9] The Officer noted “organization” is not defined in the IRPA but has been given a broad interpretation in the jurisprudence. The Officer stated that terrorist organizations are not structured and it is likely that some parts will be unaware of the activities of other parts. Citing *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 at paras 38-39, the Officer stated that the absence of a structure or the informal character of a group should not thwart the purposes of the IRPA, which prioritizes the security of Canadians. Identity, leadership, a loose hierarchy, and a basic organizational structure are some of the essential attributes of an organization. The Officer also relies on *Harkat (Re)*, 2010 FC 1241 at paras 89-90 [*Harkat (Re)*], which in turn cites paragraph 5 of *Husein v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1375 [*Husein*], for the definition of terrorist organizations as loosely structured and extremely secretive, with a common identity.

[10] Applying these attributes to the Southern Movement, the Officer concludes that the factions or organizations within the Southern Movement are united in their opposition to the current administration and share a common desire to restore the independence of Southern Yemen. The Officer finds this constitutes an identity. The Officer also finds the movement is represented by a list of known and identifiable leaders characterized by a hierarchy reflective of a basic organizational structure and that it therefore meets the broad definition of organization as defined in the jurisprudence.

[11] In considering membership, the Officer held that the term “member” as used in paragraph 34(1)(f) of the IRPA is to be given an unrestricted and broad interpretation, and that there is no need for a temporal relationship between a period of membership and the period during which an organization engaged in acts of subversion by force or terrorism (*Harkat (Re)* at paragraph 88 and *Yamani v Canada (Public Safety and Emergency Preparedness)*, 2006 FC 1457 at paras 12-13 [*Yamani*]). The Officer relied on the Applicant’s statements to the effect that he was a Southern Movement member from 2007 - 2014. The Officer also noted that the Applicant’s membership included the period where certain factions had engaged in radical activities in 2009 - 2010, that he had participated in demonstrations, and that he was sought as an informant by the Yemen government. These considerations led the Officer to conclude the Applicant was familiar with the organization, its objectives, its activities and its radicalization. The Officer noted membership did not require active involvement in activities amounting to subversion by force and concluded the Applicant was a member of the Southern Peaceful Movement/Al-Hirak Al-Janoubi from 2007 - 2014.

[12] After considering objective evidence, the Officer concluded the calls for violence in 2009 - 2010 by Southern Movement actors provide reasonable grounds to believe the movement engaged in acts of subversion by force against the Yemeni government. The Officer further concluded the movement had engaged in acts of terrorism, having targeted people not involved in armed conflict in order to intimidate a population or compel a government to do or abstain from doing something (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 98).

### III. Applicable legislation

[13] For ease of reference, it is helpful to reproduce the relevant portions of sections 33 and 34 of the IRPA:

#### **Rules of interpretation**

**33** The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

#### **Security**

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

[...]

**(b)** engaging in or instigating the subversion by force of any government;

#### **Interprétation**

**33** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

#### **Sécurité**

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

[...]

**b)** être l'instigateur ou l'auteur d'actes visant au

[...]	renversement d'un gouvernement par la force;
(c) engaging in terrorism;	[...]
[...]	c) se livrer au terrorisme;
(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).	[...] 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).

#### IV. Analysis

##### A. *The Decision is unreasonable*

[14] The Respondent submits, in light of the evidence, the jurisprudence and the purpose of the IRPA (i.e., to keep Canadians safe), it was reasonably open to the Officer to conclude the Southern Movement is an organization. The Respondent submits the Officer recognized the evidence indicating the group was decentralized or a loose coalition. However, the Officer concluded those various factions shared in their opposition to the government of Yemen and the desire to establish an independent South Yemen. The common goal demonstrated organizational identity. The Officer further reasonably relied on the evidence that identifiable and known leaders in a structure resembling a hierarchy represented the movement.

[15] The Applicant maintains that the Officer erred in concluding the Southern Movement is an “organization” as that term is used in paragraph 34(1)(f) of the IRPA. He argues it was an error for the Officer to rely on the definition of an organization in *Husein* because unlike the

definition in paragraph 5 of *Husein* – that an organization has leaders and a common objective, even where one part of an organization may be unaware of the activities of another – the Southern Movement is made up of “many organizations and activists” that share a common goal. The Applicant submits the objective evidence indicates that Southern Movement groups are fragmented, having been unable to develop common positions and alliances. There was no common leadership; rather, there was a collection of different local and regional groups that coordinated activities while acting independently. The movement is descriptive of these disparate groups, each with their own objectives and means of pursuing those objectives in favour of South Yemen autonomy. Despite the broad and liberal approach to what constitutes an organization under paragraph 34(1)(f) of the IRPA, the Applicant argues the Southern Movement cannot reasonably be found to meet the definition.

[16] I am satisfied that the Officer reasonably and accurately interpreted the applicable law and the meaning of “organization” for the purposes of paragraph 34(1)(f) of the IRPA, and the Applicant does not argue otherwise. However, I am not convinced the Officer’s finding that the the Southern movement is an organization is justified.

[17] In concluding that the various factions within the Southern Movement umbrella share a common identity and meet the the definition of an “organization,” the Officer relied upon the October 16, 2018 Response to Information Request [2018 RIR] (YEM106178 at Certified Tribunal Record [CTR] pages 25-32 in French and CTR pages 196-202 in English) and stated:

While some sources consider the movement to be an umbrella group that is decentralized, amorphous, or a loose coalition, it appears that the various factions of the Southern Movement are united in their opposition to the current administration and in their

desire to restore the independence of southern Yemen, and therefore have an identity in this respect. It also seems that the Movement is represented by a list of known and identifiable leaders characterized by a certain hierarchy and that it therefore has a basic organizational structure. I am of the opinion that the Southern Movement (Southern Peaceful Movement/Al-Hirak Al-Janoubi) meets the definition of the term “organization” as defined in case law. (CTR page 18, footnote omitted)

[18] The Officer concludes the Southern Movement is an “organization” based on two factors. The first is that the decentralized, amorphous, or loose coalition of various factions all share the common goal of restoring the independence of Southern Yemen. The second is that the movement is represented by a list of known and identifiable leaders characterized by a certain hierarchy.

[19] I have some concern with the Officer’s reliance on the common goal of independence shared among factions to then conclude a shared and common identity is established. There is no chain of analysis linking the common goal shared by disparate groups with the subsequent conclusion that there is a shared identity – the Officer’s conclusion is not explained or justified.

[20] I similarly question whether the Officer’s reliance on evidence that the movement was represented by a list of identifiable leaders was reasonable in the circumstances.

[21] The Officer does not specifically cite any documentary evidence to support the conclusion that the Southern Movement is led by an identifiable leadership. However, it appears the Officer relies upon the 2018 RIR. The 2018 RIR identifies the leadership and structure of the



Southern Movement, but this information postdates the Applicant's period of membership, 2007 - 2014, a membership period with which the Officer did not take issue.

[22] The country documentation evidence discloses an evolution in the movement of the disparate groups rallying in favour of independence or secession starting in 2007. In responding to the PFL, the Applicant cites documentary evidence to the effect that there was disagreement among these disparate groups with respect to the means of achieving the shared goal (Response to PFL at CTR pages 169-172). The CTR further discloses that it was in 2017 with the establishment of the inclusive Southern Transitional Council, in April of that year, that one faction came to dominate (CTR 211 and 314). The leadership group reported in the 2018 RIR may result from these 2017 events.

[23] Notably, the CTR also includes the June 28, 2013 RIR addressing the Southern Movement [2013 RIR] (YEM104475 at CTR pages 156-161). The 2013 RIR is cited in the Officer's decision but is not referenced in the "organization" portion of the Officer's analysis. Many of the sources describing the movement as "decentralised" or sharing any common leadership cited in the 2018 RIR do not appear in the 2013 RIR.

[24] The Officer's conclusion that the Southern Movement satisfied the definition of an "organization" relied heavily upon finding that the movement was represented by a list of known and identifiable leaders characterized by a certain hierarchy. Faced with contradictory evidence on the issue of organization, the Officer was required to engage in a consideration of the Southern Movement's evolving nature and to determine the more focused question of whether

the movement was an organization during the period of the Applicant's involvement from 2007-2014.

[25] The principle that membership is without temporal restrictions (*Yamani* at paras 12 and 13) is distinguishable from a circumstance where no organization existed at the time of an individual's involvement in a movement. In my view, temporality is of relevance when considering the question of whether or not a movement falls within the broad meaning of "organization" for the purpose of paragraph 34(1)(f) of the IRPA. Had the Officer engaged with the evidence the Applicant cited and relied upon in arguing the Southern Movement was not an organization, the Officer may well have concluded the Southern Movement was not an "organization" during the period of the Applicant's involvement (2007 - 2014). The failure to do so renders the decision unreasonable.

V. Conclusion

[26] For the above reasons, the Application is granted. The parties have not identified a question of general importance and none arises.

**JUDGMENT IN IMM-5679-21**

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

1. The Application is granted.
2. The matter is returned for redetermination by a different decision maker.
3. No question is certified.

**"Patrick Gleeson"**

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5679-21

**STYLE OF CAUSE:** SALEM MOHAMED SALEM AQEEL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 10, 2023

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** NOVEMBER 30, 2023

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