

Federal Court



Cour fédérale

Date: 20241022

Docket: IMM-2282-23

Citation: 2024 FC 1661

Ottawa, Ontario, October 22, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ALIAKBAR MURADI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Aliakbar Muradi, seeks judicial review of the December 21, 2022, decision of a Migration Officer at the Embassy of Canada, Amman, Jordan, who refused Mr. Muradi's application for permanent residence based on finding that Mr. Muradi was inadmissible to Canada pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Officer found that Mr. Muradi was inadmissible due to his membership in the Kurdish Democratic Party of Iran [KDPI] (also referred to as

PKDI), that there are reasonable grounds to believe has engaged in subversion by force against the Government of Iran and in acts of terrorism.

[2] Mr. Muradi submits that the decision is not reasonable and that the Officer breached procedural fairness.

[3] For the reasons that follow, the application is dismissed. There was no breach of procedural fairness. The Officer's conclusion that Mr. Muradi is inadmissible to Canada is reasonable based on the facts and the law: Mr. Muradi claimed that he could not return to Iran based on the risk he faced as a member of the KDPI; he acknowledged that the Youth Wing he joined was affiliated with the KDPI; he held a membership card in the KDPI despite his evidence that he did not participate in the KDPI; and, the law attributes a broad meaning to membership in such organizations.

I. Background

[4] Mr. Muradi is a Kurdish citizen of Iran. His family fled Iran in 1980 due to the Iran-Iraq war and he has resided in refugee camps since he was 5 years old.

[5] In August 2019, Mr. Muradi (with his wife and children) submitted an application for permanent residence in the Convention Refugee Abroad and Country of Asylum Class at the Canadian Mission in Amman, Jordan. Mr. Muradi sought refugee protection based on his inability to return to Iran due to his membership in the KDPI. He stated that he and his family would be in grave danger if they were to return to Iran.

[6] In May 2021, the Officer, with the aid of a Kurdish interpreter, interviewed Mr. Muradi via video conference.

[7] The Officer found that Mr. Muradi was seriously and personally affected by civil conflict in Iran and that he met the Asylum Class definition and did not have a durable solution in Iraq. However, the Officer found that Mr. Muradi may be inadmissible to Canada and that a comprehensive security screening was required. The security screening was conducted by the National Security Screening Division [NSSD] of the Canadian Border Security Agency [CBSA]. The NSSD relied on Mr. Muradi's responses at his interview with the Officer, including his statements that he joined the Youth Wing but left after a few months, that he had "not participated since the age of 16," that "when you reach 20 it becomes PDKI," and that he was "currently a member without participating".

[8] The NSSD assessed open source information and concluded that there are reasonable grounds to believe that the KDPI has engaged in subversion by force of the Iranian government and has engaged in terrorism. The NSSD also cited the jurisprudence regarding the notion of membership.

[9] The NSSD Report concluded that there are reasonable grounds to believe that Mr. Muradi is inadmissible pursuant to paragraph 34(1)(f) of the Act for being a member of an organization that there are reasonable grounds to believe has engaged in subversion by force against the Iranian government and in acts of terrorism. The Report noted that the determination whether Mr. Muradi is inadmissible "rests solely with the decision maker".

[10] In March 2022, following the receipt of the NSSD recommendation, the Officer sent Mr. Muradi a letter (referred to as a procedural fairness letter) noting the Officer's concern that Mr. Muradi may be inadmissible due to his membership in the KDPI. The letter requested a response within 30 days.

[11] Mr. Muradi's nephew responded by two emails on March 27, 2022, and a subsequent email on March 31, 2022. Mr. Muradi responded by email on April 4, 2022. Mr. Muradi's counsel responded with written submissions on April 25, 2022.

[12] The email from Mr. Muradi's nephew stated that Mr. Muradi was a member of PKDI "since he was 15-16 till a couple of years ago and I attach his old membership card to this email". He stated that "if you go anywhere near Iran and they somehow find out you are a member of the pdi or were a member, they will either imprison you or hang you". In the second email, the nephew noted that the "pdki has never been declared a terrorist group" and he suggested that the Officer contact a particular person knowledgeable about the topic. In the third email, the nephew asked for an update, adding, "my uncle was just a teenager when he signed up just to go to school. He has never been involved with them in anything other than a cardholder."

[13] Mr. Muradi's own response by email stated that after relocating to a refugee camp in 1981, he later learned of education opportunities from friends and family that required his registration with the Youth Union (also referred to as the Youth Wing) to access. He stated that he only later became aware that this was organized by the local Democratic Party of Iranian Kurdistan. He noted that he had explained to the Officer that he was only a member of the

“Youth group” for two years and was never a member of the KDPI. He explained that his nephew was confused in saying that he was a member until a few years ago and asked that all his nephew’s responses be ignored. He also stated that, at his interview, he had said that he did not understand why he was issued a membership card, as he was never a member nor affiliated with the KDPI, but the interpreter did not convey this.

[14] On April 25, 2022, Mr. Muradi’s counsel responded to the procedural fairness letter with submissions including background information about the KDPI recruitment and organization and noting that: the KDPI is not listed as a terrorist organisation; Mr. Muradi’s nephew is not fluent in Kurdish and miscommunicated certain information; any involvement of Mr. Muradi in the Youth Wing was minimal; the Youth Wing is distinct and should be treated as a separate entity; and, H&C factors should be considered.

II. The Decision under Review

[15] The Officer found that Mr. Muradi is inadmissible because there are reasonable grounds to believe that he is a member of the inadmissible class of persons described in paragraph 34(1)(f) of the Act due to his membership in the KDPI for which reasonable grounds exist to believe that the KDPI has engaged in subversion by force against the Government of Iran and in acts of terrorism (the Act, paragraphs 34(1)(b) and (c)).

[16] The Officer found that Mr. Muradi’s responses to the procedural fairness letter did not alleviate these concerns.

[17] The Officer also found that subsection 25(1) of the Act, which permits an exemption from any applicable criteria or obligations of the Act based on Humanitarian and Compassionate grounds [H&C], is not available where there is a finding of inadmissibility pursuant to section 34.

III. The Applicant's Submissions

[18] Mr. Muradi submits that the Officer's decision is not reasonable, including because: the Officer erred in finding that the KDPI is a terrorist organization in the absence of any evidence; the Officer erred in failing to distinguish between the Youth Wing and the KDPI; the Officer did not assess Mr. Muradi's degree of involvement in either the Youth Wing or the KDPI, the length of the time he was involved, or his intentions, purpose and commitment to the organization and its objectives; the Officer ignored or misapprehended his evidence and submissions in response to the procedural fairness letter; and, the Officer erred by failing to consider H&C factors.

[19] Mr. Muradi further submits that the Officer breached the duty of procedural fairness by not providing him with an opportunity to meaningfully respond to the Officer's concerns and due to errors in interpretation by Mr. Muradi's nephew and by the interpreter who assisted at Mr. Muradi's interview.

[20] Mr. Muradi argues that his nephew, who assisted him with his application and responded to the procedural fairness letter, is not sufficiently fluent in Kurdish and did not accurately state Mr. Muradi's affiliation with the KDPI, which was only with the Youth Wing. He again submits that any responses from his nephew should be ignored. He also reiterates that the interpreter at

his interview failed to convey that he repeatedly stated that he only attended one meeting and could not understand why he was issued a membership card.

[21] Mr. Muradi also alleged bias by the Officer, but did not support this allegation with any evidence and did not pursue this allegation at the hearing.

[22] Mr. Muradi makes several other arguments that are either not relevant or are contrary to the established jurisprudence.

IV. The Respondent's Submissions

[23] The Respondent notes that Mr. Muradi based his application for a permanent resident visa as a Convention Refugee on being a member of the KDPI. Mr. Muradi attested that he could not return to Iran because he is a member of the KDPI, he would be arrested for engaging in KDPI activities and that he and his family would be in grave danger if they were to return.

[24] The Respondent submits that formal membership or personal participation in specific acts of the organization is not required to fall within paragraph 34(1)(f). The term "membership" has a broad meaning; there is no temporal component for either the organization or its members.

[25] The Respondent further submits that the Officer reasonably found KDPI used acts of violence and assassinations to achieve their goal of independence from Iran through armed conflict, noting that this Court has recognized that the KDPI engaged in violent actions including violent insurrection against the government of Iran in 1967-1986 and in the 1980s and 1990s.

[26] The Respondent also notes that, contrary to Mr. Muradi's submission, the Officer did not err in failing to consider the notion of complicity; *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 has no application to the paragraph 34(1)(f) analysis.

[27] The Respondent notes that based on Mr. Muradi's admission to being a member of the Youth Wing and to have become a youth member of the KDPI at the age of 20, his membership card, and his claim that he if he returned to Iran he would be arrested, detained and executed because of his KDPI involvement, the Officer reasonably concluded that Mr. Muradi was a member of the KDPI.

[28] The Respondent disputes the allegations of any breach of procedural fairness, noting that Mr. Muradi received a procedural fairness letter explaining the Officer's concerns and providing him with an opportunity to address those concerns.

[29] The Respondent further submits that Mr. Muradi has not provided any evidence to support his contention that the interpreter failed to adequately translate his statements at the interview.

V. Issues and Standard of Review

[30] Although Mr. Muradi raised several arguments, the key issues are:

1. Whether the Officer breached procedural fairness by:
 - a. denying Mr. Muradi a meaningful opportunity to address the Officer's concerns, and/or

- b. failing to provide adequate interpretation at the interview; and
2. Whether the Officer reasonably concluded that Mr. Muradi is inadmissible pursuant to paragraph 34(1)(f) of the Act because he was a member of an organization described in paragraphs 34(1)(b) and 34(1)(c).

[31] Where issues of procedural fairness are raised, the Court must determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances. The Court must ask “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). Where a breach of procedural fairness is found, no deference is owed to the decision-maker.

[32] The scope of the duty of procedural fairness is variable and is informed by several factors established by the Supreme Court of Canada in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 21 [*Baker*]. In *Baker*, the Supreme Court of Canada explained that procedural fairness is based on the principle that individuals affected by decisions should have the opportunity to present their case and to have decisions affecting their rights and interests made in a fair and impartial and open process “appropriate to the statutory, institutional, and social context of the decision” (*Baker* at para 28).

[33] Whether the decision is reasonable is reviewed in accordance with the principles set out in *Canada (Minister of Citizenship and Immigration v Vavilov)*, 2019 SCC 65 [*Vavilov*]. A

reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91). A decision should not be set aside unless it contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

VI. Relevant statutory provisions

[34] Pursuant to paragraph 34(1)(f) of the Act, members of organizations that engage in espionage, subversion, or terrorism are inadmissible to Canada on security grounds:

Security	Sécurité
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
(a) engaging in an act of espionage that is against Canada or that is contrary to Canada’s interests;	a) être l’auteur de tout acte d’espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;
(b) engaging in or instigating the subversion by force of any government;	b) être l’instigateur ou l’auteur d’actes visant au renversement d’un gouvernement par la force;
(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;	b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s’entend au Canada;
(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).

[...]

Exception — application to Minister

42.1 (1) The Minister may, on application by a foreign national, declare that the matters referred to in section 34, paragraph 35(1)(b) and subsection 37(1) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that it is not contrary to the national interest.

[...]

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).

[...]

Exception — demande au ministre

42.1 (1) Le ministre peut, sur demande d'un étranger, déclarer que les faits visés à l'article 34, à l'alinéa 35(1)b) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de l'étranger si celui-ci le convainc que cela ne serait pas contraire à l'intérêt national.

VII. The Officer did not breach procedural fairness

A. *Mr. Muradi had a meaningful opportunity to address the Officer's concerns*

[35] The onus was on Mr. Muradi to establish that he met the criteria for permanent residence as a member of the Convention Refugee or Country of Asylum Class. Mr. Muradi “knew the case he had to meet” and he was given a reasonable and meaningful opportunity to participate and to address the Officers concerns. Mr. Muradi was interviewed by video conference. Following the security screening by the NSSD, which was “non favourable”, the Officer sent Mr. Muradi a procedural fairness letter outlining the Officer's concerns about Mr. Muradi's membership in the KDPI. Mr. Muradi's nephew responded, as did Mr. Muradi, by email,

followed by lengthy submissions by Mr. Muradi's lawyer. The Officer considered all the responses, and these are reflected in the GCMS notes.

[36] There was no requirement for the Officer to provide a further hearing or follow up interview in these circumstances (see for example, *Singh v Canada (Citizenship and Immigration)*, 2016 FC 826 at paras 53-54).

B. *There was no breach of procedural fairness due to alleged inadequate translation*

[37] Mr. Muradi argues that his nephew misstated information in Mr. Muradi's application and in the responses to the procedural fairness letter because his nephew is not fluent in Kurdish. If this is so, it is not the Officer's error to rely on the information set out in the Application form. As noted by the Officer, Mr. Muradi based his claim that he could not return to Iran on his membership in the KDPI. Mr. Muradi reiterated this at his interview.

[38] While he now submits that his nephew initially misstated his membership as in the KDPI, rather than only in the Youth Wing, Mr. Muradi provided the same or similar information at his interview. He explained that he joined the Youth Wing for educational opportunities, but also stated that he "is" a member of the KDPI but never participated and that he could not return because he "is" a member of the KDPI. At the interview, Mr. Muradi did not raise any concerns regarding his interaction with the interpreter or about the quality of the interpretation. Mr. Muradi's June 2023 affidavit states only that the interpreter spoke a different dialect, but that he understood the interpreter.

[39] The jurisprudence has established guiding principles regarding the determination of whether allegations of inadequate interpretation amount to a breach of procedural fairness. These include that the goal is linguistic understanding, not perfect translation; and, that an applicant must raise concerns about the adequacy of the translation at the first reasonable opportunity (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 [*Mohammadian*]; *Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161 at para 3 [*Singh*]).

[40] Mr. Muradi has not established that there was any breach of procedural fairness arising from the interpretation at his interview. The GCMS notes, prepared at the time of the interview, reflect the questions and answers and do not convey that Mr. Muradi misunderstood the questions—although several of his answers may reflect a less than perfect translation. For example, he stated that he left the Youth Wing after a few months, but also stated that he left after a year. He stated he was only a member of the Youth Wing, and “that everyone who came is KDPI – I am not a member but have a card”, and further added, “I was a in Pdki activities in Iraq and I am afraid of the police there I am currently a member without participating”.

[41] There is little that Mr. Muradi now attests to that was not considered by the Officer due to the alleged omissions by the interpreter.

[42] The GCMS notes reflect that the Officer acknowledged all the responses to the procedural fairness letter, including Mr. Muradi’s response that the interpreter failed to convey

that he stated that he was only a member of the Youth Wing. The GCMS notes also reflect the interview questions and answers, almost verbatim, and contemporaneously.

VIII. The Officer's conclusion that Mr. Muradi is in an inadmissible class of persons pursuant to paragraph 34(1)(f) is reasonable

A. *The Officer did not err in finding that there were reasonable grounds to believe the KDPI is an organization that engages in terrorism and subversion*

[43] The Officer reasonably found that the KDPI is an organization that engages in subversion by force and terrorism against the Government of Iran based on the evidence before the Officer.

[44] The Officer relied on the CBSA's NSSD Report, which included an analysis of open source data and the jurisprudence on the characterization of the KDPI's activities. The Officer reasonably found that reasonable grounds exist to believe that the KDPI is an organization that is engaging, has engaged or will engage in acts of subversion by force and terrorism.

[45] As the Respondent notes, subversion is not limited in the way that the Applicant suggests (*Maqsudi v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1184 at paras 45-48), and *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 has no application to the paragraph 34(1)(f) analysis (*Wasta Ismael v Canada (Citizenship and Immigration)*, 2022 FC 1520 at paras 26-28).

[46] Whether the Government of Canada lists the KDPI as a terrorist organization under the *Criminal Code* is not determinative, although this can be a consideration (*Rana v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1080 at para 57; *Karakachian v Canada (Citizenship and Immigration)*, 2009 FC 948 at para 40).

B. *The H&C exemption is not available*

[47] The Officer did not err in failing to consider Mr. Muradi's H&C submissions. The H&C exemption is not available where there is a finding of inadmissibility pursuant to section 34. The wording of subsection 25(1) is clear; the Minister is not required to consider H&C factors where an applicant is found to be inadmissible to Canada pursuant to sections 34, 35, 35.1 or 37.

C. *The Officer did not err in finding that reasonable grounds exist to believe that Mr. Muradi is inadmissible pursuant to paragraph 34(1)(f) due to his membership in an organization described in paragraphs 34(1)(b) and 34(1)(c)*

[48] Mr. Muradi's claim that he cannot return to Iran due to his membership in KDPI places him in a difficult position that pits his denial of his involvement in the KDPI against the basis of his claim.

[49] As noted above, the Officer reasonably found that the KDPI engaged in subversion and terrorism and that a member of the KDPI would be inadmissible pursuant to paragraph 34(1)(f).

[50] The Officer concluded that Mr. Muradi is a member of the KDPI, noting:

In his submissions in response to the PFL. PA confirmed that he was a member of the Youth Union of the KDPI for two years but

denies any involvement since then. This is inconsistent with the information on his Schedule A signed by PA and information provided at the interview where PA said that he is currently a member, but not active, and he has a membership card. I have reasonable grounds to believe that PA is still a member of the KDPI.

[51] The Officer's finding that there were reasonable grounds to believe that Mr. Muradi is still a member of the KDPI is justified based on the evidence before the Officer and the jurisprudence regarding membership.

[52] In *Canada (Public Safety and Emergency Preparedness) v Ukhueduan*, 2023 FC 189 at paras 21-23 [*Ukhueduan*], Justice Gascon explained the notion of membership, noting that a broad interpretation is required and that informal participation can be sufficient to find membership:

[22] Nothing in paragraph 34(1)(f) of the IRPA requires “a ‘member’ to be a ‘true’ member who contributed significantly to the wrongful actions of the group” (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 [*Kanagendren*] at para 22). On the contrary, it is trite law that the criteria for finding membership in an organization engaging in subversive acts or terrorism pursuant to paragraph 34(1)(f) are relatively easy to meet (*Kanagendren* at para 22; *Mirmahaleh v Canada (Citizenship and Immigration)*, 2015 FC 1085 at para 10; *Haqi v Canada (Citizenship and Immigration)*, 2014 FC 1167 at paras 36–37). Actual or formal membership in an organization is not required, nor is an actual involvement or active participation in the wrongful subversive or terrorist activities of the organization (*Opu v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 650 at para 100). There is no need for a significant level of integration within the organization (*Poshteh* at paras 30–31).

[23] Moreover, a person's admission of membership in an organization is sufficient to meet the membership requirement within the meaning of paragraph 34(1)(f) of the IRPA, “[r]egardless of the nature, frequency, duration or degree of involvement” (*Foisal v Canada (Citizenship and Immigration)*),

2021 FC 404 at para 11; see also *Khan v Canada (Citizenship and Immigration)*, 2017 FC 397 [*Khan*] at para 31). Once membership is admitted, it is membership for all purposes (*Al Ayoubi v Canada (Citizenship and Immigration)*, 2022 FC 385 at paras 24–25; *Khan* at para 31). In *Nassereddine v Canada (Citizenship and Immigration)*, 2014 FC 85, where the applicant admitted he was a member of the Amal Movement, the Court held the following at paragraph 57:

Of note is that most of the case law requiring consideration of various criteria to determine if an applicant is a member in a terrorist organization, including all of the cases referenced above, is concerned with situations where the applicant had not admitted membership in a terrorist organization. That is not, and in my view distinguishes, the situation in this case where the Applicant has consistently acknowledged that he was a member of Amal.

[Emphasis added.]

[53] Mr. Muradi admitted that he joined the Youth Wing but stated that he left after a few months. However, he also stated that he “is” a member of the KDPI, holds a membership card, but he did not participate in the KDPI. He stated that if he returned, he would be “arrested, detained and executed by the regime because I was in Pdki activities in Iraq”, and “I am currently a member without participating... I have a card. I have not participated...” Although there is some inconsistency in his account, he did admit to being a member of the KDPI, and he stated that the Youth Wing was affiliated with the KDPI. Given this admission, the Officer was not required to assess Mr. Muradi’s level of participation or support.

[54] The jurisprudence has also established that there is no temporal aspect to membership. In *Ukhueduan* at paras 32-33, Justice Gascon noted, “[t]he wording of the provision refers explicitly to the past, present, and future activities of an organization. The Court has also established that

paragraph 34(1)(f) does not require a temporal connection between membership and the subversive or terrorist acts of the organization...”

[55] In Schedule A to his visa application, Mr. Muradi stated that he “is” a member of the KDPI and for this reason he cannot return. His wife made the same statement in her joint application.

[56] The Officer did not err in finding that Mr. Muradi’s responses to the procedural fairness letter were not consistent with Schedule A or the interview. Although at the interview Mr. Muradi emphasized that his membership in the KDPI seemed to have been by virtue of his age and that he left the Youth Wing after several months at the age of 16, he did not offer an explanation about why he still held a KDPI membership card. His nephew’s response, which Mr. Muradi now also asks be ignored due to language barriers, suggests that he asked that it be cancelled, but provided no further details.

[57] Mr. Muradi also now submits that although he was only ever a member of the Youth Wing for a short period, he would be regarded as a member of the KDPI if he returned to Iran because the authorities in Iran would not make this distinction. I note that this argument was not made to the Officer.

[58] As Mr. Muradi explained, he and his family have experienced an uncertain and extremely difficult life in refugee camps. Mr. Muradi family’s application for permanent residence pursuant to the Country of Asylum Class had passed all hurdles other than the security screening. The

Officer's finding of inadmissibility is a harsh blow to the family. However, to respect the principles of administrative law as established in the jurisprudence, the Court must defer to the Officer's decision barring any "sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). No such shortcomings can be found in the Officer's decision.

[59] At the hearing of this Application for Judicial Review, I inquired whether Counsel for Mr. Muradi had explored the applicability of subsection 42.1(1) of the Act, which provides that, on application, the Minister may grant relief by declaring that certain matters set out in section 34 do not constitute inadmissibility if the Minister is satisfied that it is not contrary to the national interest.

[60] In *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at paras 23-26), the Federal Court of Appeal noted that paragraph 34(1)(f) is informed by contextual and purposive considerations, one of which is the Minister's ability to grant relief: "[b]ecause of the very broad range of conduct that gives rise to inadmissibility under paragraph 34(1)(f), the Minister is given discretion to grant relief against inadmissibility".

[61] An application pursuant to subsection 42.1 is available to any foreign national found inadmissible by section 34 (*Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at para 80). This Court has recognized that it applies to foreign nationals that are found inadmissible under paragraph 34(1)(f) (see for example, *Tsegay v Canada (Citizenship and Immigration)*, 2023 FC 1263 at para 23; *Fatum v Canada (Citizenship and Immigration)*, 2022

FC 1495 at paras 53-54; *Ugbazghi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 694 at para 47).

[62] In *Ukhueduan* at para 29, Justice Gascon questioned why the decision maker (in that case, the Immigration Appeal Division [IAD]) had not considered section 42.1:

[29] I would add, as the Minister noted, that the IAD seems to have forgotten that an applicant has the option of applying to the Minister under section 42.1 of the IRPA to overcome findings of inadmissibility. This exception is intended to remedy the harsh results that may arise in some cases from the broad interpretation which must be given to section 34 of the IRPA (*Abdullah* at para 26; *Yamani v Canada (Public Safety and Emergency Preparedness)*, 2006 FC 1457 [*Yamani*] at paras 13–14).

[63] My similar question should not be interpreted as suggesting that relief would necessarily be granted, only that it appears that this provision was not considered by counsel for Mr. Muradi.

JUDGMENT in file IMM-2282-23

THIS COURT'S JUDGMENT is that

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2282-23

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