Date: 20080514

Docket: IMM-4674-07

Citation: 2008 FC 610

Vancouver, British Columbia, May 14, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JAVED MEMON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Immigration Appeal Division of the Immigration and Refugee Board (IAD) found that Mr. Memon was a member of an organization that engages, has engaged, or will engage in terrorism and therefore found that he was inadmissible to Canada. In my view, that decision was reasonable and open to the IAD on the record before it.

I. Background

[2] Mr. Memon is a citizen of Pakistan. He arrived in Canada in 1998 and made a refugee claim which was denied in May 1999. In November 1999, he married a Canadian citizen and a spousal application for permanent resident status was filed.

[3] After he applied for permanent residence, a report was written with respect to Mr. Memon under subsection 44(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. The report stated that Mr. Memon was inadmissible under subsection 34(1)(f) of the *Act* as there were reasonable grounds to believe that he was a member of an organization that engages, has engaged or will engage in terrorism.

[4] The standard of proof required for a finding of inadmissibility made under s. 34 is explicitly set out in s. 33 of the *Act*. Sections 33 and 34 the *Act* read as follows:

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	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.
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 or an act of	a) être l'auteur d'actes d'espionnage ou se livrer à la

subversion against a democratic government, institution or process as they are understood in Canada;	subversion contre toute institution démocratique, au sens où cette expression s'entend au 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;
(c) engaging in terrorism;	c) se livrer au terrorisme;
(d) being a danger to the security of Canada;	d) constituer un danger pour la sécurité du Canada;
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
(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) 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) ou c).

[Emphasis added]

[5] The report was referred to the Immigration Division of the Immigration and Refugee Board (ID) for an admissibility hearing. On November 30, 2005, the ID decided that the section 44 report was not well-founded. The Minister appealed to the IAD.

[6] At the IAD the parties agreed that the appeal would proceed based on the record before the ID and its hearing transcript without need for an oral hearing before the IAD. The parties also agreed to the following facts:

> The respondent [Mr. Memon] considered himself a supporter of the Altaf faction of the Mohajir Quami Movement (the "MQMA") from

> 1992 to 1994. He did not engage in any activities with the MQMA during this period.
>
> From 1994 to 1999 the respondent, [Mr. Memon] was a member of the MQMA. He engaged in a variety of activities in support of the MQMA. He provided donations to the MQMA. He also collected donations from other MQMA supporters and brought them to his local MQMA office. He made and posted flyers for MQMA meetings. He attended MQMA demonstrations at the press club, the Governor's house, the Chief Minister's house and police stations. He assisted an MQMA candidate in the 1997 election by handing out leaflets and asking people for their support.

[7] In addition to the documents already on record before the ID, the Minister submitted several other country condition documents to the IAD, including reports from Amnesty International, the United States Department of Justice and the Immigration and Refugee Board.

[8] On October 16, 2007, the IAD found that there were reasonable grounds to believe an organization of which Mr. Memon was a member, the MQMA, committed acts of terrorism, including operating torture chambers, engaging in rocket launch attacks against police and television offices, and kidnapping and killing reporters, editors and publishers. It ordered the deportation of Mr. Memon.

II. The MQM

[9] Mr. Memon admits to having been a member of the Altaf faction of the Mohajir Quami Movement. The materials before the IAD and this Court with respect to the organizations relevant to the determination made by the IAD may be summarized in the following manner.

[10] In 1984 Altaf Hussein founded the Mohajir Quami Movement (the "MQM"). Between 1990 and 1992, a faction of the MQM, led by Afaq Ahmed and Aamir Khan, broke away from the MQM. This faction was called MQM Haqiqi, literally the "real" MQM which I shall refer to in these reasons as the "MQM-H". The main portion of the MQM after the MQM-H faction left continued to be led by Altaf Hussein and became known as the MQM Altaf, or MQM-A, although it was still referred to by many, including itself, as the MQM. This fact is critical to the Applicant's initial argument with respect to the unreasonableness of the IAD in relying on materials citing abuses carried on by the MQM as if it were a reference to the MQM-A. The Applicant admits to being a member of this organization. In or about 1997, the Mohajir Quami Movement changed its name to the Muttahida Quami Movement which is also referred to in the materials as the MQM or the MQM-A.

III. Grounds of Review

[11] The Applicant raises three aspects of the IAD decision as the basis of this application:

1. The IAD failed to distinguish between the acts of the MQM-H faction from those of the MQM-A faction;

2. The IAD erred in finding the documentary evidence was sufficiently credible and trustworthy to establish reasonable grounds to believe that the MQM-A committed acts of terrorism; and

3. The IAD erred in finding reasonable grounds existed for determining that the MQM-A engaged in acts of terror against civilians and other persons not taking an active part in the hostilities in a situation of armed conflict.

[12] The issues raised in this application are questions of fact and questions of mixed fact and law. The appropriate standard of review of the IAD decision is reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9. In applying this standard, I take my guidance from the following statement of the Court in paragraph 47 of that decision:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[13] It is also relevant in reviewing the IAD decision to keep in mind the standard of proof required when making a determination under section 33 of the *Act* of inadmissibility. The standard of proof under s.33 was explained by the Supreme Court of Canada in *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100 [*Mugesera*], at para. 114:

> The FCA has found, and we agree, that the "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities: *Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433 (C.A.), at p. 445; *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (C.A.), at para. 60. In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information: *Sabour v. Canada (Minister of*

> *Citizenship & Immigration)* (2000), 9 Imm. L.R. (3d) 61 (F.C.T.D.)
> [Emphasis added]

[14] Given these legislative provisions and the judicial interpretation thereof, as the Applicant's membership in the MQM-A was not in dispute, in order to determine whether the Applicant was inadmissible the IAD had to assess whether there was an objective basis, based on compelling and credible information, to believe that the MQM-A engages or has engaged in terrorism.

IV. Analysis

Whether the IDA erred in failing to distinguish the acts of the MQM-H from those of the MQM-A?

[15] The Applicant submits that the IAD erred in relying on evidence that described violent acts of the MQM as if they were undoubtedly acts of the MQM-A when, it was argued, they could be (and it was suggested were) acts of the MQM-H.

[16] It was argued that the IAD placed considerable weight on a transcription error of the evidence: Mr. Memon's statement is recorded in the transcript of the ID as being "when the name appears as Mohajir Quami Movement…automatically it goes to the group of Altaf Hussein". The Applicant submitted an audio copy of the hearing and a translator's certification to show that the transcription of this portion of the ID hearing was in error and that the Applicant actually stated "when the name appears as Muttahida Quami Movement…automatically it goes to the group of Altaf Hussein".

[17] While there was an error in the written transcription of Mr. Memon's evidence, I find that little turned on this discrepancy. There was ample evidence before the IAD that made specific reference to the MQM-A having participated in violent acts which was also relied upon by the IAD in reaching its conclusion. Some of these are referenced set out later.

[18] As pointed out by the Respondent, the IAD noted that Mr. Memon himself testified that MQM-H was a splinter group of the original MQM and the main movement, headed by Altaf Hussein, continued from the original MQM as the MQM-A. Further, the IAD noted that Mr. Memon refers to his involvement in the MQM and the MQM-A almost interchangeably. Importantly, in my view, the Applicant submitted a letter dated October 28, 1998, from the organization attesting to his membership in the Muttahida Quami Movement (MQM) and the record contained another letter from the International Secretariat of the Muttahida Quami Movement (MQM) which contains the following statement: "You have enquired about certain terms that are referred to the people belonging to the MQM, Muttahida Quami Movement – formerly known as Mohajir Quami Movement". Accordingly, it was not unreasonable for the IAD to conclude that references to acts of the MQM were acts of the MQM-A.

[19] Further, the Applicant has not pointed to any evidence on the record that suggests the IAD ignored evidence which would lead to the conclusion that the MQM, as popularly referred to, is a separate organization from the MQM-A. In fact, the IAD specifically mentions this lack of contrary evidence when reaching its conclusion:

> I take it as a negative inference that no evidence has been produced to show that the MQM-A is a different organization than the MQM to counter the position put forward by the respondent [Mr. Memon] himself on this issue.

[20] Further, even if one were to accept that there are occasions where there may be some confusion as to whether the acts complained of were carried out by the MQM, MQM-A or MQM-H, the 1996 Amnesty International Report makes it clear that in Karachi, where the Applicant was a member of the MQM-A, all factions were equally responsible for the acts of terrorism being committed.

> In Karachi, the two factions of the MQM…are pitted against each other and several of them oppose the government. These confused lines of conflict enable each group as [sic] also the government to hold others responsible for abuses. However, Amnesty International believes that the available evidence strongly suggests that all the armed opposition groups operating in Karachi are responsible for torture, abductions and killings.

Whether the IAD erred in finding the documentary evidence was sufficiently credible and trustworthy to establish reasonable grounds to believe that the MQM-A committed acts of terrorism?

[21] The Applicant submitted that the IAD placed inappropriate weight on the Amnesty International Reports which, it was argued, merely raised a suspicion of terrorism but did not meet the reasonable grounds test as defined in *Mugesera*. I find that the Applicant's argument is without merit.

[22] The IAD's decision addresses this issue thoroughly and concludes:

> Regarding the sufficiency of sources, I am of the opinion that the documentary sources in this case are similar but more comprehensive than those in the *Omer* and *Jalil* cases. In the present case there are numerous commentaries and sources but I find as in *Jalil,* that the Amnesty International Reposts are the easier to find

> credible and reliable. I am persuaded by their statements [paragraphs 38-40 above] that they find their information from fact finding missions to assess on the spot, they cross check and corroborate information from a wide variety of sources and contacts, and they review for political impartiality. However I do not rely solely on the Amnesty material but rely on that material, together with corroboration and consistent reporting and commentary from other sources.

[23] I find that this is a reasonable conclusion for the IAD to reach. The IAD listed numerous sources for its information and, having reviewed much of that material, I have concluded that it supports, in large part, the view expressed by Amnesty International.

[24] Further, the IAD thoroughly and in a detailed manner addressed the sufficiency of sources and cites the holdings from several decision of this Court that address the reliability of near identical documentation (see e.g. *Jalil v. Canada (Minister of Citizenship and Immigration),* 2007 FC 568 and *Omer v. Canada (Minister of Citizenship and Immigration),* 2007 FC 478). In its decision, the IAD quotes *Khan v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1053 at para 14-15[1]:

> With respect to this argument, I find that a complete reading of the Report (AR, p.37) does not bear out the credibility argument advanced. While the Report does state that Amnesty International was unable to independently verify the reports of torture, it goes on to state the information was gathered by a variety of sources being members of other political parties, the media, the army, and "observers". I find no error in the Member's willingness to give the Report weight for the stated reason that the "reappearance of similar information and incidents in diverse publications contribute to the trustworthiness of the documents" (AR, p. 19, para. 31).

[1] The IAD incorrectly cites this decision as *Kuan* 2005 FC.

> As a result, I have no hesitation in agreeing with Counsel for the Respondent's argument that the evidence contained in Tab 5, while it might be less than proof on a balance of probabilities, is more than a flimsy suspicion. As a result, I find that the evidence in Tab 5 meets the standard of "reasonable grounds to believe" as that term is used in s. 34(1)(f).

[25] It was reasonable for the IAD to apply this reasoning. Therefore, I reject the Applicant's argument on this point.

Whether the IAD erred in finding reasonable grounds existed for determining that the MQM-A engaged in acts of terror against civilians or other persons not taking an active part in the hostilities in a situation of armed conflict?

[26] Terrorism is not defined in the *Act.* The Supreme Court of Canada in *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1, [2002] 1 S.C.R. 3 [*Suresh*] provided the definition of terrorism that is to be applied. This definition from paragraph 98 of S*uresh* was applied in this case by the IAD:

> 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 [the former *Immigration 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. [Emphasis added]

[27] The Applicant argues that the IAD was unreasonable in reaching the conclusion that the acts attributed to the MQM-A were "terrorism" as defined in *Suresh*, because the intended targets of the acts in question were not "civilians" or "other persons not taking an active part in the hostilities".

[28] I find that the IAD conclusion on this point was also reasonable. The Applicant appears to be arguing that the only way someone can be a civilian is if they are completely neutral in a conflict, without any type of political affiliation. The evidence referred to by the IAD speaks of the targets of attacks as political opponents, dissidents, family members of political opponents, television stations, journalists, members of the journalistic profession, and other people whose political affiliation is unknown. As one example, one Amnesty International report quoted by the IAD states:

> The army in June 1992 said it had uncovered 23 torture cells in Karachi in which the MQM reportedly tortured, and sometimes killed MQM dissidents and political opponents; military spokesmen said the cells had been found in MQM offices, schools and hospitals.
>
> Newspapers in Pakistan, whose editors had over the years repeatedly told Amnesty International that they were being intimidated, harassed and physically attacked by MQM members, reproduced photographs of the alleged torture chambers showing blood-splattered walls, electrical gadgets supposedly used for torture, and ropes and chains dangling from the ceiling. Some of the torture cells…were alleged to have been rape cells, in which dissident women were gang-raped by MQM workers. The newspapers also carried extensive interviews with persons describing themselves as victims of MQM torture, including rape, and with relatives of people who allegedly died in MQM custody. "The News" and "Dawn" of 25 June 1992 cite several women whose sons or husbands allegedly haven [sic] tortured to death in MQM torture cells in Landhi, Karachi...

[29] Even if I were to accept the Applicant's assertion that Pakistan did qualify as being in a state of armed conflict at the time in question, it would be an impossible burden to require that, before the IAD could find group was guilty of terrorist activity, it prove definitively that the target was a completely neutral party. Given that the evidence cited by the IAD speaks to a wide range of victims of the MQM's violent activities, including members of the journalist community and family members of political opponents, I find it was reasonable for the IAD to conclude that the acts of the MQM-A constituted terrorism according to the *Suresh* definition.

[30] Accordingly, I reject the Applicant's submission that it was unreasonable for the IAD to find on the evidence before it that the MQM-A engaged in acts against persons not taking part in the hostilities.

V. Ancillary Matter

[31] The parties agreed that there had been an error in naming the Respondent in this application as The Minister of Public Safety and Emergency Preparedness and sought an order, on consent, amending the named Respondent to The Minister of Citizenship and Immigration. That request shall be granted.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The Respondent in this application shall be amended to The Minister of Citizenship and Immigration;

2. This application for judicial review is dismissed; and

3. No serious question of general importance is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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