Date: 20080605

Docket: IMM-2399-07

Citation: 2008 FC 701

Edmonton, Alberta, June 5, 2008

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

MOHAMMAD K. DAUD
also known to Immigration as
MOHAMMAD KHALID DAUD

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for leave for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act* (the Act) of a decision dated May 28, 2007 by an immigration officer (the officer) in which the applicant was found to be inadmissible for permanent residence by reason of being a member of a terrorist organization pursuant to s. 34(1)(f) of the Act.

[2] The applicant is a citizen of Pakistan who left the country in April of 1996, filed a refugee claim in Canada on May 15, 1996 and was granted refugee status on July 23, 1997.

[3] The applicant admitted his membership in the Muttahida Qaumi Movement - Altaf (MQM-A) and detailed his activities as a member of this group during a May 12, 1998 interview with the Canadian Security and Intelligence Service (CSIS). In his Personal Information Form, the applicant disclosed his political membership and activities in Pakistan since 1985.

[4] In his decision, the officer indicated that there were reasonable grounds to believe that the MQM-A had engaged in terrorist activities based on objective documentary evidence. Accordingly, the applicant was found inadmissible for permanent residence.

STANDARD OF REVIEW

[5] In determining the appropriate standard of review in a given case, reasonableness or correctness, the Supreme Court of Canada, in *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 62, instructed that before engaging in a *de novo* standard of review analysis, courts should first "ascertain whether the jurisprudence already determined in a satisfactory manner the degree of defence to be accorded with regard to a particular category of question." The standard of review applicable to a determination of whether an organization is one for which there are reasonable grounds to believe engages, has engaged, or will engage in acts of terrorism pursuant to s. 34(1)(f) has been found to be that of reasonableness (*Jalil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 568, [2007] F.C.J. No. 763 (QL), at para. 15; *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 246, [2006] F.C.J. No. 320 (QL), at paras. 19-20; *Kanendra v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 923, [2005] F.C.J. No. 1156 (QL), at para. 12).

[6] Thus, the standard of review applicable to the present case remains that of reasonableness. Accordingly, the analysis of the officer's decision will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] […] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47).

ANALYSIS

[7] The crux of the present case involves determining whether the officer committed a reviewable error when he concluded that the applicant was inadmissible on security grounds for being a member of a terrorist organization pursuant to s. 34(1)(f) of the Act.

[8] I note at the outset that the applicant was granted refugee status and thus was found to face persecution should he be returned to Pakistan. Therefore, any subsequent finding of inadmissibility should be carried out with prudence, and established with the utmost clarity. I find the comments of my colleague Madam Justice Carolyn Layden-Stevenson in *Alemu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 997, [2004] F.C.J. No. 1210 (QL), at para. 41 particularly instructive:

> An exclusion finding is extremely significant to an applicant. Caution must be exercised to ensure such findings are properly made. The court will not substitute its opinion for that of the decision-maker when the analysis and basis for the decision are reasonable. That is not the situation here. A finding of exclusion must provide some basis for the determination regarding the nature of the group and the determination regarding an applicant's membership in the group. Failure to address both and to provide a basis for both, in my view, yields a result that falls far short of being reasonable.

[9] Given that the applicant admitted to being a member of the MQM-A organization, what is to be reviewed by this Court is the officer's determination that the MQM-A is "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)" (s.34(1)(f) of the Act).

[10] Section 33 of the Act indicates that the facts constituting inadmissibility under section 34 include facts arising from omissions and, unless otherwise provided, are determined on a standard of "reasonable grounds to believe." The standard "reasonable grounds to believe" is met when there is more than mere suspicion, but less than a balance of probabilities, based on credible evidence (*Thanaratnam v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 122, [2005] F.C.J. No. 587, (QL), at para. 22).

[11] Subsequently, in *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 568, [2007] F.C.J. No. 763 (QL), at para. 18, Deputy Justice Max Teitelbaum held that "the assessment of whether there are reasonable grounds to believe that an organization has engaged in acts of terrorism is a two-step analysis". The first step involves a factual determination of whether there are reasonable grounds to believe that the organization in question committed the acts of violence attributed to it. At the second step of the analysis, a determination is made as to whether those acts constitute acts of terrorism. The officer must provide the definition of terrorism relied upon and explain how the listed acts meet that definition (*Jalil v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 246, [2006] F.C.J. No. 320 (QL), at para. 32).

[12] The applicant challenges the officer's findings at both steps outlined above and further challenges the officer's decision on the ground that he failed to consider whether the MQM-A, as an organization, engaged in acts of terrorism.

[13] With respect to the first step, the officer examined the documentary evidence indicating that the MQM-A committed acts of violence against the civilian population, including journalists and other political groups during the period in which the applicant was a member. This documentation revealed that the organization has been accused of being involved in acts of murder, torture, and general violence accompanying its political activities.

[14] With respect to the related issue of whether the MQM-A, as an organization, engaged in acts of terrorism, the applicant submits that violence was not part of MQM-A's objectives. While there is no legal requirement for evidence that the organization "sanctioned or approved" of the acts forming part of the s. 34(1)(f) analysis, the officer must assess whether there is enough evidence to establish that they were indeed sanctioned (*Jalil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 568, [2007] F.C.J. No. 763 (QL), at para. 38).

[15] The applicant submits that the officer could not conclude that MQM-A engaged in violence because it did not form part of the organization's objectives. I disagree. This determination is a factual one, based on the documentary evidence which involves not only the statements of the leadership or an organization's members but also their actions. The analysis does not lend itself well to a simple tally of members who openly support violent acts; however, at some point, the

magnitude and frequency of violent tactics employed by the organization in question will make it difficult to classify the perpetrators as merely rogue members acting outside the will of the group.

[16] The officer examined documentary evidence emanating from sources such as Amnesty International, the UK Home Office, and the US Department of Justice, which led him to conclude that instances of killing and torture are a "continuous and regular part" of the MQM-A organization. Further, the officer noted an Amnesty International Report entitled "Pakistan: Human rights crisis in Karachi" (February 1996) which stated that "Despite protestation by MQM leader Altaf Hussain that the MQM does not subscribe to violence, there is overwhelming evidence and a consensus among observers in Karachi that some MQM party members have used violent means to further their political ends". Given the evidence before the officer, I am unable to conclude that his determination that MQM-A committed violent acts, including murder and torture, was unreasonable.

[17] As pertains to the second step, the case law reveals that the evaluating officer must refer to the specific definition of terrorism used and analyze how the acts cited above fit within it (*Jalil v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 246, [2006] F.C.J. No. 320 (QL), at para. 32; *Ali v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1174, [2004] F.C.J. No. 1416 (QL), at paras. 63-64. The officer made reference to s. 83.01 of the *Criminal Code* of Canada, as well as the annexed list of treaties to the *United Nations Convention for the Suppression of the Financing of Terrorism* as fundamental guidelines in his analysis. Further, he reproduced the definition of terrorism provided by the Supreme Court of Canada in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, [2002] S.C.J. No. 3 (QL), at para. 98 which

indicates that terrorism 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”.

[18] I note that in *Naeem v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 123, [2007] F.C.J. No. 173 (QL), at para. 46, Madam Justice Dawson correctly emphasized the need to properly and explicitly characterize the acts in question as terrorism: “[a]cts such as kidnapping, assault and murder are undoubtedly criminal, but are not necessarily acts of terrorism. It was incumbent on the officer to explain why she viewed them to be terrorist acts.” The officer in the present case followed this jurisprudential guidance and stated that MQM-A’s activities, including torture and execution of political opponents and journalists, was carried out in furtherance of the organization’s political goals.

[19] According to the applicant, the officer misconstrued the evidence which showed general political violence in Pakistan by all political parties. However, in my view, the existence of general violence does not preclude a determination that an organization engages in terrorism. The existence of generalized violence is part of the context within which the officer conducts his analysis, but is not dispositive of the end determination. Indeed, terrorist acts are committed during an array of country conditions ranging from periods of relative peace to those of widespread strife and conflict.

[20] The applicant further argues that the officer misconstrued the evidence relating to Citizenship and Immigration Canada (CIC) and CSIS. Specifically, he refers to a report dated February 1, 1999, prepared by CSIS which indicated that the applicant was “cooperative and

forthcoming" and a security memorandum dated July 26, 2001, which states that "His [the applicant's] history, first with the APMSO [All Pakistan Mohajir Student Organization] and later with the MQM in Pakistan, indicates that he is very involved with the cause of the Mohajirs, however, nothing indicates he has personally been involved in violent or terrorist activities". I note firstly, that the applicant's cooperative and forthcoming behaviour, while laudable is irrelevant to the present matter before this Court. Second, as stated by my colleague Justice Pierre Blais in *Omer v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 478, [2007] F.C.J. No. 642 (QL), at para. 11 "[…] the issue of complicity is irrelevant to a determination under paragraph 34(1)(f) of the Act, which refers strictly to the notion of membership in the organization."

[21] Accordingly, I am unable to conclude that the officer's analysis with respect to the second step was unreasonable. To the contrary, the "decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para. 47).

[22] For the preceding reasons, this application for judicial review shall be dismissed.

JUDGMENT

THIS COURT ORDERS that the present application for judicial review is dismissed.

"Danièle Tremblay-Lamer"
Judge

ANNEX

***Immigration and Refugee Protection Act*, 2001, c. 27.**	***Loi sur l'immigration et la protection des réfugiés*, 2001, ch. 27.**
[…]	[…]
Minister of Citizenship and Immigration	Compétence générale du ministre de la Citoyenneté et de l'Immigration
4. (1) Except as otherwise provided in this section, the Minister of Citizenship and Immigration is responsible for the administration of this Act.	4. (1) Sauf disposition contraire du présent article, le ministre de la Citoyenneté et de l'Immigration est chargé de l'application de la présente loi.
Designated Minister	Ministre désigné
(1.1) The Governor in Council may, by order, designate a minister of the Crown as the Minister responsible for all matters under this Act relating to special advocates. If none is designated, the Minister of Justice is responsible for those matters.	(1.1) Le gouverneur en conseil peut, par décret, désigner tout ministre fédéral qu'il charge des questions relatives à l'avocat spécial dans le cadre de la présente loi; à défaut de désignation, le ministre de la Justice en est chargé.
Minister of Public Safety and Emergency Preparedness	Compétence du ministre de la Sécurité publique et de la Protection civile
(2) The Minister of Public Safety and Emergency Preparedness is responsible for the administration of this Act as it relates to	(2) Le ministre de la Sécurité publique et de la Protection civile est chargé de l'application de la présente loi relativement :
(a) examinations at ports of entry;	a) au contrôle des personnes aux points d'entrée;
(b) the enforcement of this Act, including arrest, detention and removal;	b) aux mesures d'exécution de la présente loi, notamment en matière d'arrestation, de détention et de renvoi;
(c) the establishment of policies respecting the enforcement of this Act and inadmissibility on grounds of security, organized criminality or violating human or international rights; or	c) à l'établissement des orientations en matière d'exécution de la présente loi et d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou pour activités de criminalité organisée;
(d) determinations under any of subsections 34(2), 35(2) and 37(2).	d) à la prise des décisions au titre des paragraphes 34(2), 35(2) ou 37(2).
Specification	Précisions du gouverneur en conseil
(3) Subject to subsections (1) to (2), the Governor in Council may, by order,	(3) Sous réserve des paragraphes (1) à (2), le
(a) specify which Minister referred to in any of	

subsections (1) to (2) is the Minister for the purposes of any provision of this Act; and (b) specify that more than one Minister may be the Minister for the purposes of any provision of this Act and specify the circumstances under which each Minister is the Minister. Publication (4) Any order made under subsection (3) must be published in Part II of the Canada Gazette. 2001, c. 27, s. 4; 2005, c. 38, s. 118; 2008, c. 3, s. 1. […] Designation of officers 6. (1) The Minister may designate any persons or class of persons as officers to carry out any purpose of any provision of this Act, and shall specify the powers and duties of the officers so designated. Delegation of powers (2) Anything that may be done by the Minister under this Act may be done by a person that the Minister authorizes in writing, without proof of the authenticity of the authorization. Exception (3) Notwithstanding subsection (2), the Minister may not delegate the power conferred by subsection 77(1) or the ability to make determinations under subsection 34(2) or 35(2) or paragraph 37(2)(a). […] Security 34. (1) A permanent resident or a foreign national is inadmissible on security grounds for (a) engaging in an act of espionage or an act of	gouverneur en conseil peut, par décret : a) préciser lequel des ministres mentionnés à ces paragraphes est visé par telle des dispositions de la présente loi; b) préciser que plusieurs de ces ministres sont visés par telle de ces dispositions, chacun dans les circonstances qu'il prévoit. Publication (4) Tout décret pris pour l'application du paragraphe (3) est publié dans la partie II de la Gazette du Canada. 2001, ch. 27, art. 4; 2005, ch. 38, art. 118; 2008, ch. 3, art. 1. […] Désignation des agents 6. (1) Le ministre désigne, individuellement ou par catégorie, les personnes qu'il charge, à titre d'agent, de l'application de tout ou partie des dispositions de la présente loi et précise les attributions attachées à leurs fonctions. Délégation (2) Le ministre peut déléguer, par écrit, les attributions qui lui sont conférées par la présente loi et il n'est pas nécessaire de prouver l'authenticité de la délégation. Restriction (3) Ne peuvent toutefois être déléguées les attributions conférées par le paragraphe 77(1) et la prise de décision au titre des dispositions suivantes : 34(2), 35(2) et 37(2)a). […] Sécurité 34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

subversion against a democratic government, institution or process as they are understood in Canada; (b) engaging in or instigating the subversion by force of any government; (c) engaging in terrorism; (d) being a danger to the security of Canada; (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or (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). Exception (2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	a) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada; b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force; c) se livrer au terrorisme; d) constituer un danger pour la sécurité du Canada; e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au 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) ou c). Exception (2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

FEDERAL COURT

SOLICITORS OF RECORD

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