Date: 20090212

Docket: IMM-3082-08

Citation: 2009 FC 141

Ottawa, Ontario, this 12th day of February 2009

Present: The Honourable Orville Frenette

BETWEEN:

Mohammed Saeed MOTEHAVER

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of the Immigration Division of the Immigration and Refugee Board (the "Board") dated June 19, 2008, determining that the applicant is inadmissible on security grounds based on paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "IRPA") and issuing a deportation order pursuant to paragraph 229(1)(*a*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

The Facts

[2] The applicant was born in Iran on March 22, 1968. He arrived in Canada on January 4, 1995 and claimed refugee status. On March 9, 1995, the applicant was granted refugee status; however, he is not a permanent resident or a citizen of Canada.

[3] On January 26, 2005, a report was prepared by an immigration officer pursuant to subsection 44(1) of the IRPA alleging that the applicant is inadmissible on security grounds based on paragraph 34(1)(*f*) of the IRPA. Specifically, the report alleges that he is a member of the *Mujahedin-e Khalq* (MEK), a terrorist organization.

[4] The report was referred to the Immigration Division and an admissibility hearing was held on January 8, 2008, continued on March 20 and May 13, 2008.

[5] On June 19, 2008, the Board rendered its decision determining that the applicant was inadmissible under paragraph 34(1)(*f*) of the IRPA, being a member of an organization that was engaged or will be engaged in terrorism.

[6] An order of deportation was signed against the applicant.

The Impugned Decision

[7] In a 17-page decision, the Board reviews the applicable legislation and the evidence, composed of the applicant's Personal Information Form (PIF) and interviews, his testimony and that of others, plus the general documentation about Iran and MEK.

[8] The Board examined the nature of MEK and its activities, including terrorism and murders, concluding that the applicant is inadmissible under paragraph 34(1)(*f*) of the IRPA, because it had reasonable grounds to believe that the applicant is a member of MEK which has engaged or will engage in terrorism.

The Legislation

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 :
[…]	[…]
(*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*).
44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.	**44.** (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

The Applicable Standard of Review

[9] The proper standard of review for substantive decisions of the Board depends on the nature of the decision. The Supreme Court of Canada has determined in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, that the proper standard for questions of law is correctness and for questions of fact and mixed fact and law, is reasonableness *simpliciter*.

[10] The jurisprudence has established the issue of whether an organization described in paragraph 34(1)(*c*) of the IRPA has been reviewed on a standard of reasonableness (*Kanendra v. Canada (M.C.I.)*, 2005 FC 923, [2005] F.C.J. No. 1156 (QL)).

[11] The related issue of whether an applicant is a member of an organization referred to in paragraph 34(1)(*f*) is also reviewed on a standard of reasonableness, as it is a question of fact and law (*Poshteh v. Canada (M.C.I.)*, [2005] 3 F.C.R. 487 (F.C.A.); *Afridi v. Minister of Public Safety and Emergency Preparedness et al.*, 2008 FC 1192; *Faridi v. Minister of Citizenship and Immigration*, 2008 FC 761).

[12] Therefore, the standard of review to be applied in this case is reasonableness.

The Issues

1. Who is a member of a terrorist organization under paragraph 34(1)(*f*) of the IRPA?
2. Is the applicant a member of MEK?

Analysis

[13] Concerning the first issue, "terrorism" is not defined in the IRPA but the Supreme Court of Canada in *Suresh v. Canada (M.C.I.)*, [2002] 1 S.C.R. 3, at paragraph 98, defined terrorism as follows:

> . . . 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".

[14] The Supreme Court of Canada in *Mugesera v. Canada (M.C.I.)*, [2005] 2 S.C.R. 100, stated, at paragraph 114:

> . . . "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 […]

[15] This is a very low threshold (*Sivakumar v. Canada (M.E.I.)*, [1994] 1 F.C. 433 (C.A.), at page 445; *Chiau v. Canada (M.C.I.)*, [2001] 2 F.C. 297 (C.A.), at paragraph 60).

[16] Justice James O'Reilly, in *Sinnaiah v. Minister of Citizenship and Immigration*, 2004 FC 1576, suggests the quality of the proof must be whether there is more than suspicion or "a whiff of suspicion" (paragraph 16).

[17] To establish a membership in a terrorist organization under paragraph 34(1)(*f*) of the IRPA, this section must be broadly interpreted.

[18] In the present instance, the Government of Canada has listed MEK as a terrorist organization and even if the United Nations Security Council has recently de-listed it, Canada and the United States have maintained such listing. Courts must abide by this fact. Our courts have consistently decided that MEK is a terrorist organization: *Poshteh*, *supra*, at paragraphs 2, 3 and 10; *Noori v. Canada (M.C.I.)*, [1996] F.C.J. No. 187 (T.D.) (QL), paragraphs 1 to 4; *Sepid v. Minister of*

Citizenship and Immigration, 2008 FC 907, paragraph 18; *Chogolzadeh v. Minister of Public Safety and Emergency Preparedness*, 2008 FC 405 (paragraphs 37, 41, 44 and 45).

[19] In *Poshteh, supra*, the applicant was a citizen of Iran whose father had been a member of MEK. After his father's death in 1999, the applicant, then 17 years old, attempted to become a member of MEK but was denied. He was however allowed to participate in its activities by distributing pamphlets - MEK propaganda; he was considered to be a "*de facto*" member. He came to Canada in 2002 and after being interviewed by an immigration officer he was held to be inadmissible under paragraph 34(1)(*f*) of the IRPA. This decision was unanimously maintained by the Federal Court of Appeal.

[20] In *Ugbazghi v. Minister of Citizenship and Immigration*, 2008 FC 694, Justice Eleanor Dawson dismissed an application for judicial review of a refusal for permanent residence because the applicant had been a member of the Eritrean Liberation Front (ELF), an organization that engaged in terrorism. The applicant had claimed she was not a member of the ELF but admitted she supported the "freedom fighters" and "helped the cause" by donating money and distributing pamphlets. Justice Dawson determined that these factors of support of the ELF, justified a decision of inadmissibility under sections 33 and 34 of the IRPA.

[21] Justice Pierre Blais, in *Omer v. Minister of Citizenship and Immigration*, 2007 FC 478, dismissed an application attacking an Immigration and Refugee Board's decision which had concluded that the applicant was ineligible and to be deported in application of paragraph 34(1)(*f*) of the IRPA. The applicant, a citizen of Pakistan, had been a member of the Mothaidda Quami

Movement (MQM) in Pakistan and acknowledged during the hearing that he was responsible for the "MQM Quebec" branch. There was reasonable ground to believe that the MQM is an organization which engages, has engaged or will engage in terrorism.

[22] A similar decision has been rendered by Justice Judith Snider in *Yamani v. Minister of Citizenship and Immigration*, 2006 FC 1457, concerning an applicant, who was a permanent resident of Canada but who had been a member of the Popular Front for the Liberation of Palestine, an organization which had engaged in terrorist activities during the time he was a member.

[23] In light of these precedents, the second issue is: Should the applicant be considered a member of MEK?

[24] The Board based its decision on the following facts:

- In his Personal Information Form (PIF), dated February 7, 1995, submitted in support of his refugee claim, the applicant described how he was introduced to MEK literature in the early 1980s. In 1989, he met supporters of MEK and began secretly distributing MEK pamphlets on the campus of the university where he studied in Iran.
- He left Iran because he had been informed that the authorities sought to arrest him for his involvement with the MEK.
- In his PIF, the applicant writes that one of his family members, a brother, was particularly active and was a member of MEK.

- In his application for permanent residence dated May 14, 1995, he indicated he was a sympathizer of the “Moujahedin” from 1989 to 1994.
- He declared to immigration officers that in Canada, he distributed leaflets as a sympathizer of MEK.
- He attended MEK meetings in Canada and contributed funds to this organization.
- He received the MEK newspaper, called *Nashrech*.
- At his hearing, the applicant denied involvement with the MEK and denied his brother had been a member of MEK. He also claimed not having knowledge of violent acts committed by the MEK while he resided in Iran.
- Finally, in his testimony, the applicant’s brother Majid testified the former supported the MEK in Iran but was not a member of any political organization.

[25] The applicant raises an argument in his memorandum about the application of the *Canadian Charter of Rights and Freedoms* and Canada’s obligations in international law.

[26] At the hearing the applicability of the above legislation was not shown, neither was their relevance. I do not perceive any pertinence or relevance of this point to the present case.

[27] In light of paragraph 34(1)(*f*) of the IRPA and its interpretation by the Courts, all of the factors described before, subject to the standard of review of “reasonable grounds to believe”, I support the Board’s conclusion that the applicant was and is a member of MEK.

[28] The Board gave clear and intelligible reasons supporting its decision, drawing inferences form the facts provided by the applicant himself in his PIF, his interviews and his testimony.

[29] The qualification of being a member according to paragraph 34(1)(*f*) of the IRPA is to be given a broad and unrestricted interpretation, since in immigration legislation, public safety and internal security are highly important.

[30] In *Poshteh, supra*, at paragraphs 33 to 38, the Federal Court of Appeal upheld the Immigration Division's determination that the length of time of the applicant's involvement, his distribution of MEK propaganda, and his attempt to become a member were sufficient to constitute membership for the purposes of the application of paragraph 34(1)(*f*) of the IRPA.

[31] The present case bears similarities with *Poshteh.*

Conclusion

[32] According to *Dunsmuir, supra*, if the Board rendered a decision which falls within the "range of possible, acceptable outcomes which are defensible in respect to the facts and law", courts should not interfere (paragraph 47). Furthermore, deference should be given to the Immigration Division (at paragraph 49). This principle has been applied in many cases: *Gutierrez v. Minister of Citizenship and Immigration*, 2008 FC 971, paragraph 22; *Marshall v. Minister of Citizenship and Immigration*, 2008 FC 946, paragraph 38; *Mendoza v. Minister of Public Safety and Emergency Preparedness*, 2007 FC 934, paragraph 25).

[33] Therefore, this application for judicial review will be dismissed.

JUDGMENT

The application for judicial review of the decision of the Immigration Division of the Immigration and Refugee Board, dated June 19, 2008, is dismissed.

No question of general importance is certified.

"Orville Frenette"
Deputy Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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