

Federal Court



Cour fédérale

Date: 20141128

Docket: IMM-696-14

Citation: 2014 FC 1146

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 28, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

AYALEW GABEYHU ABEBE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of the Immigration Division [ID] of the Immigration and Refugee Board declaring the applicant to be inadmissible under paragraphs 34(1)(f), (b) and (c) of the IRPA.

II. Facts

[2] The applicant is a 39-year-old Ethiopian citizen of Oromo ethnicity. The applicant based his refugee protection claim on an alleged fear of persecution by the Ethiopian government because of his political activities with the opposition.

[3] In 2001, the applicant left Ethiopia for Kenya before going to Norway, where his application for asylum was rejected. In 2011, the applicant left Norway for Iceland, where he was again refused asylum. The applicant arrived in Canada on November 21, 2011, and claimed refugee protection that same day.

[4] On May 9, 2013, a report on the applicant, prepared in accordance with subsection 44(1) of the IRPA, was referred to the ID for an admissibility hearing pursuant to subsection 44(2) of the IRPA. The report stated that there were reasonable grounds to believe that the applicant is described in paragraphs 34(1)(f), (b) and (c) of the IRPA because of his participation in the Oromo Liberation Front [OLF] and the political party Ginbot 7.

III. Impugned decision

[5] In a decision dated January 23, 2014, the ID concluded that the applicant was inadmissible under paragraphs 34(1)(f), (b) and (c) of the IRPA.

[6] First, after examining the evidence in the record, the ID concluded that the applicant had been a member of the OLF, an organization that there are reasonable grounds to believe engages

or has engaged in “acts of terrorism”, according to paragraphs 34(1)(f), (b) and (c) of the IRPA, because of numerous bombings attributed to the OLF that had occurred in Addis-Ababa and Dire-Dawa in 1997, 2000 and 2002.

[7] The ID then went on to conclude that the applicant was an active member of the political party Ginbot 7, an organization that there are reasonable grounds to believe engages in or instigates “the subversion by force of any government”, according to paragraphs 34(1)(f), (b) and (c) of the IRPA.

[8] Finally, considering the discrepancies between the applicant’s initial statements in his Personal Information Form [PIF], in his IMM 5611 questionnaire entitled “Claim for Refugee Protection in Canada”, and in his testimony at the hearing, the ID concluded that the applicant had tried to play down his participation in the OLF, thereby undermining his credibility (Tribunal Record, at pp 8 and 9; Decision of the ID, at paras 45 and 36).

IV. Issue

[9] Are the ID’s findings regarding the applicant’s inadmissibility under paragraphs 34(1)(f), (b) and (c) of the IRPA reasonable?

V. Statutory provisions

[10] The applicant was declared inadmissible under the following sections 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 or 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;

...

(c) engaging in terrorism;

...

(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)*.

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) se livrer au terrorisme;

[...]

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)*.

VI. Position of the applicant

[11] The applicant submits that the ID erred in its assessment of the evidence regarding the applicant's participation in the OLF and in its characterization of that organization as one "engaging in terrorism", under paragraph 34(1)(c) of the IRPA.

[12] The applicant further submits that the ID erred in characterizing Ginbot 7 as an organization described in paragraph 34(1)(f) of the IRPA.

[13] Finally, the applicant alleges that the ID erred in its interpretation of the concept of “member” within the meaning of paragraph 34(1)(f) of the IRPA.

VII. Standard of review

[14] According to the Federal Court of Appeal, the reasonableness standard applies to the ID’s determination of whether the applicant is a “member” of an organization described in paragraph 34(1)(b) or (c) of the IRPA (*Poshteh v Canada (Minister of Citizenship and Immigration)*, (FCA), [2005] FCJ 381 at para 21 [*Poshteh*]; *Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 623 at para 21; *Kanendra v Canada (Minister of Citizenship and Immigration)*, 2005 FC 923 at para 12).

[15] In applying the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process and must analyze whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47).

VIII. Analysis

[16] Section 33 of the IRPA states that, for the purposes of interpreting subsection 34(1), the burden of proof applicable to the determination of “facts . . . [which] include facts arising from

omissions” must be appreciated in accordance with the standard of “reasonable grounds to believe” that the facts “have occurred, are occurring or may occur”, thereby permitting the ID to consider past, present and future facts when making a determination as to the applicant’s inadmissibility (*Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 at para 18).

[17] The case law holds that the applicable standard of review is less stringent than the civil standard of proof on a balance of probabilities, but is more than a mere suspicion. The “reasonable grounds to believe” standard therefore requires that the ID consider whether there is “an objective basis for the belief which is based on compelling and credible information” rendering the applicant inadmissible under subsection 34(1) of the IRPA (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114; *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 39; *Fathi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 558 at para 24).

[18] In addition, there need not be a matching of the applicant’s active participation in organizations described in paragraph 34(1)(f) and the period during which the organization was carrying out the alleged acts, according to paragraphs 34(1)(b) and (c) of the IRPA (*Al Yamani v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1457 at para 12).

[19] What is more, it is trite law that the term “member” within the meaning of subsection 34(1) must be given an unrestricted and broad interpretation (*Poshteh*, above at paras 27-29).

[20] In *Qureshi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 7, the Court rejected a narrow interpretation of the concept of “member”:

[21] In *Kanendra*, Mr. Justice Noël rejected the distinction between formal membership and membership inferred through participation stating:

21 The Applicant submits that the interpretation of “member” in s. 34(1)(f) must be read strictly, so as not to include in its ambit persons who may associate and sympathize with an organization described in s. 34(1)(a), (b) or (c), but who are not themselves a threat to Canada. The Applicant further submits that “member” should be interpreted to mean current and actual or formal membership

22 To adopt such an interpretation would, I think, be contrary to the spirit of the legislation as well as to prior jurisprudence. In *Suresh v. Canada (Minister of Citizenship and Immigration)* (1997), 40 Imm. L.R. (2d) 247 (F.C.T.D.) at 259 (para. 22), rev'd in part (on different grounds), 47 Imm. L.R. (2d) 1 (F.C.A.), Justice Teitelbaum stated that, “Membership cannot and should not be narrowly interpreted when it involves the issue of Canada's national security. Membership also does not only refer to persons who have engaged or who might engage in terrorist activities.” See also *Canada (Minister of Citizenship and Immigration) v. Singh* (1998), 44 Imm. L.R. (2d) 309 at para. 51 *et seq.* (F.C.T.D.); *Canada (Minister of Citizenship and Immigration) v. Owens* (2000), 9 Imm. L.R. (3d) 101 at paras. 16-18 (F.C.T.D.); *Poshteh, supra*, at para. 29.

23 Therefore, the term “member” as it is used in s. 34(1)(f) of IRPA should be given a broad interpretation. . . .

[Emphasis added.]

[21] In his memorandum, the respondent aptly raises the distinction between inadmissibility and exclusion, the latter requiring a higher level of participation or complicity in a crime or terrorist act. This distinction was examined in *Kanapathy v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 459 at paras 35-37:

[35] The requirements for establishing inadmissibility on security grounds are thus less stringent than the requirements for exclusion on grounds of violating international human rights. The latter requires complicity or knowing participation in the commission of a specific international crime, while the former does not require any complicity or knowing participation in an act of terrorism. Mr. Kanapathy fails to appreciate these distinctions when he argues that the Officer erred by failing to show that he actually incited a terrorist act during his employment with Murasoli.

[36] Given the low threshold that must be met to support a membership finding under subsection 34(1) of IRPA, the Officer's conclusion that Mr. Kanapathy's work for the Murasoli supported the LTTE was reasonable. Mr. Kanapathy has acknowledged that the Murasoli supported and was controlled by the LTTE. Moreover, the documentary evidence affirms the links between the Murasoli and the LTTE and discusses the importance of media propaganda to the LTTE's activities.

[37] The Officer quite reasonably relied on Mr. Kanapathy's knowing participation in LTTE propaganda campaigns and his association with key members of the LTTE over a three-year period to find that there were reasonable grounds to believe that Mr. Kanapathy was a member in the LTTE for the purposes of paragraph 34(1)(f) of IRPA.

[Emphasis added.]

[22] The Court finds that it was reasonable for the ID to conclude that the applicant is, or was, a "member" of the OLF and Ginbot 7, given his level of active involvement in both organizations, and that these organizations are described in paragraphs 34(1)(f), (b) and (c) of the IRPA.

[23] First of all, in his PIF, the applicant states that in 2000-2001, he and other students of Oromo origin aided and supported the OLF by distributing pamphlets and raising funds to help detained students of Oromo origin (Tribunal Record, at p 129). Moreover, at the hearing before the ID, the applicant stated that he had contributed to the OLF:

Q. Here you said that you were supporting and helping the Oromo Liberation Front. How did you do that?

A. I drew the contact with Oromo Liberation Front, but seeing the pressure that made upon Oromo students, having understanding that or looking that, so I just wanted to help those who join them.

Q. But how did you do that, how did you help?

A. Yeah, I'm an instrument for those who had been detained, who had been detained by writing by (inaudible). . . . There was pressure put on Oromo so that some of them were detained. So we contributed money or we raised some money to help detained Oromo students.

...

Q. The question was, were you a member of the OLF?

A. I was supporting for going into that. I was not registered as a member, nor I didn't sign any membership document.

...

Q. Why did you support the OLF? Why not another group?

A. At that time, there was not such other Oromo organization apart from which was affiliated to the government. The only organization that was considered for the cause of Oromo was (inaudible).

(Tribunal Record, at pp 515 and 519).

[24] Furthermore, the documentary evidence supports the ID's finding that the OLF is an organization "engaging in terrorism":

Radical Ahmara groups, the OLF, and the Islamic extremist group Al'ittihad Al'islamia were responsible for a number of grenade attacks, bombings, shootings, and ambushes that killed and injured a number of persons.

...

Police blamed the Oromo Liberation Front (OLF) for a series of grenade attacks in Addis Ababa in mid-April that killed left two persons and seriously injured 75 others. Other deadly grenade attacks, attributed to the Islamic extremist group Al'ittihad al'islami and the OLF, occurred in Dire Dawa and Harar. The police blamed OLF members for the March 28 ambush and killing of the mayor of Dolo Mena, a Danish missionary nurse, and a passing motorist.

On July 13, 150 to 200 suspected OLF militants attacked the Jeldu Wereda police station, killing 3 policemen and wounding 5.

...

On November 5 authorities arrested three alleged OLF terrorists, who confessed to hotel and restaurant bombings in Addis Ababa and Dire Dawa. On November 6, the Federal Police arrested 17 OLF supporters, most of them members of Tulema, a longstanding Oromo self-help organization that the Government asserts is a political organization. Six were founding members of the newly registered Oromo Human Rights League. A total of 31 OLF activists were arraigned on various terrorism and illegal weapons possession charges on December 2. Although the OLF is an illegal organization, due to its refusal to renounce violence and accept the Constitution, simple membership is not necessarily cause for arrest. OLF members travel abroad for negotiations with the Government without hindrance. The Government draws a distinction, however, between the OLF's rank and file and its leadership.

...

Political participation remains closed to a number of organizations that have not renounced violence and do not accept the Government as a legitimate authority. These groups include Medhin, the Coalition of Ethiopian Democratic Forces, the Ethiopian's People's Revolutionary Party, the OLF, some elements of the ONLF and several smaller Somali groups.

(U.S. Department of State Country Report on Human Rights Practices 1997- Ethiopia, Tribunal Record, at pp 136-138 and 143).

[25] The report entitled U.S. Department of State - *Country Report on Human Rights*

Practices 2002 – Ethiopia denounces the violence perpetrated by the OLF:

The OLF and ONLF continued to use landmines during the year. Some U.N. vehicles were hit by mines near Jijiga, resulting in injuries to personnel. On August 5, a bomb exploded at the Edom Hotel in the town of Jijiga, killing one person and injuring six others. No group claimed responsibility for the attack, although authorities believed the ONLF was responsible.

On September 11, a bomb killed four persons at the Tigray Hotel in Addis Ababa. The Government blamed the OLF for the attack and claimed to have arrested the perpetrators. The OLF denied responsibility for the attack.

There was no further information by year's end in the 2000 case in which landmines allegedly were used to derail a freight train near Nazareth or the 2001 arrests of five OLF members who allegedly committed the act.

(Tribunal Record, at pp 154-155).

[26] The report *Country Report on Terrorism 2011 – Chapter 2 - Ethiopia* describes the terrorist activities of the OLF and the Ethiopian government's reaction to those activities:

[The Government of Ethiopia] also remained concerned about domestic groups such as the Ogaden National Liberation Front (ONLF) and the Oromo Liberation Front (OLF). Despite the Ethiopian Government's peace agreement with the United Western Somali Liberation Front (UWSLF) and a faction of the ONLF in 2010, elements from both groups, as well as the OLF, continued their attempts to target Ethiopian government officials and infrastructure. This included a failed attempt by OLF elements to attack Addis Ababa during the African Union (AU) Summit in January 2011. The Ethiopian government cooperated with the U.S. government on military, intelligence, and security issues.

(Tribunal Record, at p 200).

[27] Moreover, the report *Jane's World (Insurgency and Terrorism), Oromo Liberation Front (OLF)*, dated May 31, 2006, describes the OLF as the most robust armed insurgent group in the late 1990s. Among other things, the report states:

The OLF became the most robust armed group in Ethiopia in the late 1990s, and from 2002 to 2004 was held responsible by Ethiopian authorities for several small bomb attacks in Ethiopia, including the triple bomb blasts at a hotel in Addis Ababa on the 12 September 2002, killing one person and wounding several others.

...

The OLF has declared that armed struggle is necessary to achieve the Oromo's right to self-determination. Since its inception, the OLF has conducted a low level guerilla campaign against the Ethiopian security forces on each of its four fronts. The group has sought to capture strategic areas and to establish guerilla bases from which to operate and expand their area of control. The OLF has always claimed that it would not harm civilians and only targets government installations and military targets such as military convoys, army bases and transportation networks. It states that it has an unswerving ant-terrorist stance and denies government accusations of its involvement in terrorist attacks against civilian and tourist facilities. In practice, its armed insurgency tactics have been quite weak, and have been reduced to a handful of minor bomb incidents in recent years.

Politically, the OLF has sought to encourage anti-government resistance amongst the Oromo community and to draw international attention to alleged human rights abuses by the Ethiopian government.

...

The OLF has a respectable arsenal of conventional weapons. Equipment seized by security forces has included a large number of Kalashnikov and G3 assault rifles, rocket propelled grenade launchers and anti-tank mines. Small remote detonation bombs, have, since 2000, been the weapon of choice in attacks on government targets.

(Tribunal Record, at pp 205-207).

[28] Furthermore, it is common ground that the applicant actively contributed to the activities of Ginbot 7 as a member of that party. In his IMM 5611 form, the applicant states, at Question 26, that he was a member of Ginbot 7 from 2009 to 2011 and that his activities in this organization included fundraising and recruitment (Tribunal Record, at p 113). Further, in response to Question 40, “Have you or your accompanying minors ever used, planned or advocated the use of armed struggle or violence (attacks, hostage taking etc.) to reach political, religious or ideological objectives?” the applicant answers “yes” and states, “if there was a revolution, or overthrow the government by any means” (Tribunal Record, at p 115). In addition, in his PIF, the applicant states that he joined Ginbot 7 as a member in December 2008 and contributed to the party through the following activities:

- Paying registration fees and monthly party membership fees;
- Participating in general meetings, organizing party meetings and distributing pamphlets;
- Fundraising in support of the party and, in particular, its radio and television services;
- Promoting the organization, particularly through the sale of books on the organization;
- Taking on an executive role in a party group and selecting new members.

(Tribunal Record, at p 130).

[29] What is more, the evidence shows that there are reasonable grounds to believe that Ginbot 7 meets the definition of an organization seeking “the subversion by force of any government” within the meaning of paragraph 34(1)(b). The report *Landinfo Country of Origin Information Centre, Report Ethiopia: the Ginbot 7 party*, attests that this party is dedicated to subverting the Ethiopian government by force:

Ginbot 7 (G7) is a political party established in 2008. The party works for regime change, including the use of military means, and is therefore illegal. G7 mobilizes Ethiopians in the diaspora and in Ethiopia, but it is uncertain how extensive the party's activities in Ethiopia are. Several people have been arrested, indicted and convicted of terrorist acts under the auspices of G7 in 2009 and 2011. However, it is unclear whether the arrests reflect the defendant's concrete connection to terrorist plans or acts, or whether the charges camouflage measures to limit unwanted oppositional activity.

...

Party leader Berhanu Nega told Landinfo in May 2009 that the party primarily wants a regime change, and that it has a goal of embracing all ethnic groups in Ethiopia and creating a comprehensive oppositional alliance. G7 does not exclude the use of violent means to overthrow the current ruling coalition EPRDF.

[Emphasis added.]

(Tribunal Record, at pp 301 and 305).

[30] Furthermore, the *Country Report on Terrorism 2011 – Chapter 2 – Ethiopia* (Tribunal Record, at p 200) states:

The Ethiopian Parliament issued a proclamation in May that declared five groups to be outlawed terrorist organizations. The groups include OLF and ONLF, violent domestic ethnic-based groups; Ginbot 7, a diaspora-based group that has called for the overthrow of the ruling party of Ethiopia (the Ethiopian People's Revolutionary Democratic Front); al-Qa'ida; and al-Shabaab.

[31] Finally, the applicant states in his PIF that he joined Ginbot 7 “[b]ecause it is necessary to force the ruling party to hand over power not only democratically but also by any other means” (Tribunal Record, at p 130).

IX. Conclusion

[32] The Court finds that the ID's findings fall within the range of possible conclusions that it was entitled to draw, having regard to all the evidence.

[33] The ID's decision to declare the applicant inadmissible in accordance with the language of paragraphs 34(1)(f), (b) and (c) of the IRPA is reasonable. The intervention of this Court is therefore unwarranted.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review be dismissed;
2. There is no question to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

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