

Federal Court



Cour fédérale

Date: 20161024

Docket: IMM-4499-15

Citation: 2016 FC 1182

Ottawa, Ontario, October 24, 2016

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ALI MOHAMMAD HADIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ali Mohammad Hadian has brought an application for judicial review of a decision of an immigration officer at the Canadian Embassy in Poland. The immigration officer refused his request for a permanent resident visa because he found that there were reasonable grounds to believe that Dr. Hadian was inadmissible as a danger to the security of Canada pursuant to s 34(1)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[1] For the reasons that follow, I have concluded that the immigration officer's decision falls within a range of possible, acceptable outcomes. Dr. Hadian's receipt of funding from the Government of Iran and his long-term employment by the University of Tehran may not in themselves have constituted reasonable grounds to find him inadmissible to Canada. However, considered together with Dr. Hadian's acknowledgment that his areas of expertise could be used to facilitate the development of weapons of mass destruction [WMD], and his attempts to minimize his connections to persons and entities linked to Iran's WMD program, the immigration officer's decision should be upheld. The application for judicial review is therefore dismissed.

II. Background

[2] Dr. Hadian is a citizen of Iran. He obtained an undergraduate degree in metallurgical engineering from the University of Tehran in 1985, and a graduate degree from the same institution in 1987. He then received a scholarship from the Government of Iran to pursue doctoral studies. He was admitted to McGill University and travelled to Canada on a student visa in 1989. Once in Canada, he obtained a visa to work at McGill's Department of Mining and Metallurgical Engineering. He earned a Ph.D. from McGill in December 1993. In January 1994, he returned to Iran and found employment as an Associate Professor at the University of Tehran, where he works to this day.

[3] In 2006, Dr. Hadian submitted an application for permanent residence as a member of the Federal Skilled Worker Class to the Canadian Embassy in Syria. His application was transferred

to the Canadian Embassy in Poland in 2010, and he was invited to update the application at that time. In 2013, he attended an interview at the Canadian Embassy in Poland.

[4] On August 5, 2014, Dr. Hadian received a letter from the Canadian Embassy in Poland advising him that he may be inadmissible as a danger to the security of Canada based on his potential involvement in the expansion of Iran's nuclear weapons program. On August 13, 2014, Dr. Hadian made written submissions in response. On January 29, 2015, Dr. Hadian was informed that he was inadmissible under s 34(1)(d) of the IRPA, and that his request for a permanent residence visa was refused.

[5] Dr. Hadian filed an application for judicial review of the refusal to grant him a permanent residence visa. The application was allowed on consent on the basis that the immigration officer's analysis was insufficient, and the request was remitted to a new immigration officer for redetermination.

[6] On August 19, 2015, Dr. Hadian once again received a letter from the Canadian Embassy in Poland advising him that he may be inadmissible as a danger to the security of Canada, because his permanent residence might be used to facilitate the transfer of controlled goods or information to Iran, thereby contributing to the expansion of Iran's WMD program. Dr. Hadian provided written submissions in response on September 18, 2015.

[7] The specific concerns disclosed to Dr. Hadian were: (a) the financial support he received from the Government of Iran during his studies in Canada; (b) his long-term association with the

University of Tehran; (c) the listing of the University of Tehran by the United Kingdom and Japan as “an entity of concern” for the development of Iran’s WMD; (d) his collaboration with Dr. Naser Ehsani of Malek Ashtar University; and (e) Dr. Ehsani’s and Malek Ashtar University’s support of Iran’s WMD program.

[8] Dr. Hadian responded that: (a) the engineering department of the University of Tehran was not listed pursuant to the *Special Economic Measures (Iran) Regulations*, SOR/2010-165; (b) the sources linking the University of Tehran to Iran’s WMD program were outdated and unreliable; (c) in July 2015, the United States of America, the United Kingdom, France, China, Russia, Germany and the European Union reached a long-term agreement with Iran that will result in the lifting of sanctions; (d) Dr. Hadian’s master’s degree was in metallurgical engineering and not advanced ceramics; (e) the British and Japanese concerns regarding the University of Tehran were exaggerated by the Canadian Embassy; (f) the University of Tehran is not beholden to the Iranian government; and (g) Dr. Hadian did not know Dr. Ehsani personally, and they appeared as co-authors of research papers only at the request of Dr. Hadian’s graduate student, who made use of Dr. Ehsani’s facilities but was not otherwise associated with Malek Ashtar University.

[9] On September 26, 2015, Dr. Hadian’s application for permanent residence was again refused on the basis that there were reasonable grounds to believe that he is a danger to the security of Canada pursuant to s 34(1)(d) of the IRPA.

III. Decision under Review

[10] The immigration officer concluded that Dr. Hadian's current employer, field of expertise, and past financial support by the Government of Iran, together with his collaboration with an individual and institution associated with Iran's WMD program, provided reasonable grounds to believe that he would present a risk of transferring goods or knowledge to Iran in support of its WMD program if he were granted permanent residence in Canada. The immigration officer's notes, which form a part of the decision, include the following:

The applicant's response does not assuage my A34(1)(d) concerns regarding his facilitation of Iran's WMD proliferation activities. There is evidence that the applicant has a long employment history in a relevant field of studies with an entity listed by the UK and Japan as having facilitated Iran's development of WMD. Additionally, there is evidence that the applicant has collaborated personally in research conducted at an entity listed by the European Union as having facilitated Iran's development of WMD.

IV. Preliminary Issue: Procedural Fairness

[11] On May 2, 2016, the Respondent requested non-disclosure of certain information contained in the Certified Tribunal Record pursuant to s 87 of the IRPA. Dr. Hadian took no position on the Respondent's motion, and the Respondent provided an assurance that none of the withheld information would be relied upon in the application for judicial review.

[12] On August 30, 2016, I granted the Respondent's motion and ordered that certain information be protected against disclosure. Counsel for Dr. Hadian acknowledged at the hearing

of this application for judicial review that the Court's order and the Respondent's assurance were sufficient to address any concerns about the adequacy of disclosure and procedural fairness in this case.

V. Issue

[13] The sole issue raised by this application for judicial review is whether the immigration officer's finding that Dr. Hadian was inadmissible to Canada pursuant to s 34(1)(d) of the IRPA was reasonable.

VI. Analysis

[14] A decision regarding inadmissibility pursuant to s 34(1) of the IRPA involves questions of mixed fact and law, and is subject to review by this Court against the standard of reasonableness (*Okomaniuk v Canada (Minister of Citizenship and Immigration)*, 2013 FC 473 at para 19; *Alijani v Canada (Minister of Citizenship and Immigration)*, 2016 FC 327 at para 16). The Court's role in an application for judicial review of an official's determination under s 34(1)(d) of the IRPA is restricted to determining whether the official's conclusion that "reasonable ground to believe" exist is itself reasonable (*SN and MR v Canada (Citizenship and Immigration)*, 2016 FC 821 at para 44 [*SN*]).

[15] Pursuant to s 34(1)(d) of the IRPA, a person is inadmissible to Canada if he or she is a danger to the security of Canada. In *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paragraph 90 [*Suresh*], the Supreme Court of Canada defined "danger to the security of Canada" as follows:

[A] person constitutes a “danger to the security of Canada” if he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be “serious”, in the sense that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible.

[16] The facts that constitute inadmissibility under s 34(1)(d) must be established on the standard of “reasonable grounds to believe” (IRPA, s 33; *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 116 [*Mugesera*]). Reasonable grounds to believe require “something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities” (*Mugesera* at para 114). They exist where “there is an objective basis for the belief which is based on compelling and credible information” (*Mugesera* at para 114), and where “the facts giving rise to inadmissibility have occurred, are occurring, or may occur” (IRPA, s 33; *Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37 at para 30). In other words, reasonable grounds to believe are established where there is “a *bona fide* belief in a serious possibility based on credible evidence” (*Chiau v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 297 (CA) at para 60; *SN* at para 40; *Suresh* at para 90; *Mugesera* at para 114].

[17] Where an official notifies an applicant of concerns regarding his or her inadmissibility to Canada, the onus to assuage those concerns lies squarely with the applicant (IRPA, s 11(1); *SN* at para 51; *Medovarski v Canada (Minister of Citizenship and Immigration)*; *Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at para 46).

[18] There is no dispute in this case that contributing to the expansion of Iran's WMD program through the transfer of goods and knowledge constitutes a danger to the security of Canada (see also *SN* at para 44). The question before the Court is therefore whether the immigration officer reasonably concluded, based on the totality of the evidence and applying the standard of reasonable grounds to believe, that Dr. Hadian was inadmissible to Canada pursuant to s 34(1)(d) of the IRPA.

(i) *Reliability of Sources*

[19] Dr. Hadian challenges the sources of information relied upon by the immigration officer, which he says were outdated and unreliable. Dr. Hadian also argues that the immigration officer based his decision on speculation and suspicion, rather than on evidence.

[20] The immigration officer found the sources linking the University of Tehran to Iran's WMD programs to be timely, because they encompassed periods during which Dr. Hadian was employed by the University of Tehran. The immigration officer found the information to be reliable because it was detailed, and it emanated from a non-partisan organization based in Washington, D.C.

[21] I am satisfied that the immigration officer's reliance on the sources cited was reasonable. While the principal source, Iran Watch, reported information furnished by a discredited political organization, it also referenced credible entities such as the Governments of the United Kingdom and Japan. The immigration officer reasonably concluded that these sources were sufficient to

raise an objectively reasonable suspicion regarding the University of Tehran, Malek Ashtar University and Dr. Naser Ehsani.

(ii) *Employment with the University of Tehran*

[22] The immigration officer was unpersuaded by Dr. Hadian's assertion that the Government of Canada's decision not to list the University of Tehran pursuant to the *Special Economic Measures (Iran) Regulations* precluded the university's involvement in Iran's WMD program. Nor did the University of Tehran's cooperation with British and Japanese universities assuage his concerns. According to the immigration officer, "it does not follow that a government's concern would automatically result in ties being cut between educational institutions of that government's country."

[23] While Dr. Hadian's longstanding association with the University of Tehran may not in itself have been sufficient to establish reasonable grounds to believe, this was one factor among others that reasonably concerned the immigration officer.

(iii) *Field of Expertise*

[24] Dr. Hadian states that the immigration officer mischaracterized his field of expertise as advanced ceramics rather than metallurgical engineering. He says that the immigration officer failed to acknowledge his focus on civil applications, and not aerospace applications, and maintains that the immigration officer was unable to connect his fields of study to the development of WMD.

[25] However, the immigration officer found that Dr. Hadian's areas of expertise encompassed both metallurgical engineering and advanced ceramics, and that these fields of study could have "dual use" in both civil applications and the development of WMD. Importantly, Dr. Hadian acknowledged the potential "dual use" of his areas of expertise.

(iv) *Financial Support of the Government of Iran*

[26] Dr. Hadian argued that the financial support he received from the Government of Iran to pursue his doctoral studies was essentially a loan, which had been repaid. He also insisted that he obtained the support as a result of a competitive process that was based solely on merit. Dr. Hadian disputes that the financial support he received from the Government of Iran to study in Canada twenty five years ago can reasonably support a finding of inadmissibility today.

[27] The Respondent describes the immigration officer's concern as follows: "Given the Government of Iran's previous support for his study in Canada, he *may* in the future be obliged to facilitate the transfer of goods/knowledge" [emphasis original]. While far from conclusive, I am satisfied that this is some evidence to support the reasonableness of the immigration officer's concerns regarding Dr. Hadian's potential danger to the security of Canada.

(v) *Connection with Dr. Naser Ehsani and Malek Ashtar University*

[28] The immigration officer noted that Dr. Hadian had co-authored two research papers with Dr. Naser Ehsani, a professor whose work on beryllium production at Malek Ashtar University is alleged to have contributed to Iran's WMD program. Dr. Hadian neither confirmed nor denied the allegations concerning Dr. Ehsani and Malek Ashtar University. Nor did he deny that his

name appeared together with that of Dr. Ehsani as co-authors of two research papers. He nevertheless claimed to have no personal knowledge of Dr. Ehsani. He said that Dr. Ehsani's name was included as an author of the research papers only as a courtesy, and as an alternative to paying him for a graduate student's use of his facilities at Malek Ashtar University.

[29] In my view, the immigration officer reasonably doubted the credibility of Dr. Hadian's denial of any personal knowledge of Dr. Ehsani or his alleged involvement in Iran's WMD program. Dr. Hadian had been employed by the University of Tehran for a lengthy period of time, specializing in areas that he acknowledged were "dual use". Dr. Ehsani occupies a prominent position as President of Malek Ashtar University. Dr. Hadian supervised a graduate student who performed work in Dr. Ehsani's facilities, and both Dr. Hadian and Dr. Ehsani's names appeared as co-authors of research papers. The immigration officer fairly described Dr. Hadian's efforts to distance himself from Dr. Ehsani as uncorroborated and self-serving.

VII. Conclusion

[30] In sum, the immigration officer's decision falls within a range of possible, acceptable outcomes. Dr. Hadian's receipt of funding from the Government of Iran and his long-term employment by the University of Tehran may not in themselves have constituted reasonable grounds to find him inadmissible to Canada. However, considered together with Dr. Hadian's acknowledgment that his areas of expertise could be used to facilitate the development of WMD, and his attempts to minimize his connections to persons and entities linked to Iran's WMD program, the immigration officer's decision should be upheld.

[31] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for appeal.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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