

Federal Court



Cour fédérale

Date: 20161121

Docket: IMM-4887-15

Citation: 2016 FC 1285

Ottawa, Ontario, November 21, 2016

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MUHAMMAD NAEEM

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Muhammad Naeem, is a Convention refugee. He has a long and complex history of involvement both with Canadian immigration authorities and this Court. On August 28, 2009, Mr. Naeem was found to be inadmissible to Canada because of his past membership in organizations that there are reasonable grounds to believe have engaged in terrorism. His request for Ministerial relief under the former subsection 34(2) of the *Immigration*

and Refugee Protection Act, SC 2001, c 27 [IRPA] was denied on October 12, 2015 by the Respondent, the Minister of Public Safety and Emergency Preparedness [Minister].

[2] Mr. Naeem now seeks judicial review of the Minister's decision and submits that the Minister failed to properly consider the "national interest" and perform a balancing of the relevant factors as articulated in the Supreme Court of Canada's decision in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [Agraira] and as directed in *Naeem v Canada (Citizenship and Immigration)*, 2007 FC 123 [Naeem 2007].

[3] While the evidence before me demonstrates that Mr. Naeem has successfully established himself in Canada, there is no basis upon which this Court can interfere with the Minister's decision and as a result, the application for judicial review is dismissed.

I. Background

[4] Mr. Naeem is a citizen of Pakistan and a member of the Mohajir ethnic sub-group. In 1988, while a student at the National College in Karachi, Pakistan, Mr. Naeem became a member of the All Pakistan Mohajir Student Organization [APMSO], the student wing of the Mohajir Quami Movement [MQM]. He was sixteen (16) years old at the time.

[5] From 1988 to 1990, he was an active member of the APMSO and served as joint secretary. His duties included attending meetings with other APMSO leaders and providing assistance and support to other Mohajir students.

[6] After graduating from college in 1990, Mr. Naeem attended the University of Karachi until 1993 and claims to have been only an ordinary member of the APMSO. He attended meetings and accompanied other APMSO members to rallies but did not report to anyone.

[7] In 1992, the MQM split into two (2) factions—the MQM-Altaf [MQM-A] and the MQM-Haqiqi [MQM-H]. Mr. Naeem remained affiliated with the MQM-A.

[8] After the split, the Pakistan government took a hard stance against the MQM-A. As a result, Mr. Naeem went into hiding from 1993 to 1999. He claims not to have done any work for the APMSO/MQM and MQM-A and that his only goal was to save his life and survive.

[9] Mr. Naeem arrived in Canada in March 1999. He was granted refugee protection on February 21, 2001. He immediately thereafter applied for permanent residence.

[10] In March 2002, Mr. Naeem attended an interview with the Canadian Security Intelligence Service. He was again interviewed in February 2005, this time, by an immigration officer from Citizenship and Immigration Canada [CIC] who found that there were reasonable grounds to believe that Mr. Naeem was inadmissible pursuant to paragraph 34(1)(f) of the IRPA due to his membership in the MQM/MQM-A.

[11] On March 4, 2005, Mr. Naeem applied for Ministerial relief from his finding of inadmissibility. His application was refused by the Minister on March 14, 2006. As a result, his application for permanent residence was also refused.

[12] In May 2006, Mr. Naeem filed an application for judicial review of the refusal of Ministerial relief and of his permanent residence. In March 2007, the Federal Court allowed the combined application for judicial review and ordered the redetermination of both decisions (*Naeem 2007*).

[13] In May 2008, Mr. Naeem was again found inadmissible pursuant to paragraph 34(1)(f) of the IRPA. Mr. Naeem successfully challenged the inadmissibility finding before this Court and, in December 2008, his case was sent back for redetermination by a different officer (*Naeem v Canada (Citizenship and Immigration)*, 2008 FC 1375).

[14] In August 2009, Mr. Naeem was the subject of another inadmissibility finding pursuant to paragraph 34(1)(f) of the IRPA. Although leave was granted, his application for judicial review was dismissed in November 2010 (*Naeem v Canada (Citizenship and Immigration)*, 2010 FC 1069).

[15] Meanwhile, Mr. Naeem continued updating his request for Ministerial relief and application for permanent residence. In November 2011, the Minister again denied Mr. Naeem's request for Ministerial relief. His application for permanent residence was denied later the same month. The following month, Mr. Naeem sought judicial review of both decisions.

[16] In March 2012, Mr. Naeem discontinued his application for judicial review of the decision refusing his application for permanent residence under the agreement that his

application would be re-opened if this Court granted his application for judicial review regarding the denial of his request for Ministerial relief.

[17] In December 2013, the Minister consented to a re-determination of Mr. Naeem's request for Ministerial relief, taking into consideration the guidance of the Supreme Court in *Agraira*. The application for judicial review was granted by this Court (*Naeem v The Minister of Public Safety and Emergency Preparedness*, (December 12, 2013), Toronto IMM-9386-11 (FC)) and the matter was referred back for reconsideration.

[18] In February 2015, Mr. Naeem received a copy of the briefing note and supporting documentation prepared by the President of the Canada Border Services Agency [CBSA] for the Minister, recommending that Ministerial relief be denied. Mr. Naeem provided additional submissions in response to the draft recommendation.

[19] In April 2015, Mr. Naeem's application for permanent residence on humanitarian and compassionate grounds was refused. Leave to judicially review the decision was denied by this Court in July 2015.

[20] On October 12, 2015, the Minister refused to grant Mr. Naeem's request for Ministerial relief. This decision underlies this application for judicial review.

[21] In September 2016, Mr. Naeem's application for judicial review of a decision to deny his application for permanent residence was allowed by this Court. An immigration officer had

refused Mr. Naeem's application for permanent residence despite Mr. Naeem's request that no decision on his application be made until after this application for judicial review be determined. The application was allowed on the basis that the officer was entirely silent on Mr. Naeem's request to delay the determination of the permanent residency application (*Naeem v Canada (Citizenship and Immigration)*, 2016 FC 1073).

II. The Minister's Decision

[22] The Minister adopted the CBSA's most recent recommendation that Ministerial relief be denied to Mr. Naeem. The reasons set out in the CBSA's briefing note shall therefore be considered to be the reasons of the Minister (*Canada (Public Safety and Emergency Preparedness) v Khalil*, 2014 FCA 213 at para 29; *Puvanenthiram v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 587 at para 11 [*Puvanenthiram*]; *Siddique v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 192 at para 25 [*Siddique*]).

[23] The briefing note provides an overview of the legislation enabling Ministerial relief and summarizes the legal test to be applied by the Minister in deciding whether relief should be granted. It then provides general background information on the APMSO, the MQM and the MQM-A. After reviewing Mr. Naeem's immigration history, the briefing note proceeds to discuss the elements considered in making the recommendation, including Mr. Naeem's version of events, the divergent accounts he has provided throughout the years, the CIC officer's 2005 report, prior decisions of the Minister and Mr. Naeem's 2015 post-disclosure submissions. The briefing note then provides an assessment of Mr. Naeem's application, discussing the evidence weighing against him as well as the positive factors in his favor.

[24] Overall, the briefing note concludes that despite Mr. Naeem’s positive contributions to Canada, Mr. Naeem was “a willing, informed and committed member of the APMSO/MQM and MQM-A for a period of eleven years”. Additionally, he failed to demonstrate that it would be contrary to the national interest to exempt him from inadmissibility for his membership in organizations for which there are reasonable grounds to believe engaged in terrorism at the time of his involvement.

III. Issue

[25] The determinative issue in this application for judicial review is whether the Minister’s decision denying Ministerial relief is reasonable.

IV. Standard of review

[26] It is well established, and both parties agree, that the Minister’s decision to deny relief pursuant to the former subsection 34(2) of the IRPA is a discretionary decision that attracts the standard of reasonableness (*Agraira* at para 50; *Puvanenthiram* at para 20; *Siddique* at para 40; *Hameed v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1353 at para 28 [*Hameed*]).

[27] When reviewing a decision on the standard of reasonableness, the Court is concerned with “the existence of justification, transparency and intelligibility within the decision-making process” and “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 SCC 9 at para 47 [*Dunsmuir*]).

[28] Moreover, the Court is not entitled to reweigh the evidence that was before the Minister given the discretionary nature of the Minister’s decision. If the Minister has considered and weighed all of the relevant factors, his decision shall be found to be reasonable (*Agraira* at para 91; *Afridi v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1299 at para 24 [*Afridi*]).

V. Analysis

[29] In *Agraira*, the Supreme Court of Canada established a number of legal principles governing applications for Ministerial relief under the former subsection 34(2) of the IRPA.

[30] First, the onus is on the applicant for Ministerial relief to satisfy the Minister that his or her presence in Canada would not be detrimental to the national interest (*Agraira* at para 43).

[31] Second, in determining what is in the “national interest”, the Minister should be guided by a broad range of factors, including the factors set out in the CIC guidelines (*Agraira* at para 87). They are:

- a) Will the applicant’s presence in Canada be offensive to the Canadian public?
- b) Have all ties with the regime/organization been completely severed?
- c) Is there any indication that the applicant might be benefiting from assets obtained while a member of the organization?

- d) Is there any indication that the applicant may be benefiting from previous membership in the regime/organization?
- e) Has the person adopted the democratic values of Canadian society?

[32] An interpretation of the term “national interest” that relates predominantly to national security and public safety shall be considered reasonable if it does not exclude other important considerations such as those set out in the CIC guidelines or other analogous considerations (*Agraira* at para 88).

[33] Third, humanitarian and compassionate considerations are more properly considered in the context of an application pursuant to section 25 of the IRPA. The consideration of personal factors may be relevant in an application for Ministerial relief to the extent that the factors may have an impact on the assessment of the applicant’s personal characteristics for the purpose of determining whether the applicant can be viewed as a threat to the security of Canada (*Agraira* at para 84).

[34] Finally, the determination of which factors are relevant to the analysis in any given case will depend on the particulars of the application before the Minister (*Agraira* at para 87).

[35] With these legal principles in mind, I shall now consider Mr. Naeem’s arguments.

[36] Mr. Naeem argues that the Minister failed to properly consider the “national interest” and perform any balancing of relevant factors as directed by the Court in *Naeem 2007* at paragraphs

60-65, and as articulated by the Supreme Court in *Agraira*. While the Minister mentioned some positive factors, he presented them in a negative light and distorted the evidence. The Minister also completely ignored other positive factors.

[37] Particularly, Mr. Naeem submits that the Minister proceeded on the flawed premise that he had been involved in the APMSO/MQM-A for eleven (11) years, from 1988 until he left Pakistan in 1999. Mr. Naeem contends that there is no evidence that he was actively involved in the organization after 1992, when he was forced to go into hiding. He attended a single meeting while he was in hiding in 1998 wherein the discussion related to how members were to inform each other if they were arrested. The meeting did not pertain to any MQM-A activities, merely practical survival in a time of unlawful arrests.

[38] Mr. Naeem further submits that the Minister erred in asserting that “the majority of his eleven-year membership occurred when he was an adult.” Mr. Naeem states that he joined the APMSO at the age of sixteen (16) years when he went to college and continued his involvement at university for two (2) more years, from the ages of eighteen (18) to twenty (20). He then stopped any meaningful involvement with the APMSO/MQM and MQM-A after 1992. Mr. Naeem thus considers that the Minister’s finding that the majority of his eleven-year membership occurred when he was an adult is not only unreasonable but also unsupported by the evidence.

[39] Mr. Naeem also submits that the Minister falsely equated the persecution he suffered in Pakistan and his arrests at the hands of the authorities as reflective of his level of involvement in

the MQM-A. Mr. Naeem argues that it is apparent from the country conditions reports in Pakistan that the Pakistan police frequently arbitrarily detain and torture people suspected as only casually involved with the MQM-A.

[40] Moreover, the Minister erroneously assumed that because violence was committed by the MQM-A, Mr. Naeem would have known about it. Mr. Naeem considers that the Minister failed to take into account that his active involvement with the organization ended in 1992 when he went into hiding and that he was not in a position to be aware of or involved in any way in the violence perpetrated by the members of the MQM-A. The Minister also unreasonably discounted the fact that Mr. Naeem was never personally engaged in any kind of violence and that he is against all forms of violence. Similarly, the Minister unreasonably disregarded the fact that Mr. Naeem's past activities in the organization were social and political in nature and had nothing to do with violence.

[41] Mr. Naeem further submits that the Minister should also have considered the current nature of MQM-A, namely that it is now a recognized political party in Pakistan and that it is not listed as a terrorist entity by the Canadian government.

[42] Finally, Mr. Naeem also argues that the Minister fettered his discretion and failed to consider relevant personal factors and evidence, particularly the fact that he has successfully established himself and integrated into Canada, is a contributing member of society, that he has not benefited from his membership in the organization, that he is not a danger to the public and has adopted Canada's democratic values. Other than a general statement hinting at the above, the

Minister engaged in absolutely no analysis or balancing of these factors, going against the decision of the Supreme Court in *Agraira*, and the direction of the Federal Court in *Naeem 2007*. Moreover, the Minister made no mention of the fact that he never engaged in or condoned violent activities, that his period of active involvement was short (from 1988-1992), that he was a minor when he joined and was never involved with MQM-A in Canada.

[43] The Respondent submits that the Minister properly exercised his discretion and reasonably found that Mr. Naeem had failed to demonstrate that his presence in Canada would not be detrimental to the national interest.

[44] It is apparent from the decision that the Minister reasonably considered and balanced the factors relevant to national interest and that he did not misapprehend or ignore relevant evidence.

[45] The Minister considered the positive factors warranting relief against inadmissibility including the fact that Mr. Naeem is an honest and hardworking person who has successfully established himself in Canada, contributes to the economic prosperity of Canada and has adopted Canada's democratic values. The Minister also noted Mr. Naeem's statement that he ceased being a member of the MQM-A when he arrived in Canada, he has never been arrested and does not pose a threat to the security of Canada and that consideration should be given to the current legitimate status of the MQM-A in the Pakistani government. The Minister also considered Mr. Naeem's statement that he was never involved in any violent activity, never carried a weapon and never condoned violence. However, the Minister equally found that Mr. Naeem was a "willing, informed and committed" member of the APMSO/MQM and the MQM-A for a

period of eleven (11) years. After considering all the relevant factors in the exercise of his discretion, the Minister concluded that the positive factors did not outweigh Mr. Naeem's voluntary, continuous and informed involvement and commitment to organizations that there are reasonable grounds to believe engaged in acts of terrorism at the time of his involvement.

[46] Contrary to Mr. Naeem's submissions, the Minister's decision is not based on the mistaken assumption that Mr. Naeem was "actively" involved in the APMSO/MQM and MQM-A for eleven (11) years. Throughout the decision, the Minister explicitly acknowledges Mr. Naeem's argument that he was only actively involved with the APMSO/MQM from 1988 until 1992 and that he was only sixteen (16) years old when he first joined the APMSO/MQM. However, the Minister decided that given that Mr. Naeem had attended meetings with MQM members and lived with other MQM members while he was in hiding from 1992/3-1999, he still "maintained a relationship and his membership with the MQM-A" and therefore, considered "that his membership was continuous, ending in March 1999." Upon review of the Certified Tribunal Record, and in particular the notes of the interviews conducted on January 23, 2008, July 15, 2008 and June 2, 2009, it was reasonable for the Minister to conclude that Mr. Naeem was a member of the MQM-A continuously until 1999.

[47] The Minister also noted that Mr. Naeem had voluntarily joined and maintained his membership with the APMSO/MQM and the MQM-A. To support his conclusion, the Minister noted Mr. Naeem's statement that he had sought out and voluntarily joined the APMSO/MQM when he attended college in 1988 and that he had maintained his membership while at university. He also observed that Mr. Naeem had chosen to stay with the MQM-A, instead of the MQM-H,

when the MQM split into two (2) factions and that he continued his membership with the MQM-A until he left Pakistan in 1999.

[48] The Minister also found that Mr. Naeem demonstrated a strong commitment to the APMSO and the MQM-A by maintaining his membership through eleven (11) years. In making this finding, the Minister noted that early in his membership with the APMSO/MQM, Mr. Naeem was warned by the police to cease his involvement in the organization after being arrested, detained and beaten while in detention. The Minister reasonably concluded that the fact Mr. Naeem had remained a member of the MQM-A, despite police warnings, his arrests and beatings, the many killings of other MQM-A members, the ever-increasing danger and fear for his personal safety, was indicative of his loyalty and commitment to the organizations. The Minister also noted that despite being beaten, hospitalized and forced to go into hiding, Mr. Naeem did not see the point of trying to convince the authorities that he was no longer an active member.

[49] Moreover, the Minister did not infer from Mr. Naeem's multiple arrests that he necessarily held a prominent position, in spite of Mr. Naeem's submission to that effect. However, the Minister did infer that Mr. Naeem was aware of the violence committed by the MQM and MQM-A, despite his statement to the contrary. The Minister concluded that Mr. Naeem could not have been unaware of the range of violence and terrorist activities perpetrated by the MQM and MQM-A, given the length of time he resided in Karachi in the 1990's which saw high levels of violence due to the fighting between the MQM-A and the MQM-H, the protracted period during which he was member and his awareness of the status of

the MQM-A as described by the details he provided of the meeting or meetings he attended while in hiding. Not only is the Minister's inference reasonable, it is supported by the statement made by Mr. Naeem in his March 2005 Ministerial relief submissions, whereby he indicated that he "abhorred the violence which the MQM sometimes resorted to" but that he was in favour of the aims and goals of the organization. It is also supported by the jurisprudence of this Court which has found that it is reasonable for the Minister to infer an applicant's knowledge of the MQM's violence by virtue of living in a major city where violence was commonplace (*Siddique* at paras 59-60; *Afridi* at para 33).

[50] Likewise, the Minister did not discount the fact that the reason Mr. Naeem joined the organization was connected to the discrimination that Mohajirs were subjected to in terms of educational and employment opportunities and that his past activities in the organization were social and political in nature and did not involve any perpetration of violence. Despite being positive factors in the overall assessment, the Minister nonetheless concluded that Mr. Naeem was a member of the MQM and MQM-A and that his actions had nonetheless contributed to the organizations as a whole.

[51] I also find no merit to Mr. Naeem's argument that the Minister fettered his discretion by failing to consider certain positive factors, such as:

- 1) he has successfully established himself and integrated into Canada;
- 2) he is a contributing member of Canadian society;
- 3) he has not benefited from his membership in MQM-A;
- 4) he is not a danger to the public and has adopted the democratic values of Canada;

- 5) he is a Convention refugee; and,
- 6) he never participated in violent activities of MQM-A.

[52] Upon review of the decision and as shown above, the Minister clearly considered factors 1, 2, 4, 5 and 6. The Minister properly noted Mr. Naeem's personal situation and circumstances, his alleged democratic values, establishment, hard-working nature, the extent and duration of his relationship with the MQM-A and the discontinuance of his membership and interaction with the MQM-A since his arrival in Canada. The only outstanding factor relates to whether the Minister considered whether Mr. Naeem benefited from his membership in the MQM-A. While the Minister is silent on this issue, I do not believe this to be determinative such as to render the Minister's decision unreasonable.

[53] Mr. Naeem argues that when "balancing" the relevant factors, the Minister is required to set out in detail how he weighed national security and public safety against the other factors. However, the jurisprudence of this Court is such that so long as the Minister identifies factors other than public safety and national security in his analysis, he is not required to provide reasons why certain factors were afforded more weight (*Siddique* at para 84).

[54] Mr. Naeem is essentially arguing that the Minister should have afforded more weight to his current activities in Canada, rather than those in Pakistan. However, this Court has found that it is reasonable for the Minister to give greater weight to past actions of an applicant, as explained in paragraph 35 of *Afridi*:

[35] Finally, Mr. Afridi submits that the Minister unreasonably focussed on his past involvement with the MQM and the nature of

the organization rather than on his current personal situation. It is not, however, an error for the Minister to consider past actions in assessing whether a person's continued presence to Canada would be detrimental to the national interest. Indeed, national security and public safety consideration are not limited to assessments of current and future risk, and it bears noting that much of the focus in *Agraira* was on Mr. Agraira's past activities in Libya. Moreover, as the briefing note observes, Mr. Afridi ceased being involved with the MQM in Canada because he became too busy with his family and his job, and not because he was disassociating himself from the organization and its tactics. It was therefore reasonable for the Minister to have regard to these factors in assessing whether it was in the national interest to grant Ministerial relief to Mr. Afridi.

[55] Having concluded that the Minister reviewed and considered all the relevant factors based on the record before him, I am of the view that it was open to the Minister to decide which factors would guide the exercise of his discretion and how much weight he would give them. In this case, the Minister concluded that he was placing more weight on the nature and level of commitment Mr. Naeem demonstrated to organizations for which there are reasonable grounds to believe engaged in violence and terrorist activities.

[56] At the hearing, I expressed concern that the grounds for the inadmissibility finding should not automatically become the basis for the denial of the Ministerial relief. As Justice Phelan noted in *Soe v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 461 at paragraph 34 and as was reiterated in both *Hameed* and *Afridi*, treating past membership of an organization for which there are reasonable grounds to believe has engaged in terrorism as determinative of an application for Ministerial relief would render the exercise of discretion meaningless. However, the granting of Ministerial relief is ultimately a discretionary balancing exercise by the Minister. While the competing factors might have been weighed differently, it is not the role of this Court

to reweigh the evidence that was before the Minister when assessing the reasonableness of the Minister's exercise of discretion under the former subsection 34(2) of the IRPA.

[57] Consequently, I find the Minister's decision to be justified, transparent and intelligible and within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir* at para 47).

[58] As a result, the application for judicial review is dismissed. The parties did not propose a certified question and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question is certified for appeal.

"Sylvie E. Roussel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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