Federal Court  Cour fédérale

Date: 20190715

Docket: IMM-3257-18

Citation: 2019 FC 934

Ottawa, Ontario, July 15, 2019

PRESENT: Madam Justice Walker

BETWEEN:

KHALED SABER ABDELHAMED ZAHW

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Khaled Saber Abdelhamed Zahw, seeks judicial review of a decision (Decision) of the Immigration Division (ID) of the Immigration and Refugee Board finding him inadmissible to Canada on security grounds pursuant to paragraphs 34(1)(b) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The ID found that the Applicant was a member of an organization, the Egyptian military, that there were reasonable grounds to believe engaged in or instigated the subversion by force of the Egyptian government in 2013.

[2] The Decision is a redetermination of a prior ID decision dated April 24, 2017 (Prior ID Decision). The Applicant's application for judicial review of the Prior ID Decision was granted by Justice Shore on December 6, 2017 (*Zahw v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1112 (*2017 Judgment*)).

[3] For the reasons that follow, the application is dismissed.

I. Background

[4] The Applicant is a citizen of Egypt. He joined the Egyptian military in 1989 as an engineer (First Lieutenant) and was promoted a number of times during his career. The Applicant held the rank of Colonel from January 2008 to December 2013 and, thereafter, was a Brigadier General until his retirement in January 2015. These dates are important as the issues in this application arise from the Applicant's membership in the Egyptian military and the military's ouster of the government of President Morsi during the summer of 2013.

[5] The Applicant and his wife arrived in Canada on July 21, 2015, having applied for and received visitor visas. They claimed refugee protection on November 24, 2015, fearing persecution by the Egyptian state due to its ongoing suspicion that the Applicant was a supporter of the Muslim Brotherhood. The Applicant alleged that this suspicion derives from comments he made in support of the Morsi regime in 2013.

[6] On February 3, 2016, an officer with Citizenship and Immigration Canada prepared a report under subsection 44(1) of the IRPA. The officer concluded that the Applicant is

inadmissible to Canada pursuant to paragraph 34(1)(f) of the IRPA as he was a member of the Egyptian military, an organization that there were reasonable grounds to believe had engaged in acts referred to in paragraph 34(1)(b), namely the subversion by force of the Egyptian government. The officer stated that, on July 3, 2013, the Egyptian military carried out a coup against the democratically elected government of Egypt.

[7] On February 5, 2016, the Applicant's case was referred to the ID for an admissibility hearing pursuant to subsection 44(2) of the IRPA.

[8] Also on February 5, 2016, the Applicant's claim for refugee protection was suspended pursuant to paragraph 100(2)(a) of the IRPA pending the ID's determination of the Applicant's inadmissibility.

[9] The ID held an admissibility hearing on March 6, 2017 and issued the Prior ID Decision on April 24, 2017. The ID concluded:

> [34] The panel finds that there are reasonable grounds to believe that Mr. Khaled Saber Abdelhamed Zahw is a foreign national. It is conceded that Mr. Zahw was a member of the Egyptian military from 1989 until January 2015. The panel finds that there are reasonable grounds to believe that the Egyptian military was engaged in or instigated the subversion by force of the government of Egypt in July 2013, while Mr. Zahw was a member of that organization. The panel finds that Mr. Zahw is inadmissible pursuant to s. 34(1)(f) for 34(1)(b). The panel makes a Deportation Order against Mr. Zahw pursuant to paragraph 229(1)(a) of the *Immigration and Refugee Protection Regulations*. …

[10] The Applicant filed an application for judicial review of the Prior ID Decision and, on December 6, 2017, Justice Shore issued the *2017 Judgment* granting the application for judicial review.

[11] The Court held that the Prior ID Decision was unreasonable because the documentary evidence before the panel could not support a conclusion that the Egyptian military subverted by force the Egyptian government. Justice Shore stated (*2017 Judgment* at para 1):

> [1] The Court finds that the Immigration Division [ID] failed to conclude if and how the Egyptian military was engaged in an act of force that intended to overthrow a government by force (*Shandi (Re)*, [1991] F.C.J. No. 1319 (QL) [*Shandi*]). The Immigration and Refugee Board of Canada [IRB or Board] has to study the evidence on the record as a whole, in addition to comprehensive, fulsome Country Condition Evidence emanating from the Board. In its reasons, the ID cited the Federal Court of Appeal's decision in *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 [*Najafi*], indicating that "subversion by force of a government" means "using force with a goal of overthrowing any government", but that the term "may be distinguished by its specific objective from the broader concept of use of force against the state. It specifically involves using force with the goal of overthrowing the government, either in some part of its territory or in the entire country" (*Najafi*, above, at para 12). The evidence, as discussed in the ID reasons, was also generalized, not specific to the Applicant's involvement in the military given the unit in which he worked, and lacked information which caused the ID to fail to assess the goal of the Egyptian military in the 2013 events.

[12] The Court found that the ID had not adequately considered all of the evidence before it, including reports by international monitoring groups. The Court focussed on whether the ID had properly determined that the events of 2013 were a military coup, stating that, "there is an important distinction to be made between a coup d'état and a military intervention" (*2017*

Judgment at para 32). Finally, the Court concluded that it was the serious unrest in the streets of Cairo in July 2013 that led to President Morsi's removal.

II. Decision under review

[13] The Decision is an oral decision of the ID dated June 27, 2018. The ID found that the Applicant was a member of the Egyptian military during June and July 2013 and that there were reasonable grounds to believe that the military instigated and was engaged in the subversion by force of the Morsi government during that period. As a result, the Applicant was inadmissible to Canada pursuant to paragraphs 34(1)(b) and 34(1)(f) of the IRPA.

[14] The ID referred to the standard of proof of "reasonable grounds to believe" the facts that constitute inadmissibility (section 33 of the IRPA) and first reviewed the political history of Egypt from 2011 through 2013 based on the evidence before it. The panel relied on an "Inadmissibility Assessment" report of the National Security Screening Division of the Canada Border Services Agency (CBSA) dated April 7, 2015 (CBSA Report). The CBSA Report refers to articles from various news sources reporting on the events leading up to and following July 1-3, 2013. In the panel's view, having reviewed all of the documentary evidence, the CBSA Report appeared to be "a balanced consistent depiction of events leading up to President Morsi's removal from office". The ID stated that the publications referred to in the CBSA Report were reliable and persuasive. The panel found that there had been "a continuous and extensive reporting on the crisis in Egypt and the overthrow of the first democratically elected Egyptian President by military coup".

[15] The ID stated that the legal test applicable to the assessment of inadmissibility for purposes of paragraph 34(1)(f) of the IRPA comprises three parts: “membership” in the organization in question, the “reasonable grounds to believe” standard, and the definition of “terrorism” or “subversion” (*Arab v. Canada (Citizenship and Immigration)*, 2010 FC 967 at paras 24-27).

[16] The ID noted that there was no dispute regarding the Applicant’s membership in the Egyptian military during the relevant period. The panel addressed the issue of whether an individual must have personally engaged in the alleged subversion in order to fall within the ambit of paragraph 34(1)(f) and stated:

> Although Mr. Zahw claims he did not participate in any acts of violence or subversion against the government, section 34(1)(f) does not require any act of participation (inaudible) support of terrorism or subversion by force of the government, only that the person be a member of an organization that engaged in terrorism or subversion by force of the government.

[17] The ID found that the military was instrumental, if not responsible, for the overthrow of the Egyptian government based on its assumption of control of the situation in Cairo. It was clear that the use of force was the intended means to remove the government as military vehicles and soldiers in riot gear surrounded the protesters in the hours before Mr. Morsi was ousted from office (*Oremade v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1077 (*Oremade*)). After providing a chronology of the events of early July 2013 in Cairo, including the military’s display of force, its 48-hour ultimatum to and removal of President Morsi, and the primary role in those events of General el-Sisi, the Commander-in-Chief of the Egyptian

military, the ID concluded that there were reasonable ground to believe that the military had engaged in the subversion by force of the government.

[18] The ID acknowledged that the term "subversion" is not defined in the IRPA. Citing the decision of the Federal Court of Appeal (FCA) in *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 (*Najafi*), the panel stated that the subversion by force of a government means the use of force with the goal of overthrowing any government and that the "term may be distinguished by its specific objective from the broader concept of use of force against the state" (*Najafi* at para 12).

[19] The ID held that the military carried out its acts knowingly and with the intent to overthrow the Egyptian government, again referring to the involvement of military personnel and vehicles. The progression of events demonstrated that the removal of President Morsi was an organized, planned and calculated assault on the presidency by the military with the purpose of overthrowing the elected government.

[20] The ID did not accept the Applicant's argument that President Morsi was removed from power in response to a popular uprising led by a coalition of leaders. The panel referred to passages in the Applicant's Basis of Claim (BOC) narrative in which he stated that President Morsi was removed from power and was taken into custody along with Muslim Brotherhood leaders. The ID found that the Applicant attempted during the hearing to downplay the role of the military in the removal of the President from office. The panel acknowledged the presence in the streets of millions of protesters but nonetheless found that the Egyptian military was

responsible for the actual removal and replacement of the President using threatened and actual force to achieve its ends.

III. Issue and standard of review

[21] The parties agree that the Applicant was a member of the Egyptian military in July 2013. The sole issue before me is whether the ID's conclusion that there were reasonable grounds to believe that the military engaged in or instigated acts of subversion by force against the Egyptian government in July 2013 was reasonable.

[22] The standard of review of the ID's findings with respect to whether or not there are reasonable grounds to believe that an organization engaged in subversion by force of a government for purposes of paragraph 34(1)(b) of the IRPA is reasonableness. The ID's consideration of the issue involves questions of mixed fact and law (*Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 at paras 11-14 (*Alam*); *Najafi* at paras 56-57). The Court will intervene only if the Decision falls outside the "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).

IV. Legislative background

[23] The inadmissibility provisions of the IRPA at issue are as follows:

DIVISION 4	**SECTION 4**
INADMISSIBILITY	**INTERDICTIONS DE TERRITOIRE**
Rules of interpretation	**Interprétation**
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 are occurring or may occur.	**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.
Security	**Sécurité**
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 :
[…]	[…]
(b) engaging in or instigating the subversion by force of any government;	**b)** être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
[…]	[…]
(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).	**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).

V. Analysis

Applicant's Submissions

[24] The Applicant's primary submission is that the removal of President Morsi was the result of a "popular revolt by the citizens of Egypt leading to the removal of Mohamed Morsi which was supported by the Egyptian military in order to maintain order in the country" and was not a military coup. The Applicant relies on news reports from independent media organizations that characterize the military's intervention as a response to the popular will of the protesters and submits that President Morsi would not have been removed from office without the public protests. The Applicant points to the military's motivation for intervening to argue that it was unreasonable for the ID to conclude that the Egyptian military subverted the government by force within the meaning of paragraph 34(1)(f) of the IRPA.

[25] The Applicant refers to the definition of subversion in the *Merriam-Webster Dictionary* requiring a "systematic attempt to overthrow or undermine a government or political system by persons working secretly from within". In his view, there was no evidence before the ID that the Egyptian military engaged in a systematic plot to overthrow the government

[26] The Applicant relies on the distinction drawn in the *2017 Judgment* between a "military intervention" and a "military coup" and argues that it was unreasonable for the second ID panel to find that the Egyptian military had engaged in subversion, as the evidence established only a military intervention in the face of public unrest. The Applicant submits that the additional

evidence before the second ID panel was essentially the same as the evidence before the first panel and that the ID was bound by the finding in the *2017 Judgment*.

Respondent's Submissions

[27] The Respondent submits that the evidence reasonably supports the ID's finding that there were reasonable grounds to believe that the Egyptian military engaged in the subversion by force of the Morsi government in the summer of 2013. As the Applicant's membership in the Egyptian military during that period is uncontested, he is inadmissible pursuant to paragraphs 34(1)(b) and 34(1)(f) of the IRPA.

[28] The Respondent refers to dictionary definitions of the term "subversion" that emphasize the actions or process of overthrowing or undermining a government and states that the Applicant's own evidence, namely his BOC, demonstrated the military's plans to overthrow the government. The Respondent submits that the ID properly relied on the interpretation of subversion set out by the FCA in *Najafi*.

[29] The Respondent relies on numerous articles and reports before the ID, including those cited by the Applicant, to argue that the evidence clearly establishes the Egyptian military's planned intervention, supported by an obvious display of threatened force in the streets of Cairo.

[30] In response to the Applicant's principal submission, the Respondent submits that whether or not the Egyptian government was overthrown with public support is irrelevant to a finding of

inadmissibility under paragraphs 34(1)(b) and 34(1)(f) of the IRPA. This argument was considered and rejected by the Court in *Oremade*.

[31] Finally, the Respondent argues that the ID was not bound by the *2017 Judgment* to find that the military's actions in 2013 were a military intervention only and not a subversion of the Egyptian government. The *2017 Judgment* held that the first ID panel failed to reasonably assess the evidence before it. The second ID panel considered all of the documentary evidence, including new evidence presented by the Minister, and the Applicant's own evidence.

Analysis

(a) Preliminary Remarks

[32] For the reasons that follow, I find that the ID's conclusion that there were reasonable grounds to believe that the Egyptian military instigated and was engaged in the subversion by force of the Morsi government in the summer of 2013 was reasonable. There is no dispute between the parties as to the Applicant's membership in the Egyptian military during that period. As a result, the ID's finding that the Applicant was inadmissible to Canada pursuant to paragraphs 34(1)(b) and 34(1)(f) of the IRPA was also reasonable. I note that it is sufficient for purposes of paragraph 34(1)(f) to establish membership in the organization in question. There is no requirement for the ID to find that an applicant participated or was directly complicit in the acts of alleged subversion (*Alam* at paras 33-35).

[33] It is important to bear in mind that the facts giving rise to inadmissibility must be established on the standard of "reasonable grounds to believe" pursuant to section 33 of the IRPA. 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". Reasonable grounds to believe will exist where there is an objective basis for the belief which is based on compelling and credible information (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paras 114-117). Further, the question in this application is not whether there were in fact reasonable grounds to believe the Applicant was inadmissible. Rather, the question before me is whether the ID's conclusion that there were reasonable grounds to so believe was itself reasonable (*Pizarro Gutierrez v Canada (Citizenship and Immigration),* 2013 FC 623 at para 22; *Niyungeko v Canada (Citizenship and Immigration)*, 2019 FC 820 at paras 10-11 (*Niyungeko*)).

(b) *Jurisprudence*

[34] This Court addressed the meaning of subversion in the context of the inadmissibility provisions of the IRPA in *Eyakwe v. Canada (Citizenship and Immigration)*, 2011 FC 409 (at para 30):

> [30] There is no single definition of subversion by force found in the jurisprudence or the Act. The Board reviewed the leading cases from this Court and the Court of Appeal on subversion. It concluded that the most common definition for subversion is the changing of a government or instigation thereof through the use of force, violence or criminal means.

[35] The FCA considered at length the interpretation of paragraph 34(1)(b) of the IRPA in *Najafi* in 2014. The applicant in the case was a member of the Kurdish Democratic Party (KDP) of Iran. The ID found that there were reasonable grounds to believe the KDP had subverted the Iranian government by force. The certified question before the FCA was whether an individual who participates in an organization that uses force "in an attempt to subvert a government in furtherance of an oppressed people's claimed right to self-determination" is excluded from inadmissibility due to Canada's international obligations under Protocol I of the Geneva Conventions of 1949. In other words, is inadmissibility dependent on the legitimacy of the acts of subversion?

[36] In summarizing the ID's decision, the FCA stated (*Najafi* at para 12):

> [12] The Division then expressed the view that "subversion by force of a government" may be distinguished by its specific objective from the broader concept of use of force against the state. It specifically involves using force with the goal of overthrowing the government, either in some part of its territory or in the entire country. The Division was also satisfied that the words "any government" include even a despotic regime, and that the government's actions, however oppressive, are not relevant to the analysis (paragraph 32 of the decision).

[37] This passage figured in the *2017 Judgment* and is relied on by the Applicant in this application in support of his argument that the Egyptian military did not intend to overthrow the government but instead acted in response to the demands of the public. However, I find that the distinction drawn merely highlights the requirement that the use of force be directed towards the overthrow of the government as the intended outcome. It does not address motivation.

[38] The FCA considered the interpretation of paragraph 34(1)(b) of the IRPA at paragraphs 58-91 of *Najafi*. The Court first noted that the word "subversion" is not defined in the IRPA and that there is no universal definition of the term. The Court accepted the *Black's Law Dictionary* definition which refers to the act or process of overthrowing the government (*Najafi* at para 65):

> [65] As noted by the Division, the word "subversion" is not defined in the Act, and there is no universally adopted definition of the term. The *Black's Law Dictionary*'s definition to which the Division refers at paragraph 27 (particularly, the words "the act or process of overthrowing … the government") is very much in line with the ordinary meaning of the French text (« actes visant au renversement d'un gouvernement »). Although in certain contexts, the word "subversion" may well be understood to refer to illicit acts or acts done for an improper purpose, the words used in the French text do not convey any such connotation. I am satisfied that the shared meaning of the two texts does not ordinarily include any reference to the legality or legitimacy of such acts.

[39] The FCA concluded that the language "any government" contained in paragraph 34(1)(b) is not limited to the subversion of democratic governments (*Najafi* at paras 70, 79). The process of overthrowing a corrupt and despotic government may amount to subversion by force within the meaning of paragraph 34(1)(b) of the IRPA. The FCA stated that the provision is to be applied broadly in assessing inadmissibility and is subject to mitigation by the Minister in an application pursuant to what is now section 42.1 of the IRPA (*Najafi* at para 80).

[40] Other aspects of the term "subversion by force" relevant to this application have been considered in decisions of this Court. In *Oremade*, a 2005 decision of this Court, Justice Phelan stated that Parliament intended paragraph 34(1)(b) to have a broad sweep. The Court found that "subversion by force" is not limited to acts of violence, rather it includes threats, coercion or compulsion by violent means (*Oremade* at paras 26-27):

> [26] However, this intent to subvert by force is not to be measured solely from the subjective perspective of the Applicant. It may well be that there was a hope or expectation that the coup would be bloodless but it is also reasonable for persons on the street to assume upon seeing armed soldiers occupying lands and buildings that force could or would be used if thought necessary.
>
> [27] I agree with the IAD's conclusion that the term "by force" is not simply the equivalent of "by violence". "By force" includes coercion or compulsion by violent means, coercion or compulsion by threats to use violent means, and, I would add, reasonably perceived potential for the use of coercion by violent means.

[41] Subsequent cases have accepted the broad interpretation of paragraph 34(1)(b) described in *Oremade* and the Court's finding that there must be intent to use force to subvert the government (see *Niyungeko* at paras 33-35, citing *Najafi* and *Oremade*).

(c) *Material Facts*

[42] The ID based its Decision on the following material facts, which are not contested by the parties:

A. In February 2011, President Mubarak stepped down from power, the Egyptian military took power in his place, Parliament was dissolved and Egypt's constitution was suspended.

B. From November 2011 through February 2012, multi-stage elections were held. In May 2012, the first round of voting in presidential elections was held with 13 candidates, including the Muslim Brotherhood's Mohamed Morsi. Mr. Morsi ultimately won the election and took office as President on June 30, 2012.

C. Following his election, President Morsi decreed that his decisions would be immune from judicial review. He also barred the Egyptian courts from dissolving the Constituent Assembly and the Upper House of Parliament.

D. Mass protests ensued from January to June 2013, calling on President Morsi to step down.

E. Public demonstrations continued into early July 2013 and, on July 1, 2013, the Egyptian military issued an ultimatum, giving President Morsi and the members of the opposition 48 hours to resolve their disputes or the military would impose its own solution.

F. On July 2, 2013, military officials disclosed details of the army's plan to intervene if no agreement was reached.

G. On July 3, 2013, General el-Sisi announced that President Morsi had been removed from office, Egypt's constitution had again been suspended, and Chief Justice Adly Mansour of the Egyptian Supreme Constitutional Court would act as Interim President until new elections could be held.

H. Military vehicles and soldiers in riot gear surrounded the rally in Cairo and the presidential palace hours before the takeover, several people died and many more were injured in fights between supporters of President Morsi, civilian opponents, and security forces. By the end of the night of July 3, 2013, Mr. Morsi was in military custody and was blocked from communications. Many of his senior aides were under house arrest.

I. The New York Times reported that, at a televised news conference, General el-Sisi said that the military had no interest in politics and was ousting President Morsi because "he had failed to fulfill the hope for the national consensus" and failed to meet the demands of the Egyptian people. The New York Times stated that there was no mistaking the threat of force and signs of a crackdown.

(d) Application of Jurisprudence and Evidence to the Applicant's case

[43] For the following reasons, I find that the evidence in the record supports the ID's conclusion that there are reasonable grounds to believe that the Egyptian military subverted by force, and/or the threat of force, the Morsi government in July 2013 within the meaning of paragraph 34(1)(b) of the IRPA.

[44] In the present case, the events of June and July 2013 in Cairo are not in dispute. In summary, there were significant public demonstrations against the government of President Morsi. On July 1, 2013, the Egyptian military issued a 48-hour ultimatum to the President and the opposition to resolve their outstanding issues or face intervention. Military personnel in riot gear and armoured vehicles moved into position in the streets of Cairo. On July 3, 2013, led by General el-Sisi, the military removed President Morsi from power, suspended the Egyptian Constitution and installed an interim president.

[45] The evidence in the record consists of general, documentary reports regarding Egypt and numerous articles from independent and well-respected news sources (BBC News; New York Times; Washington Post; Radio Free Europe/UNHCR; Jane's Defence Weekly, etc.) detailing the events of early July 2013. The articles and reports consistently describe the Egyptian military's intervention in July 2013 as a military coup or ouster, albeit with significant public support.

[46] The following excerpt from a New York Times article *("Army Ousts Egypt's President: Morsi is Taken into Military Custody"*) dated July 3, 2013 is instructive:

> By the end of the night, Mr. Morsi was in military custody and blocked from all communications, one of his advisers said, and many of his senior aides were under house arrest. Egyptian security forces had arrested at least 38 senior leaders of the Muslim Brotherhood, including Saad el-Katani, the chief of the group's political party, and others were being rounded up as well, security officials say. No immediate reasons were given for the detentions.
>
> […]
>
> The generals built their case for intervention in a carefully orchestrated series of maneuvers, calling their actions an effort at a

> "national reconciliation" and refusing to call their takeover a coup. At a televised news conference late on Wednesday night, Gen. Abdul-Fattah el-Sisi said that the military had no interest in politics and was ousting Mr. Morsi because he had failed to fulfil "the hope for a national consensus."
>
> The general stood on a broad stage, flanked by Egypt's top Muslim and Christian clerics as well as a spectrum of political leaders including Mohamed ELBaradei, the Nobel Prize-winning diplomat and liberal icon, and Galal Morra, a prominent Islamist ultraconservative, or Salafi, all of whom endorsed the takeover.
>
> Despite their protestations, the move plunged the generals back to the center of political power for the second time in less than three years, following their ouster of President Hosni Mubarak in 2011.
>
> […] Still, there was no mistaking the threat of force and signs of a crackdown. Armored military vehicles rolled through the streets of the capital, surrounded the presidential palace and ringed in the Islamists…

[47] Other articles in the record contain similar commentaries, variously describing the military's actions as the "army's move to depose the president" following four days of mass street demonstrations, noting the presentation by General el-Sisi of a "roadmap for the future" (BBC News), and a "coup but with public support" (Refworld/UNHCR). A report regarding Egypt/US relations authored by the US Congressional Research Service dated February 8, 2018 described the events as follows:

> The atmosphere of mutual distrust, political gridlock, and public dissatisfaction that permeated Morsi's presidency provided Egypt's military, led by then-Defense Minister Sisi, with an opportunity to reassert political control. On July 3, 2013, following several days of mass demonstrations against Morsi's rule, the military unilaterally dissolved Morsi's government, suspended the constitution that had been passed during his rule, and installed an interim president. The Muslim Brotherhood and its supporters declared the military's actions a coup d'etat and protested in the streets. Weeks later, Egypt's military and national police launched a violent crackdown against the Muslim Brotherhood, and police

> and army soldiers fired live ammunition against demonstrators encamped in several public squares, resulting in the killing of at least 1,150 demonstrators. The Egyptian military justified these actions by decrying the encampments as a threat to national security.

[48] While the Applicant questions the ID's reliance on news sources and the CBSA Report in support of its conclusions, he has referenced no country reports that contradict the descriptions of the events of July 1-3, 2013 by those sources. Based on the evidence in the record, there can be little question but that the Egyptian military forcibly removed the government. The question is whether the Applicant's arguments that (1) the military's actions were not systematic in nature and (2) the cause of the military's intervention was the public sentiment against President Morsi, render the ID's conclusion that there were reasonable grounds to believe that the military engaged in subversion within the meaning of paragraph 34(1)(b) of the IRPA unreasonable.

[49] The Applicant submits that the evidence does not support a finding that the Egyptian military acted covertly or systematically to remove the Morsi government from office. I do not find this argument persuasive for two reasons.

[50] I note first that the *Black's Law Dictionary* definition relied on by the FCA in *Najafi* does not require that the subversion of a government be systematic. Further, there is no reference to covert planning or plotting in paragraph 34(1)(b) of the IRPA. Inevitably, an organization that intends to subvert a government will have engaged in some degree of planning but I find no basis for the Applicant's argument that the planned nature of the intervention must be independently established or that the actions of the organization must be systematic in nature.

[51] In any event, the evidence in the record indicates that the Egyptian military planned its actions of July 2013 in some detail. There were ongoing discussions between the military and the government throughout the period. The military issued a 48-hour ultimatum and deployed its personnel and equipment in the public squares in Cairo and around the Presidential palace. Military leaders publicly described their plan for the removal of President Morsi. At the expiry of the 48-hour period, the military executed the actions it had described in an orderly manner. The military removed President Morsi from office, suspended the constitution, installed an interim president, and arrested Mr. Morsi and many of his supporters, all of which reflect a systematic approach to the ouster of the government.

[52] As stated above, the Applicant's primary submission is that the removal of President Morsi was the result of a popular revolt by the citizens of Egypt. The Egyptian military was motivated to take action to avoid civil war and restore public order, with broad support from influential constituencies. The military intended to intervene in the volatile events unfolding in Cairo but its motivation was not subversive. The Applicant argues that the cause or motivation for the military's intervention is a critical issue in this case.

[53] The Respondent does not contest the fact that the military's removal of President Morsi and the Egyptian government occurred in the midst of a groundswell of public opposition to the government. However, the Respondent argues that paragraphs 34(1)(b) and (f) of the IRPA make no mention of an organization's motivation for overthrowing a government.

[54] I agree with the Respondent's position. The words of paragraph 34(1)(b) of the IRPA are to be given a broad interpretation. The provision refers to engaging in or instigating the subversion by force of any government (in French, « actes visant au renversement d'un gouvernement par la force »). In my view, a distinction must be drawn between the intention and motivation of an organization. The organization in question must intend to oust a government by force in order that its acts fall within paragraph 34(1)(b). However, neither the words of the paragraph nor the definitions referred to in the jurisprudence speak to the organization's motivation. In *Najafi*, the FCA stated that paragraph 34(1)(b) of the IRPA was not intended to be limited to acts committed for an "improper purpose" (at para 65).

[55] The Applicant has referred to no jurisprudence that limits subversion to the overthrow of a government that is undertaken without public support. Such a narrow interpretation of the term is inconsistent with the comments of the FCA and this Court in *Najafi* and *Oremade* that Parliament's intention was to cast a wide net to safeguard the security of Canada and to leave any amelioration of the effects of subsection 34(1) to an application pursuant to section 42.1 of the IRPA. Justice Phelan stated (*Oremade* at paras 17-18):

> [17] There is no doubt that paragraph 34(1)(b), had it been in force at the relevant times, could have had potentially startling impact on historical, and even contemporary figures. Arguably such revered and diverse figures as George Washington, Eamon De Valera, Menachem Begin and Nelson Mandela might be deemed inadmissible to Canada. With respect, the sweep of paragraph 34(1)(b) is not particularly relevant to this Applicant.
>
> [18] Parliament clearly intended that the provision have the broad sweep described. The limiting factor on such broad and potentially undesirable application is subsection 34(2) [now subsection 42.1] which gives to the Minister the responsibility to assess whether a person who falls within paragraph 34(1)(b) might be a threat to Canada or might otherwise be inadmissible. Therefore, a broad

purposive interpretation does not lead to an unreasonable or ludicrous result

[56] It is clear from the jurisprudence that the nature of a government being overthrown, whether democratically elected, oppressive or illegitimate, is irrelevant to the determination of whether an organization engaged in the subversion by force of that government for purposes of paragraph 34(1)(b) of the IRPA. In the same vein, I find that an evaluation of the motivation prompting the removal by force of a government or the degree of public support for the intervention by the organization is neither contemplated nor required. The Applicant's argument essentially echoes the arguments rejected in *Najafi* which were based on the legitimacy of the government; the Applicant's argument in this case questions the legitimacy of the military's intervention.

[57] In *Najafi*, the FCA stated that the definition of subversion as the act or process of overthrowing a government is consistent with a broad application of paragraph 34(1)(b) to determine inadmissibility. The evidence in the record establishes that the Egyptian military planned and engaged in the overthrow of the Morsi government in July 2013. In the days that followed, the military consolidated its hold on power. These facts were considered at length by the second ID panel in reaching its conclusion regarding the application of paragraphs 34(1)(b) and (f) of the IRPA to the Applicant. I find that the ID's conclusion was reasonable.

[58] Finally, the Applicant argues that the second ID panel was bound by the *2017 Judgment* to find that the actions of the Egyptian military in removing the Morsi government did not fall within paragraph 34(1)(b). However, the Court's central finding in the *2017 Judgment* was that

the first ID panel failed to consider all of the relevant evidence in reaching its conclusions. I have reviewed the Decision of the second ID panel, the evidence in the record, including the new evidence before the second ID panel, and the parties' submissions in this regard. I find that the second ID panel reasonably reviewed all of the evidence in the record, which is voluminous, and made no reviewable error in drawing its conclusions from that evidence. The ID's conclusion that there are reasonable grounds to believe that the Egyptian military subverted the government by force in July 2013 within the meaning of paragraph 34(1)(b) of the IRPA was reasonable. There is compelling and credible information in the record that establishes an objective basis for the ID's belief.

VI. Conclusion

[59] The application is dismissed.

[60] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-3257-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3257-18
STYLE OF CAUSE:	KHALED SABER ABDELHAMED ZAHW v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 7, 2019
JUDGMENT AND REASONS:	WALKER J.
DATED:	JULY 15, 2019

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