

Federal Court



Cour fédérale

Date: 20210608

Docket: IMM-936-20

Citation: 2021 FC 557

Ottawa, Ontario, June 8, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MOHAMMAD SAEED SAEEDI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a January 7, 2020 decision of an Immigration Officer [the “Decision”], rejecting an application for permanent resident status under the Spouse or Common-law Partner in Canada class, pursuant to subsections 72(1)(e)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the “Regulations”] and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the “Act”].

II. Background

[2] The Applicant is a citizen of Iran. He was a member of Mujahedin-E Khalq [MEK]. MEK acted in resistance to the Iranian government. Many of its members faced reprisals and were granted shelter in Iraq. MEK was listed as a terrorist organization between 2003 and 2012 in the United States and Canada.

[3] The Applicant is currently a business owner in Canada and has a spouse and two Canadian children, also currently living in Canada.

[4] The Applicant applied for permanent resident status in 2018, under the Spouse or Common-Law Partner in Canada class.

[5] He received a Procedural Fairness Letter from the Immigration Officer, dated September 27, 2019, which indicated there were reasonable grounds to conclude that the Applicant was inadmissible pursuant to subsection 34(1)(f) of the *Act*, a finding that was made on January 6, 2009. Further, the Applicant had been found to be a member of MEK, an organization that is “known to be involved with terrorist activities and a terrorist organization”. The Applicant had 30 days to make submissions before a final decision would be rendered.

[6] The Applicant’s October 30, 2019 response letter did not dispute the Applicant’s involvement in MEK, but described the Applicant’s current circumstances and sought to appeal to the Immigration Officer’s discretion to consider humanitarian and compassionate grounds.

[7] In the Decision, dated January 7, 2020, the Applicant's application for permanent resident status under the Spouse or Common-law Partner in Canada class was refused.

[8] The Applicant seeks an Order quashing the Decision of the Immigration Officer and an Order of *mandamus*, requiring reconsideration by a different Immigration Officer.

III. Decision Under Review

[9] The Applicant was found to be a member of an inadmissible class of persons and the application was refused pursuant to subsections 72(1)(e)(i) of the *Regulations* and 34(1)(f) of the *Act*. The Immigration Officer found the Applicant to be a member of MEK, an organization known to be involved with terrorist activities and a terrorist organization:

Specifically, you were found to be a member of the organization MEK, Mujahedin-E Khalq, an organization known to be involved with terrorist activities and a terrorist organization, and as a result, you are inadmissible to Canada.

Your request for humanitarian and compassionate consideration to allow an exemption of the above-noted inadmissibility, is not reviewable, as *IRPA* [the "*Act*"] 25(1), 25.1(1) and 25.2(1) do not permit an exemption of an inadmissibility under section 34.

IV. Issues

[10] The issue is whether the Decision on inadmissibility pursuant to subsection 34(1)(f) of the *Act* is reasonable.

V. Standard of Review

[11] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

VI. Relevant Provisions

[12] Subsection 72(1)(e)(i) of the *Regulations* provides:

Obtaining status

72 (1) A foreign national in Canada becomes a permanent resident if, following an examination, it is established that

(e) except in the case of a foreign national who has submitted a document accepted under subsection 178(2) or of a member of the protected temporary residents class,

(i) they and their family members, whether accompanying or not, are not inadmissible,...

Obtention du statut

72 (1) L'étranger au Canada devient résident permanent si, à l'issue d'un contrôle, les éléments suivants sont établis:

e) sauf dans le cas de l'étranger ayant fourni un document qui a été accepté aux termes du paragraphe 178(2) ou de l'étranger qui fait partie de la catégorie des résidents temporaires protégés :

(i) ni lui ni les membres de sa famille — qu'ils l'accompagnent ou non — ne sont interdits de territoire,...

[13] Further, subsection 34(1)(f) of the *Act* provides:

Security

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;

(b) engaging in or instigating the subversion by force of any government;

(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;

(c) engaging in terrorism;

(d) being a danger to the security of Canada;

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or

(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).

Sécurité

34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;

b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;

c) se livrer au terrorisme;

d) constituer un danger pour la sécurité du Canada;

e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;

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).

VII. Analysis

A. *The Parties' Positions*

[14] The Applicant submits that the Decision is unreasonable because it ignored relevant evidence that MEK is no longer an organization engaging in terrorism. Canada currently does not consider MEK to be a terrorist organization. Further, the Applicant fails to fall under subsection 34(1)(f) of the *Act* in light of humanitarian and compassionate factors that the Immigration Officer did not fully consider. There is no benefit to removing a successful business owner and father from Canada.

[15] It is the Respondent's position that the Decision is reasonable. The Applicant is an uncontested member of MEK. The evidence concerning MEK supports the Immigration Officer's finding in 2009, in that there were reasonable grounds to believe that MEK engaged in the subversion of the government of Iran and/or engaged in terrorism.

B. *Reasonableness of the Decision*

[16] Reasonableness review begins with the Decision, putting the reasons first, and is concerned with the existence of justification, transparency and intelligibility of the Decision. It must consider both whether the rationale for the decision and the outcome to which it led is reasonable (*Vavilov*, above at paras 83-84, 86). The role of this Court is not to provide reasons or guess at findings that might have been made; however, reasons must be read in light of the record (*Vavilov* at paras 96-97).

[17] Subsection 34(1)(f) of the *Act* provides for inadmissibility where a permanent resident or foreign national is “a member of an organization that there are reasonable grounds to believe engages, *has engaged* or will engage in” various enumerated security grounds [*Emphasis added*]. These include the subversion of any government and terrorism (the *Act*, s 34(1)(b), (c)). The Immigration Officer found that MEK was “known to be involved with terrorist activities and a terrorist organization”.

[18] I do not accept the Applicant’s argument that the Immigration Officer’s Decision is unreasonable because MEK is no longer listed by Canada as an organization engaged in terrorist activities. A temporal connection is not required between membership and the acts of terrorism under subsection 34(1)(f) of the *Act* (*Mirmahaleh v Canada (Citizenship and Immigration)*, 2015 FC 1085 at paras 21-22):

[21] The fact that the MEK is no longer classified as a terrorist organization is not relevant in the circumstances, since paragraph 34(1)(f) does not require a temporal connection between membership and the acts of terrorism (*Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 [*Najafi*] at para 101; *Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2010 FCA 274). Furthermore, the MEK was removed from the list of terrorist organizations because it no longer resorts to violence, not because the evidence on which the previous classifications were based was reassessed. In other words, its removal from the list does not erase the MEK’s terrorist past.

[22] Finally, I note that the courts have previously identified the MEK as a terrorist organization (*Poshteh* at para 5; *Motehaver v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 141 at para 3). It is therefore clear that the member’s finding in this regard is not unreasonable.

[19] The record is clear that the Applicant had membership in MEK, which is not denied. A January 7, 2008 entry in the record states: “MEK organization is a known terrorist group that has

been responsible for attacks + assassinations against government offices and officials around the world”.

[20] While I am sympathetic to the Applicant’s argument that MEK is no longer considered to be a terrorist organization in Canada, or will not be engaged in acts referred to in subparagraphs 34(1)(a), (b), (b.1) or (c) under subparagraph 34(1)(f), nevertheless, the express wording of subsection 34(1)(f) is disjunctive and applies to the Applicant, who has been engaged in a terrorist organization.

[21] To the extent the Applicant argues that the Immigration Officer made no specific findings of fact regarding what terrorist acts the organization has engaged in, I do not find this renders the Decision unreasonable in this case. These are circumstances in which “a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose” (*Vavilov* at para 142; *Maple Lodge Farms Ltd v Canada (Food Inspection Agency)*, 2017 FCA 45 at para 51). The Applicant does not dispute that MEK was a terrorist organization and prior decisions of this Court have also identified MEK as a terrorist organization.

C. *Humanitarian and Compassionate Grounds*

[22] I have not been pointed to an error in the Immigration Officer’s reasoning that an exemption on the basis of humanitarian and compassionate considerations does not apply to an inadmissibility finding under section 34 of the *Act*, pursuant to subsections 25(1), 25.1(1) and 25.2(1) of the *Act*. For example, section 25(1) provides:

Humanitarian and compassionate considerations — request of foreign national

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — *other than under section 34, 35 or 37* — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — *other than a foreign national who is inadmissible under section 34, 35 or 37* — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

[*Emphasis added*]

[23] I further note the Respondent's submission that any perceived harshness of section 34 of the *Act* is tempered by section 42.1, providing for ministerial relief:

Exception — application to Minister

42.1 (1) The Minister may, on application by a foreign national, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect

Séjour pour motif d'ordre humanitaire à la demande de l'étranger

25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — *sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37* —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — *sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37* — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

Exception — demande au ministre

42.1 (1) Le ministre peut, sur demande d'un étranger, déclarer que les faits visés à l'article 34, aux alinéas 35(1)b) ou c) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de l'étranger si celui-ci le convainc que

of the foreign national if they satisfy the Minister that it is not contrary to the national interest.

cela ne serait pas contraire à l'intérêt national.

[24] It appears to me that the appropriate relief to be sought by the Applicant is pursuant to this section of the *Act*, and the facts here are indicative of the type of scenario to be seriously considered by the Minister.

VIII. Conclusion

[25] For the reasons above, this application is dismissed.

JUDGMENT in IMM-936-20

THIS COURT'S JUDGMENT is that this application is dismissed.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Andrew Maloney
Yosheel Bangaroo

FOR THE APPLICANT

Michael Butterfield

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pilkington Immigration Law
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT