

Federal Court of Canada
Trial Division



Section de première instance de
la Cour fédérale du Canada

Date: 19991102

Docket: DES-6-99

99 342 046

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

- and -

MAHMOUD JABALLAH

Respondent

REASONS FOR ORDER

CULLEN, J.:

[1] To summarize legislation is in all likelihood unnecessary in that the sections clearly spell out the process, but, so there can be no doubt, I have decided once again as I have done in other hearings, to quote directly from the *Immigration Act*, as this is the basis for the two Ministers' decision giving them the authority to issue a certificate under section 40.(1).

40. (1) Security Certificate - Where, after considering a report made under subsection 39(9) by the Review Committee of the person appointed under subsection 39.1(1), the Governor in Council is satisfied that the person with respect to whom the report was made is a person described in paragraph 19(1)(c.2), subparagraph 19(1)(d)(ii), paragraph 19(1)(e)(f)(g)(k) or (l) or 27(1)(a.1), subparagraph 27(1)(a.3)(ii) or paragraph 27(1)(g) or (h), the Governor in Council may direct the Minister to issue a certificate to that effect.

(2) Effect of Certificate - A certificate issued under subsection (1) is, in any prosecution or other proceeding under or arising out of this Act, conclusive proof of the matters stated therein without proof of the signature or official character of the person appearing to have signed the certificate unless called into question by the Minister.

40.1 (1) Certificate - Notwithstanding anything in this Act, where the Minister and the Solicitor General of Canada are of the opinion, based on security or criminal intelligence reports received and considered by them, that a person, other than a Canadian citizen or permanent resident, is a person described in subparagraph 19(1)(c.1)(ii), paragraph 19(1)(c.2) (d),(e),(f),(g), (j), (k) or (l) or subparagraph 19(2)(a.1)(ii), they may sign and file a certificate to that effect with an immigration officer, a senior immigration officer or an adjudicator.

(2) Delay of Inquiry - Where a certificate is signed and filed in accordance with subsection (1),

(a) an inquiry under this Act concerning the person in respect of whom the certificate is filed shall not be commenced, or if commenced shall be adjourned, until the determination referred to in paragraph 4(d) has been made; and

(b) a senior immigration officer or an adjudicator shall, notwithstanding section 23 or 103 but subject to subsection (7.1), detain or make an order to detain the person named in the certificate until the making of the determination.

(3) Reference to Federal Court - Where a certificate referred to in subsection (1) is filed in accordance with that subsection, the Minister shall

(a) forthwith cause a copy of the certificate to be referred to the Federal Court for a determination should be quashed; and

40.1 (1) Attestation de sécurité - - S'il est d'avis, après étude du rapport fait en vertu du paragraphe 39(9) par le comité de surveillance ou la personne nommée au titre du paragraphe 39.1(1), que l'intéressé appartient à l'une des catégories visées à l'alinéa 19(1)c.2), au sous-alinéa 19(1)(d)(ii), aux alinéas 19(1)e), f), g), k) ou l) ou 27(1)a.1), au sous-alinéa 27(1)a.3)(ii) ou aux alinéas 27(1)g) ou h), le gouverneur en conseil peut ordonner au ministre de délivrer une attestation à cet effet.

(2) Preuve - - Dans toute poursuite ou procédure relative à l'application de la présente loi, l'attestation délivrée en vertu du paragraphe (1) établit de façon concluante les faits qui y sont mentionnés, seul le ministre ayant le pouvoir de contester l'authenticité de la signature et la qualité officielle du signataire.

40.1(1) Attestation - -Par dérogation aux autres dispositions de la présente loi, le ministre et le solliciteur général du Canada peuvent, s'ils sont d'avis, à la lumière de enseignements secrets en matière de sécurité ou de criminalité dont ils ont eu connaissance, qu'une personne qui n'est ni citoyen canadien ni résident permanent appartiendrait à l'une des catégories visées au sous-alinéa 19(1)c.1)(ii), aux alinéas 19(1)c.2), d), e), f), g), j), k) ou l) ou au sous-alinéa 19(2)a.1)(ii), signer et remettre une attestation à cet effet à un agent d'immigration, un agent principal ou un arbitre.

(2) Suspension de l'enquête - En cas de remise de l'attestation visée au paragraphe (1):

a) l'enquête prévue par ailleurs aux termes de la présente loi sur l'intéressé ne peut être ouverte tant que la décision visée à l'alinéa (4)d) n'a pas été rendue;

b) l'agent principal ou l'arbitre doit, par dérogation aux articles 23 ou 103 mais sous réserve du paragraphe (7.1), retenir l'intéressé ou prendre une mesure à cet effet contre lui en attendant la décision.

(3) Renvoi à la Cour fédérale - En cas de remise de l'attestation prévue au paragraphe (1), le ministre est tenu:

a) d'une part, d'en transmettre sans délai un double à la Cour fédérale pour qu'il soit décidé si l'attestation doit être annulée;

(b) within three days after the certificate has been filed, cause a notice to be sent to the person named in the certificate informing the person that a certificate under this section has been filed and that following a reference to the Federal Court a deportation order may be made against the person.

(4) Judicial Consideration of Certificate - Where a certificate is referred to the Federal Court pursuant to subsection (3), the Chief Justice of that Court or a judge of that Court designated by the Chief Justice for the purposes of this section shall

(a) examine within seven days, *in camera*, the security or criminal intelligence reports considered by the Minister and the Solicitor General and hear any other evidence or information that may be presented by or on behalf of those Ministers and may, on the request of the Minister or the Solicitor General; hear all or part of such evidence or information in the absence of the person named in the certificate and any counsel representing the person where, in the opinion of the Chief Justice of the designated judge, as the case may be, the evidence or information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(b) provide the person named in the certificate with a statement summarizing such information available to the Chief Justice or the designated judge, as the case may be, as will enable the person to be reasonably informed of the circumstances giving rise to the issue of the certificate, having regard to whether, in the opinion of the Chief Justice or the designated judge, as the case may be, the information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(c) provide the person named in the certificate with a reasonable opportunity to be heard;

(d) determine whether the certificate filed by the Minister and the Solicitor General is reasonable on the basis of the evidence and information available to the Chief Justice or the designated judge, as the case may be, and, if found not to be reasonable, quash the certificate; and

(e) notify the Minister, the Solicitor General and the person named in the certificate of the determination made pursuant to paragraph (d).

5. Evidence - For the purpose of subsection (4), the Chief Justice or the designated judge may, subject to subsection (5.1), receive, accept and base the determination referred to in paragraph (4)(d) on such

b) d'autre part, dans les trois jours suivant la remise, d'envoyer un avis à l'intéressé l'informant de la remise et du fait que, à la suite du renvoi à la Cour fédérale, il pourrait faire l'objet d'une mesure d'expulsion.

(4) Examen judiciaire - Lorsque la Cour fédérale est saisie de l'attestation, le juge en chef de celle-ci ou le juge de celle-ci qu'il délégué pour l'application du présent article:

a) examine dans les sept jours, à huis clos, les renseignements secrets en matière de sécurité ou de criminalité dont le ministre et le solliciteur général ont eu connaissance et recueille les autres éléments de preuve ou d'information présentés par ces derniers ou en leur nom; il peut en outre, à la demande du ministre ou du solliciteur général, recueillir tout ou partie de ces éléments en l'absence de l'intéressé et du conseiller le représentant, lorsque, à son avis, leur communication porterait atteinte à la sécurité nationale ou à celle de personnes;

b) fournit à l'intéressé un résumé des informations dont il dispose, à l'exception de celles dont la communication pourrait, à son avis, porter atteinte à la sécurité nationale ou à celle de personnes, afin de permettre à celui-ci d'être suffisamment informé des circonstances ayant donné lieu à l'attestation;

c) donne à l'intéressé la possibilité d'être entendu;

d) décide si l'attestation est raisonnable, compte tenu des éléments de preuve et d'information à sa disposition, et, dans le cas contraire, annule l'attestation;

e) avise le ministre, le solliciteur général et l'intéressé de la décision rendue aux termes de l'alinéa d).

5. Preuve - Pour l'application du paragraphe (4), le juge en chef ou son délégué peut, sous réserve du paragraphe (5.1), recevoir et admettre les éléments de preuve ou d'information qu'il juge utiles.

evidence or information as the Chief Justice or the designated judge sees fit, whether or not the evidence or information is or would be admissible in a court of law.

(5.1) Information Obtained in Confidence from Foreign Governments - For the purposes of subsection (4),

(a) the Minister or the Solicitor General of Canada may make an application, *in camera*, and in the absence of the person named in the certificate and any counsel representing the person, to the Chief Justice or the designated judge for the admission of information obtained in confidence from the government or an institution of a foreign state or from an international organization of states or an institution thereof:

(b) the Chief Justice or the designated judge shall, *in camera* and in the absence of the person named in the certificate and any counsel representing the person,

- (i) examine that information, and
- (ii) provide counsel representing the Minister or the Solicitor General of Canada with a reasonable opportunity to be heard as to whether the information is relevant but should not be disclosed to the person named in the Certificate on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(c) that information shall be returned to counsel representing the Minister or the Solicitor General of Canada and shall not be considered by the Chief Justice or the designated judge in making the determination referred to in paragraph (4)(d), if

- (i) the Chief Justice or the designated judge determines (A) that the information is not relevant, or (B) that the information is relevant and should be summarized in the statement to be provided pursuant to paragraph (4)(b) to the person named in the certificate or
- (ii) the Minister or the Solicitor General of Canada withdraws the application; and

(d) if the Chief Justice or the designated judge determines that the information is relevant but should not be disclosed to the person named in the certificate on the grounds that the disclosure would be injurious to national security or to the safety of persons, the information shall not be summarized in the statement provided pursuant to paragraph (4)(d) to the person named in the certificate but may be considered by the Chief Justice or the designated judge in making the determination referred to in paragraph (4)(d).(6)

(6) No Appeal - A determination under paragraph (4)(d) is not subject to appeal or review by any court.

indépendamment de leur recevabilité devant les tribunaux, et peut se fonder sur ceux-ci pour se déterminer

(5.1) Renseignements secrets obtenus de gouvernements étrangers - Pour l'application du paragraphe (4):

a) le ministre ou le solliciteur général du Canada peuvent présenter au juge en chef ou à son délégué, à huis clos et en l'absence de l'intéressé et du conseiller le représentant, une demande en vue de faire admettre en preuve des renseignements obtenus sous le sceau du secret auprès du gouvernement d'un état étranger, d'une organisation internationale mise sur pied par des états étrangers ou de l'un de leurs organismes;

b) le juge en chef ou son délégué, à huis clos et en l'absence de l'intéressé et du conseiller le représentant:

- (i) étudie les renseignements,
- (ii) accorde au représentant du ministre ou du solliciteur général la possibilité de lui présenter ses arguments sur la pertinence des renseignements et le fait qu'ils ne devraient pas être communiqués à l'intéressé parce que cette communication porterait atteinte à la sécurité nationale ou à celle de personnes,

c) ces renseignements doivent être remis au représentant du ministre ou du solliciteur général et ne peuvent servir de fondement à la décision visée à l'alinéa (4)d), si:

- (i) soit le juge en chef ou son délégué détermine que les renseignements ne sont pas pertinents ou, s'ils le sont, devraient faire partie du résumé mentionné à l'alinéa (4)b),

- (ii) soit le ministre ou le solliciteur général retire sa demande;

d) si le juge en chef ou son délégué décide qu'ils sont pertinents mais que cette communication porterait atteinte à la sécurité nationale ou à celle de personnes, les renseignements ne font pas partie du résumé mais peuvent servir de fondement à la décision visée à l'alinéa (4)d).

(6) Aucun appel - La décision visée à l'alinéa (4)d) ne peut être portée en appel ni être revue par aucun tribunal.

[2] It was probably unnecessary for counsel for the applicant to stress the fact that as designated judge I have an obligation to consider all the evidence - namely that heard in open court, *in camera* and *in camera ex parte*.

WHAT IS BEING SOUGHT

[3] At. p. 1415 of the transcript, Vol. 14, the applicant seeks to establish:

whether it was reasonable for the Ministers, in light of the circumstances of this case, to issue a security certificate identifying the respondent as a member of the inadmissible class of persons 1) described in s. 19(1)(f)(ii) of the Act as a person who there are reasonable grounds to believe has engaged in terrorism, or 2) whether the respondent falls within s. 19(1)(f)(iii)(B) of the Act as a person who there are reasonable grounds to believe is or was a member of an organization that there are reasonable grounds to believe is or was engaged in terrorism.

In this case the certificate is issued on the basis of a Security Intelligence Report which alleges that Mr. Jaballah is inadmissible to Canada because he falls within the categories of persons described in subparagraphs 19(1)(e)(ii), 19(1)(e)(iv)(B) and 19(1)(e)(iv)(C), 19(1)(f)(ii) and 19(1)(f)(iii)(B) of the Immigration Act.

For his part, the respondent, declares at p. 1540, Vol. 15 of the transcript:

Any way you slice it, you have to determine whether or not the Certificate is reasonable, whether there are reasonable grounds to believe That has to be on a cogency of evidence issued to support the Certificate as reasonable given the evidence presented in the summary to which my client responded in Court.

[4] On April 6, 1999, in accordance with paragraph 40.1(4)(a) of the *Immigration Act*,

I reviewed the security intelligence report *in camera* and heard other evidence presented

on behalf of the Solicitor General and the Minister of Citizenship and Immigration in the absence of the respondent.

[5] Under paragraphs 40.1(4)(b) and (c) of the Act, the respondent was provided with a summary of the information and I ordered that the respondent be given a reasonable opportunity to be heard on the determination of whether the certificate filed by the Solicitor General and the Minister of Citizenship and Immigration was reasonable on the basis of the evidence and information available.

INTRODUCTION

[6] Very early in these proceedings (June 8/99) I suggested to counsel for the respondent that he explain to his client the role of the designated judge. At page 9, Vol. 2. of the transcript I stated:

Mr. Rodrigues, I want to check whether you have explained to the witness the role that I am playing here. In other words, he is not on trial before me. I have to determine whether the people who signed the certificate had adequate or an appropriate amount of evidence to make that decision. If anybody is on trial, it is the people who signed the certificate.

[7] Given the number of cases that have decided or touched on the role of the designated judge, it seems unlikely that the role could be misconstrued. Counsel for the applicant began his argument on this note and quoted several cases that leave no room for doubt on this subject. So there can be no doubt where I stand on this matter. I will

immodestly quote from my decision in the case of *Saygili v. Canada (Minister of Citizenship and Immigration)* (1997), 127 F.T.R. 112, at p.114:

My task is not to substitute my decision for that of the two Ministers, but rather to decide whether the Certificate filed by the Ministers is reasonable on the basis of the evidence and information available to them, and to me.

And further, from my colleague, McGillis, J. in *Ahani v. Canada* (1995), 100 F.T.R. 261, at p.268:

The proceedings under section 40.1 of the *Immigration Act* are directed solely and exclusively to determining the reasonableness of the ministerial certificate identifying the normal person as a member of certain inadmissible classes of persons.

This approach was supported by my colleague Denault, J., in *Farahi-Mahdavi*, (1993), 63 F.T.R. 120 (T.D.)

THE RESPONDENT

[8] Our first witness, as might be expected, was the respondent whose presentation of his evidence was carefully lead by his counsel Mr. Roger Rodrigues. This was followed up with cross-examination by the counsel for the applicant Mr. Mathieson and the re-examination by another counsel for the respondent, Mr. Rocco Galati.

[9] A rather comprehensive affidavit had been signed by the respondent, and it was used as a backdrop to the evidence of the respondent as well as the respondent's Motion Record. This witness was the subject of close attention in view of the fact that he had to

establish that his evidence and he were credible. The wife pretty well corroborated the respondent and needed less attention than that of the respondent.

[10] The respondent is married and has six children. His wife's name is Hussnah Mohammed Al Sayyed El Mashtouli. One son is named Ahmed Jaballah and I mention this because he gave evidence to the hearing.

[11] The respondent's evidence is that his name is Mahmoud Jaballah and he states he has never been known by any other name. He follows this up (transcript, Vol 2, p. 13) with:

Q. Have you ever used any nicknames or any cultural nicknames or any other names at all?

A. Abu Ahmed. Also he used in Canada the name of Mustafa. I used these two names because in our culture the father is called after his oldest son's name. My older son's name is Ahmed, so I was called Ahmed's father, Abu Ahmed. That is what it means.

Q. What in particular does "Abu" mean?

A. Father.

Q. Are you the only person who follows this tradition of using the name "Abu" to mean the father of the eldest son?

A. No, this is not unique to myself. This is a tradition in Egypt and a religion tradition. The father is called the father of the older son.

[12] Later he told the Court he used the name Mustafa because he was afraid Egyptian agents might be in Canada and until he felt at home he used the name Mustafa to strangers when he was introduced.

[13] The respondent has a Bachelor of Education in Biology. He is a citizen of Egypt and taught there. He volunteered that he had taught in Pakistan when outside of Egypt. He taught at the high school level.

[14] At. p. 16, Vol. 2 of the transcript, the following exchange took place between counsel and the respondent:

Q. Why did you stop teaching in July 1991?

A. Because I wanted to travel out of Egypt. I left Egypt and I went to Saudi Arabia.

Q. You wanted to travel outside of Egypt?

A. Yes, I was planning on travelling outside of Egypt.

Q. Did you leave Egypt by choice?

A. I left Egypt because I was harassed and persecuted in Egypt. I was under pressure in Egypt.

Q. Where did you go?

A. I went to Saudi Arabia on a pilgrimage visa. I travelled on a pilgrimage visa to the holy places. Because the pilgrimage to the holy places is for a limited time, I

had to leave after the end of that specific period of the pilgrimage. I stayed in Saudi Arabia for three months and after that travelled from there to Pakistan. From Pakistan I travelled to Yemen.

It seems very clear from the evidence that the respondent had been detained although technically not arrested on seven or eight occasions and in the final analysis decided to file his own claim because of the fact that he hadn't been treated properly in a democratic country. The Egyptian officials were embarrassed by this and made all kinds of promises if he would withdraw it, but he just didn't trust or believe them. We also heard from the respondent and his wife that they were both tortured while detained and, in point of fact, this caused the wife to suffer a miscarriage. This part of his testimony rings true and it does seem obvious that he was endeavouring to get out of Egypt.

[15] However, it does seem from the evidence and was corroborated by his wife that he made at least three attempts to get out of the country and each time when he received a visa he was refused at the airport but when the restrictions were eased somewhat for the religious meeting in Saudi Arabia, he was able to get through the lines and then board a ship and get to Saudi Arabia. Through all of his evidence it rings pretty clear that he never had any intention of returning to Egypt once he was able to get out and yes, he abandoned his law suit.

[16] As I have indicated above, when the restrictions were eased a bit, the respondent still had some concern because, first of all, he had to clear it with the captain of the ship

taking them to Saudi Arabia and told a few lies about that situation. But I think, in the circumstances, anyone would have been tempted to mislead the captain so that he could get to Saudi Arabia and not be returned to Egypt.

[17] Incidentally, the visa was a temporary one and required returning to Egypt after a particular period of time. He then tells us, rather than be caught up in being forced out of the country, because it had been requested by Egypt of Saudi Arabia, or at least there was a strong feeling on his part that he would be moved out of Saudi Arabia once the visa had expired, he made plans to move once again.

[18] From Saudi Arabia his evidence is that he made his way to Pakistan because of the fear he had already expressed in his evidence. He recognized that he would have to be looking for work if he was to sustain himself and his family. He indicates that someone at a mosque put him in touch with an organization next to the mosque calling itself the Islamic Assistance Organization of the Saudi Arabian Government which he described as an organization formed to help people in the countries outside Saudi Arabia in dire need through economic or natural catastrophe: "they are looking after orphans and teaching orphans". Subsequently he was asked the question if this organization was associated with the International Islamic Relief Organization and he confirmed that it was.

[19] With a few problems outlined for us by the interpreter they had one more stab at getting it correct and this time referred to it as "Islamic Relief Organization of the Saudi Arabian Government". I don't think there is anything to be commented on here; there was just an honest mistake in translation and the translator herself indicated that this was in fact the case.

[20] The respondent's position is that he was in need of assistance which he understood would be provided by this particular organization. The information the respondent had was to the effect that this organization was involved in teaching which was of interest to him because if he were going to work it would have to be as a teacher. According to the respondent the organization was a multi-discipline type operation and in addition to the interest in providing teaching they also looked after orphans, and that this was an organization looking after all people, not only outside Saudi Arabia but in Bangladesh or any other place in the world. The respondent also made the point that he never heard about the organization when he was in Egypt and he indicated that he approached this organization on August 1, 1991. The respondent states at p. 21, Vol. 2:

Q. Could you tell us what happened when you approached the organization in Mecca?

A. I contacted the organization. I gave them some of my certificates, my graduation diplomas, and I told them, "If you have any teaching branches in any country, I am willing to work there". They gave me some time, almost one month, and they told me, "We have a branch in Pakistan that teaches orphans." They teach academic and religious subjects. Within the academic subjects there was a biology course. They interviewed me to find out my qualifications. Some high professional professors looked at my qualifications and experience documents in teaching. Accordingly, after this interview, I was successful, and they nominated me to go to Pakistan.

I travelled to Pakistan in the tenth month, in October 1991

.Later the respondent confirmed that he was hired and that he received a salary and that the money was coming from the organization, although the organization received 70 percent of its budget from the government of Saudi Arabia.

[21] The respondent considered himself in the country legally and he had used his name Mahmoud Jaballah.

[22] The respondent tells us that what was uppermost in his mind is the fact that the government gave him a visa to work in Saudi Arabia but when the visa expired he had to go back to Egypt. He recognized that the Saudi Arabian government would recognize their responsibility to return him. We heard the following exchange between the respondent and his counsel (p. 23, Vol. 2):

Q. You indicated earlier that the International Islamic Relief Organization assists various needy people. What motivated you to want to work with this organization?

A. I wanted to work teaching in the teaching profession anyway, and because the International Relief Organization was an organization that they would pay my salary and I would be helpful in teaching orphans.

Q. Did you teach orphans while you were in Pakistan?

A. Yes. All the time that I taught in Pakistan I was teaching orphans.

[23] The respondent's evidence offers up a forceful denial of knowing about or having any association with Ossama Bin Laden. Jaballah indicated that he had worked at the International Islamic Relief (IIRO) as a teacher while in Pakistan.

[24] The footnote no. 7 at p. 60 of the respondent's Motion Record was read to the respondent:

According to JABALLAH's statement to CIC, he worked as a teacher at the International Islamic Relief Organization (IIRO). Reference B4 p.3. This organization is suspected to be linked to Ossama Bin Laden and involved in fraudulent activities

After reading the footnote counsel asked the following questions (p.24, Vol. 2 of the transcript):

Q. Mr. Jaballah, when you approached the Relief Organization in Saudi Arabia, did you know that it was linked to Ossama Bin Laden?

A. No.

Q. While working as a teacher in Pakistan with this organization, did you ever come to know that this organization had links to Ossama?

A. No.

Q. While working as a teacher with the International Islamic Relief Organization, did you ever see or speak to Ossama Bin Laden?

A. No.

Q. Did you ever hear the name being mentioned during the course of the years you were there?

A. No.

Q. When you initially approached the International Islamic Relief Organization in Saudi Arabia, had you ever heard the name Ossama Bin Laden before?

A. No.

Q. When in fact, did you first hear the name Ossama Bin Laden?

A. The first time I heard the name of Ossama Bin Laden was when the embassies in Tanzania and Kenya were blown up.

Q. In what context? How did you come across the name?

A. Because the whole world was accusing Ossama Bin Laden that he was the one behind blowing the embassies. I heard and read about the name in the newspapers.

Q. Was that the first time you came across the name?

A. Yes.

If the respondent is deemed to be credible the answers to these questions are a strong denial of his having any knowledge about Ossama Bin Laden. I am of course required to examine the evidence presented in open court and that produced at the *in camera* session.

[25] The respondent indicated that he never had any suspicions or any knowledge during the years that he was with the organization that they were engaged in any fraudulent activities. He indicates that the organization has a chapter in Canada too and its Director is Doctor Arafat El-Asahi. He makes the point, through questioning from counsel, that:

Q. To your knowledge, is the chapter operating legally in Canada?

A. Yes, they are legal.

[26] The respondent makes another strong statement, admittedly under examination-in-chief (p. 27, line 13, Vol. 2 of transcript):

Q. If we can assume for a moment that, in fact, Bin Laden is a terrorist and he has links to the International Islamic Relief Organization, if this was in fact the case and you were aware of it, would you have joined the organization when you did in 1991?

A. Of course not.

Q. Why not?

A. If this gentleman was belonging or affiliated with this organization and if it is proved that this gentleman was a terrorist and he was violent, of course these kinds of activities are not legal activities, because he kills innocent people, of course I would not participate in such activities.

Once again we have a hypothetical question to which the respondent gives a fairly forceful response.

[27] The respondent indicated that he had worked in a Saudi School and that it was affiliated with the Saudi embassy in Pakistan. "I was getting paid by the Embassy" and he was paid because he taught biology from about 1993 to 1994, approximately nine months.

[28] The respondent also makes the point that he was paid by the Saudi Arabian government in Pakistan and used his name Mahmoud Jaballah. While he was in Pakistan

his wife was with him and she was working as a teacher of the Arabic language. At that time his four children were with him, one of whom was born there.

NEWSPAPER ARTICLES

[29] Counsel for the respondent indicated that, among the materials before the Court, were some newspaper articles and other media reports which indicate that the International Islamic Relief Organization is suspected of having links with an individual by the name of Dr. Ayman Al-Zawaheri who was said to be one of the leaders of an organization known as the Al Jihad. The respondent indicated that he had joined the IIRO in 1991 and at that time he had never heard that this individual, Al-Zawaheri, had links to the organization. He further indicated that during the time that he was in Pakistan he never heard about this individual or his name being mentioned. When asked again, "have you ever heard the name Ayman Al-Zawaheri", he answered: "I heard the name after the events in Tanzania. Also, in 1981, his name was mentioned in one of the newspapers that he was arrested. That's it."

[30] After some toing-and-froing about a page of the Personal Information Form (PIF), the document was shown to the respondent and he confirmed that at p. 11 of the form there is a signature under claimant declaration and that it was his. It was also pointed out that there was an interpreter's declaration also dated July 11, 1996 and it appears to be

signed by an individual by the name of Ali Hussein. Counsel indicated that later on when he refers to him by name, that is what he would be referring to.

[31] At p. 35 of the transcript, Vol. 2, there is again a series of questions and answers:

Q. So as early as two months after your arrival in Canada you were telling the Canadian authorities that you worked for the International Islamic Relief organization in Pakistan.

A. Yes.

Q. At any time during the course of your stay here in Canada, did you ever attempt to hide this fact from the Canadian authorities?

A. No. When I arrived, from the first day at the airport I gave them all my documents, my diplomas related to my work and the Relief Organization.

Q. Are you referring now to your day of arriving in Canada?

A. Yes.

Q. The same day?

A. Yes, the same day, and they still have the originals.

Q. On that day, the same day that you arrived in Canada, did you tell the Canadian authorities that you had worked as a teacher for the organization in Pakistan?

A. Yes.

Q. In your mind, when you arrived in Canada, did you have any reason to believe that you should hide this fact from the Canadian authorities?

A. Of course not.

Q. Did you ever consider hiding this fact from the Canadian authorities before arriving in Canada?

A. I gave this information voluntarily.

LEAVING PAKISTAN FOR THE FIRST TIME

[32] Continuing from the transcript, p. 36, Vol. 2, line 11:

Q. When did you leave Pakistan for the first time?

A. August 1994.

Q. Why did you leave Pakistan at this time?

A. During 1994 the Egyptian government asked from the Pakistan authorities all the Egyptians who are living in Pakistan, not only Egypt but many other countries around the world started asking the throwing out or trying to put out all the Arabs living in Pakistan.

Q. Who was asking? Which government was asking?

A. Any countries were asking to expel the Arabs from Pakistan. It wasn't only those countries; even the Pakistani government wanted to expel Arabs from Pakistan.

Q. Was Egypt making this request as well of the Pakistani government?

A. Yes. The Pakistani government was forced to arrest some people, and they arrested four people and they handed them to the Egyptian government.

Q. What did you fear at this time?

A. The Pakistani government was looking for Arabs and, if they arrested them - - if they came to my house and they arrested me, immediately they would have handed me to the Egyptian government like they did with the others.

Q. When you realized this, what did you decide to do?

A. I thought to leave Pakistan with a false passport and I travelled from there to Yemen.

Q. With a false passport, did you say?

A. Yes.

Q. From what country?

A. Iraq.

Q. You went to what country?

A. Yemen.

Q. How long did you remain in Yemen?

A. One year; I stayed one year.

Q. From what month to what month?

A. From August 1994 to August 1995.

Q. Why did you choose to go to Yemen?

A. Because the Iraqi passport was the only passport available to me. I was able to travel from Pakistan to Yemen without a visa. Accordingly, I travelled to Yemen.

Q. What did you do during that one-year period from August 1994 to August 1995?

A. I tried to work in the teaching profession. For my bad luck, the application acceptance period was over because the school year starts in the ninth month, in September. Whoever wants to work has to make application three months prior. I arrived only one month before the school year, so I had to wait until next year.

Q. Did you re-apply?

A. I made application to private schools. I wasn't very successful. That's it.

Q. So you never ended up working while you were in Yemen?

A. No, I did not.

Q. How did you support yourself during this time?

A. I was working in Pakistan for three years. I saved some money from my work there. At that time I left my wife in Pakistan and she was still working in Pakistan.

Q. When you arrived in Canada, did you advise Canadian authorities that you had been in Yemen for a period of one year?

A. Yes, I did.

Q. Did you divulge this information on the same date that you arrived, along with the other information?

A. Yes, the same day.

[33] The respondent was asked at p. 40, Vol. 2 of the transcript:

Q. While you were in Yemen from August 1994 to August 1995, was your wife working in Pakistan during this time.

A. Yes.

Q. Was she earning enough money to support the four children?

A. Yes.

Q. Could you tell us again why you decided to leave Pakistan?

A. During 1995 the President of Yemen travelled to Egypt. During the discussion with Hosni Mubarak they signed a security treaty. After Ali Saleh returned, some internal security forces started arresting some Egyptians. Because I was there with a false passport - - any Arab knows the Egyptian accent, the language. I was afraid that if I was arrested and if I told them I am Iraqi, they won't believe me because my accent was different and it would be very easy for them to know me and arrest me.

So I started thinking of moving from there and travelling from there to another country.

Q. Where did you end up going to?

A. I went to Azerbaijan.

Q. Why did you choose to go to Azerbaijan?

A. When I was in Yemen, I got acquainted with a Yemeni person. He was studying in Azerbaijan. His name is Aiman.

Q. So you met an individual in Yemen named Aiman?

A. He was studying in the university in Azerbaijan. He was explaining to me the situation over there, and he told me, "There are some charitable institutions over there and there are some schools where they teach orphans, and it will be easy for you to find a job over there".

That is why I thought to go to Azerbaijan. The other reason is because it was very easy to get an Azerbaijani visa.

Q. When you travelled to Azerbaijan from Yemen, what passport did you use?

A. The same Iraqi passport that I used.

Q. How long did you remain in Azerbaijan?

A. Six months.

Q. From when to when?

A. I stayed from September 1995 to March 1996. I went to Pakistan afterward.

...

Q. It is 1995, September 1995 and the second one is 1996. So the year is 1995 to 1996.

Q. Could you give us a brief indication of the efforts you made to find work in Azerbaijan.

A. I went to some institutions to teach. I found out there was no opportunity to work or find a job.

Q. You mean there were no positions?

A. They didn't have positions available for me.

Q. When you arrived in Canada, did you advise the Canadian authorities that you had spent some time in Azerbaijan?

A. Yes.

Q. When did you first tell the Canadian authorities that you had spent some time in Azerbaijan?

A. In the airport.

Q. Upon your arrival?

A. Yes.

Q. My understanding is -- and I am looking again at your Personal Information Form, at page 30 of the Respondent's Motion Record, my lord.

You indicate that you travelled to Canada using a false Saudi Arabian passport. Is that correct?

A. Yes.

Q. Do you know where that passport ended up? Where is it?

A. In the Immigration.

Q. Did you attempt at any time to destroy that passport before your arrival in Canada?

A. No, I gave it to them voluntarily.

Q. Were there stamps on that passport indicating that you had been in Yemen and Azerbaijan?

A. There was a stamp showing that I was in Azerbaijan.

Q. Was there a stamp showing that you were in Yemen?

A. No.

Q. So the Canadian authorities would not have known from that false Saudi Arabian passport that you had been in Yemen?

A. The Canadian government knew about my being in Yemen from my discussion, from my talk, when I talked with them.

Q. Had you not told the Canadian authorities that you were in Yemen, would they have been able to gather that information from any other source?

A. No, they would not know.

Prior to proceeding with the CISIS interviews and in the course of tying up a few loose ends we had this exchange when counsel for the respondent was continuing with the examination-in-chief (p.119, line 22, Vol. 3 of the transcript):

Q. Mr. Jaballah, I believe that your testimony yesterday was that you were arrested and detained in Egypt seven times.

A. Yes.

Q. And that was, according to my notes, from 1981 to 1991, during that 10-year period.

A. Yes.

Q. My reading of the documents which were provided to us by CSIS is that Al Jihad has been around Egypt since approximately 1981. If you don't know, you don't have to agree.

A. I don't know.

Q. Do you have any idea why, during that 10-year period you were released seven times by the Egyptian authorities, given that they were accusing you of being a member of Al Jihad; yet, they released you over and over and over again?

A. This is the kind of policy that is being followed by the Egyptian authorities. In the case of a person who has been arrested once, in our popular terminology we say that he has been blacklisted. [emphasis added]. Should there be any more trouble, if they don't have the real culprits for this action or for this disturbance, they would immediately start arresting everyone who was arrested before. Anyone who looks like an observing Muslim, whether he is wearing a beard or his wife wears the Islamic hijab, would be tortured. Then following the torture and the investigation, if it was found out that one of those arrested was in fact taking part in that action or that event, when he would be put to trial. If still they have no evidence against him, even through he was tortured and investigated, he would be released.

Q. During the seven periods of time that you spent in detention, were you ever shown any proof by the Egyptian authorities that you were in fact involved in Al Jihad activities?

A. Nothing was proved. There was no evidence.

[34] The respondent indicated that in the seven times he had been arrested the Egyptian authorities had never in fact on their own initiated a trial with him. However, the respondent indicated that on one occasion that they did send him to trial which was based on finger prints and that he was actually charged with certain accusations, he had his lawyer defend him and prove that all this was false. This was easy to establish because on

the occasion of the alleged wrongdoing the respondent was in jail on that date and hardly in a position to do anything to anybody.

[35] When asked by his counsel if he had ever heard of an organization by the name of Islamic Brotherhood, he answered, yes and added the comment: "Islamic Brotherhood is a well known organization and it is always in the papers". He went on to deny that he was ever a member of the Islamic Brotherhood or that he had ever knowingly associated with or communicated with someone who is a member of the Islamic Brotherhood. Later Mr. Jaballah was shown an article from the El Aram newspaper dated September 1, 1987 indicated that five terrorists constitute the military wing responsible for carrying out political assassinations. The respondent indicated that he was picked up on this occasion because his name appeared in the article. The fact of the matter is, as he explained it, is that the people who picked him up were dead wrong because the assassination had taken place when he was in jail, as I referred to earlier. When asked what had become of the article, the respondent indicated that he had turned it over to the Board determining his application for refugee status. He had done that voluntarily.

THE THREE INTERVIEWS

[36] There is no disputing the fact that the respondent, after he arrived in Canada, was interviewed on three occasions by CSIS. On March 5, 1998; on August 21, 1998; and on

September 26, 1998. Each interview took place at his home. First names only were used here in the interest of protecting the interviewing CSIS officers. The first one, conducted by "Michel", lasted about two and a half to three hours and took place in the evening some time beginning around 7:00 p.m. or 8:00 p.m. The second interview took place at 10:00 p.m., lasted approximately three hours to 2:00 a.m. and was conducted by "David". The third interview was again conducted by David sometime between 7:00 and 10:00 in the evening. There is legitimate confusion about the actual times but I have indicated above they were akin to those particular times and for that particular duration.

[37] The respondent emphasized that his English was not very good and an interpreter was provided for the first two meetings but not for the third meeting. In part of his evidence the respondent made the point that he was not reluctant to speak with the CISIS officers but rather says at p. 135, Vol. 3, line 7 of the transcript:

A. I wasn't reluctant at all.

Q. So any references that may be contained in there to your being uneasy or reluctant are not accurate?

A. I was afraid. I was also feeling a bit uneasy. I had been subjected to all kinds of bad treatment in Egypt and, when I came here to Canada, I was looking for a kind of life where all these things are things of the past. When I was in fact subjected to almost the same kind of treatment, this was the real reason of fear. I was feeling unsettled.

I was feeling uneasy because these interviews always took place during the night, and my apartment has only two bedrooms, although I have six children. There wasn't really a place where we can sit and talk comfortable.

During the interview when we stayed up until two o'clock after midnight, I explained to him that the children were not able to go to sleep because we were sitting in one of the rooms where the children were supposed to sleep. He seemed not to care about all these details and he would go on talking. These two things happened.

Q. I don't think I asked you this earlier. During this third interview that you just spoke of, was an interpreter present all?

A. Yes, there was no interpreter.

Q. Did you ask the CSIS officer why there was no interpreter present?

A. I asked. I said, "Where is the interpreter?" When he was at the door, I asked for the interpreter. He said, "There is no need for that. I just need you on a very small matter." I said, "But maybe I can't understand you."

[38] There is some dispute about the son Ahmed and whether or not he was forbidden to be part of the interviews. The respondent makes the point that they ordered him out or would not let him come in whereas the officers indicated the kinds of questions they were going to ask and allegations they were going to make might not be suitable for a boy of his age.

[39] When the respondent, somewhat grudgingly, invited them in he states that they led him to believe that they didn't need any document from the Court to enter his home and to question him. In the final analysis the respondent states: "I have no idea what the law is so I invited him in. I said, 'you are welcome. I have nothing to be afraid of and I'm not threatened by anything. I am not hiding anything that might be dangerous so I would not feel uncomfortable talking about it.' "

[40] In a kind of summation counsel for the respondent asked (p.138, Vol.3 of transcript):

Q. At any time did you refuse to provide CSIS with an interview?

A. Every time I would express my objection, and I would say that I won't have the time and I don't feel right about this. His presence was making me concerned and worried.

And then:

Q. So in the end you ended up having all the interviews, consenting to all interviews.

[41] During the time of these interviews the respondent had a lawyer and he was never told at any one of the three interviews that he could contact his lawyer and seek his advice. The officers did not provide a warning but did indicate that the respondent shouldn't talk about this case to anybody.

[42] There was a considerable amount of evidence on the subject of these three interviews and I do not intend to go into them line by line or paragraph by paragraph. By-and-large it is fair to say that the respondent denied knowledge or acquaintance with a whole series of names and/or organizations put to him by the CISIS officers.

[43] In one situation he was asked about the name Hassan Farhat and the summary done by the CISIS officers says that the respondent had heard of Mr. Farhat and then went on to explain the connection at p. 142, line 15, Vol. 3 of the transcript:

A. Yes. The officer mentioned several names, including Mr. Farhat, and I recognized this name.

Q. How did you recognize the name. Hassan Farhat ?

A. I mentioned this yesterday in court. When I came to Canada, I was staying in a shelter on Queen Street. For my prayers I would go to the nearest mosque, and the mosque is the Madina Mosque. I was looking for assistance from anyone because my English was very poor. I was looking for someone who would help me to find a place to live in and to accompany me for some of the required processes. I talked to the people there, including this Hassan Farhat, and that was the beginning of my acquaintance with this gentleman. He helped me to find housing accommodation. That's all.

Q. Prior to coming to Canada, had you had any knowledge of Mr. Farhat?

A. No.

Q. Since those initial dealings with Mr. Farhat through the mosque, have you maintained a relationship with him? Do you still have dealings with Mr. Farhat today?

A. Very casual, like "How are you? How are you doing?" I keep very casual relationships with this person.

SUMMARY OF THE INTERVIEWS

[44] Very few suggestions put to the respondent received a yes answer when it came to identifying people or places. Where he indicated that he knew the person we would hear a thorough response of the sort which appears in the transcript at pp. 147-150, Vol. 3.

Q. Do you recall being interviewed during the first interview about an individual by the name of Mustafa Kreir?

A. Yes.

Q. At that time, what did you know about Mustafa Kreir?

A. When he asked me about Mustafa Kreir, in fact, I didn't know anyone by that name. He asked me about this person during the first interview, and he seemed very interested. The second time he was even more adamant in asking about this person. In the third interview, he persisted in asking about this person. Every time I would ask him, "Give me some kind of description."

At the third interview, I said, "Every time you are asking about this person, so if you have any photo for this person, maybe you would show it to me." He in fact did show me a photograph, and I said, "Yes, I know this person, but his name is not Mustafa Kreir. His name is Abdul Salam."

Q. When you acknowledged recognizing the picture, what happened after that?

A. He asked me, "Did you in fact know this person?" I told him that I had a friend whose name is Ali Hussein; he used to help me with the translation since I arrived here in Canada. The person who introduced me to this Ali Hussein. Hassan Farhat introduced me to Ali Hussein because Ali Hussein speaks English fluently and he has been here in Canada for 12 years.

At one time I was going to my lawyer, so I went to Ali in order to take him with me to the lawyer because he was my interpreter. There was a person there; his name is Abdul Salam, and that was the person and I met him there.

When Ali used to come and visit me, if Abdul Salam happened to be visiting Ali, he would bring Ali with him to my house.

Q. Did you indicate all of this to the CSIS officer?

A. Yes.

Q. Was he satisfied with your answer?

A. He was silent at the end.

[45] During the course of the hearing and because it was slow-going with all of the interpretations having to be made, I had the opportunity to listen very carefully to the answers given to questions posed, whether they were by counsel for the respondent or counsel for the applicant. As I have indicated earlier, I do not think it is necessary to parrot out all of the questions and answers that occurred here. However, I have tried to pick out some salient ones to indicate a mood or a sense of credibility because, in the final analysis, my determination is to be very much a question of the credibility of the various witnesses and the weight to be given to their evidence, culminating in my decision.

RESIDENCE IN CANADA

[46] The respondent touched base with many people in Canada, some for a brief moment of time and others were dealt with on a very intensive manner. My impressions of these contacts flow from the evidence and a re-reading of the transcripts as they became available. I think it is fair comment that his new friends were not suspicious and we know that others befriended him in several ways.

[47] Certainly his family were very supportive and the eldest of the children was "afraid" because he apparently overheard a threat to his father to the effect that if he did not come forward with the information he would be jailed. The son Ahmed wanted to be present during the interviews because his father did not speak very good English but he

was either discouraged or forbidden - and that depends on the person conveying the message. Certainly, at his mother's direction, he was the one who put the recording machine near the room to gather at least some wisps of conversation from that meeting. The tape, incidentally, was not something upon which to rest one's case and despite valiant efforts by the court reporter we learned very little from this tape.

WITNESSES

[48] The son, named Ahmed Jaballah

The wife, named Husnah Mohammad El-Sayyed El-Mashtouli

Mr. Hisham Bakir

Dr. Aly Hindy

Mr. Arafat El-Ashi

Steve Rosenbaum

Ahmed Jaballah (the son)

[49] The respondent's son is 13 years old. He knows that men had come to his home on three occasions and indicated that two people came for the first two meetings and one person came on the third meeting. It is Ahmed who said that he was barred from the room.

[50] In answer to a direct question he confirmed that, other than his family, no one stayed overnight at their home. He also indicated in his evidence that the CSIS officer who came the second time wasn't the "same guy" who came the first time. Ahmed consistently maintained that: "my father asked the CSIS officer if he had any proof of where he came from or who he was related to, which office he is from or what kind of place he works. He said, 'I don't have to show you. I can go to any people any time and ask them questions at any time' "(he, being the CSIS officer). He also made the point that his father responded to that by letting them come into the house.

[51] On the second occasion Ahmed indicates that the CSIS officer said the same thing as the earlier one had said at the first interview, namely, no children. "So I moved to the other room and sometimes I was standing with my mother in the hallway." The son also confirmed that the tape presented to the Court, "was the tape that I recorded when the second interview was underway".

[52] With respect to the interpreter, the son indicated that he was sleeping and he said he saw him sleep and he was snoring and he could even hear him from the other room. I am not attaching too much weight to this sentiment because of the evidence that the interpreter gave with respect to having a sore back and not being able to get to sleep, or snore for that matter.

[53] The son corroborated what his father said throughout these hearings that he didn't know very much English and Ahmed said, "I know more English than my father". However, he did indicate that his father was using a computerized dictionary in an endeavour to improve his English.

[54] We learned also, again from Ahmed, that the officer left about 1:30 a.m. or 2:00 a.m. and Ahmed went into the room for about five minutes before the CSIS officer left. He was asked by counsel for the respondent (p.562, Vol. 7 of the transcript):

Q. So you were in the room for five minutes before he left?

A. Yes.

Q. Do you remember what was being said during those five minutes between your father and the officer?

A. He was talking about taking my father to jail.

Q. He was talking about taking your father to jail?

A. Yes. He said, "You have three days to call us and give us some information. If you don't call us - - you have three days and somebody will come to your house and take you to jail."

Q. "Someone will come to your house and take you to jail?"

A. Yes. Then at that time I started crying?

Q. Who?

A. Me. I started crying.

Q. Why?

A. I didn't want my father to go to jail.

[55] Ahmed indicated to the counsel for the respondent (line 12, p. 568, Vol. 7 of the transcript:

Q. One of the first questions I asked you was whether or not you were the son of Mahmoud Jaballah.

A. Yes.

Q. And you said "yes.". I refer to your father as Mahmoud Jaballah.

A. Yes.

Q. Have you ever heard your father being referred to by any other name? Does anybody call him by any other name?

A. Abu Ahmed.

Q. Abu Ahmed?

A. Yes

Q. Why?

A. Because in Egypt or in our religion they call the father by his oldest son's name.

Q. What does "Abu" mean?

A. "Abu" is the father of.

Q. Of Ahmed?

A. Yes.

Q. You have heard your father being called this?

A. Yes.

Q. By whom?

A. By some people in the mosque that he knows.

Q. Have you ever used the term "Abu" yourself in referring to someone?

A. Yes, Abu by his oldest son's name.

Q. So you use this yourself?

A. Yes.

Q. I want to give you an Arabic term. I am going to say it in Arabic, and I want you to tell me if you have ever heard this name?

A. Okay.

Q. El Walid. Have you ever heard these two words?

A. Yes.

Q. What does it mean?

A. My father calls my mother's father El Walid.

Q. Have you ever heard anybody else besides your father use this term?

A. Yes, other people use it.

Q. Other people use it too?

A. Yes.

Q. If I wanted to use it, who would I use it for?

A. Your wife's father. That's it.

[56] On another subject Ahmed was asked if he knew a fellow by the name of Hisham and he responded, "yes and as a matter of fact he was the one brought the kids to court and does other favours, for example, picking up food. He is my father's friend." Ahmed also indicated that he knew another of his father's friends at the mosque and that was on the occasion when they were talking about the possible sale of the father's van. There was some confusion in the evidence but in the final analysis it ends up that Ahmed had met Mr. Saleh when Ahmed was with his father who was not in jail at that time.

Husnah Mohammad El-Sayyed El-Mashtouli (the wife)

[57] The respondent's wife indicated that she was born on February 19, 1960 and married on February 6, 1986 to the respondent. We heard that she has a B.A. in Literature and the Arab languages and that she has taught school in her time. She also worked in Pakistan and believes it was at the beginning of 1992 up to two or three months before she came to Canada. Again, she confirmed a statistic that she and her family came to Canada in May, 1996. They had left Egypt in July of 1991. She pretty well confirmed her husband's evidence that they tried to get out of Egypt and they were finally successful in getting a visa to Saudi Arabia which helped them to avoid persecution they were facing in Egypt.

[58] When asked if her family tried to leave Egypt she said: "My husband tried several times before. He didn't succeed. When asked how it happened now she said: "Because we asked for a visa to perform the minor pilgrimage Omra and this was issued to whoever asked for it." She tells us in her evidence that on this occasion there was no problem as far as she is concerned.

[59] Her indication is that they were successful on this final try because: "it did not require any special procedures from the government". As an aside, when asked the question she confirmed what her husband had said: "Yes, he consults me and then at the end, it's God's will". She adds: "it has been our way throughout according to Islamic rules".

[60] Getting into the nuts-and-bolts situation, counsel for the applicant (p.594, line 10.

Vol. 7 of the transcript):

Q. ...were you in the courtroom during the time that your husband was giving evidence about the problems you had for all those years in Egypt?

A. Yes.

Q. You heard him testify about his experiences of persecution in Egypt before your family left?

A. I even lived and went through this kind of persecution; I witnessed it firsthand.

Q. You heard your husband testify here. Do you generally agree with what he said about his problems in Egypt before he left?

A. Yes.

Q. Earlier today you said you left Egypt seeking a way out of the persecution your family was experiencing?

A. Yes.

Q. When did you, yourself, begin to experience personal problems in Egypt?

A. Right after I was married. Ten days after I was married they came to our apartment and they destroyed everything, including the furniture.

Q. When you say "they", who are you referring to?

A. The police, the State Security.

Q. Why did they come to your house on that occasion; do you know?

A. Whenever there was any incident in Egypt, even if it was a policeman who was hit or shot at, they would come to the house and they would arrest people.

Q. The house. Which house?

A. People who had been arrested before would be the target of any following arrest campaign.

Q. In your opinion, why did they come to your house in particular?

A. Because they already had my husband's name.

[61] By-and-large the evidence advanced by Mrs. El-Mashtouli is horrendous if it is true. It certainly falls in line with the position taken by the husband and the reasons why they were endeavouring to leave Egypt. Her evidence seems quite straightforward and honest and during the course of the hearing I had indicated in the margin of the transcript "good witness".

[62] There seems to be a pretty positive indication that the record is correct when she states: (p.608, Vol. 7 of the transcript):

A. During our stay in Saudi Arabia he (the husband) met some people at Al-Haram Mosque.

...

A. There were some people there. He was looking for a job because the visa we had was about to expire, so we would be subject to immediate deportation if we had

stayed in Saudi Arabi longer than the visa we had. When my husband landed in Pakistan, he could find a job, and there is an organization there where he can find a job. There is the International Relief Organization there, so we decided to go.

Q. Tell us again name of the organization?

A. The International Relief Organization in Pakistan.

Q. Prior to this point in time, had you ever heard of this organization?

A. No.

And much later she indicated at p. 610, line 15, Vol. 7:

A. It was the usual kind of discussion between husband and wife. He told me that now we have left Egypt and we cannot go back to Egypt any more. We can find a job anywhere, we have to go.

Q. During that discussion what was your position with respect to now taking your family from Saudi Arabia and going to Pakistan?

A. Finally, we decided that it is God's will and, if this is what is going to be, then let it be. We booked for our travel and we left Saudi Arabia.

Q. Have you been here in court when the lawyer for CSIS, in questioning your husband, indicated that it is CSIS' position that this organization you have just referred to in Pakistan is suspected of having links to terrorist activities?

A. If this is true, if this organization had these connections or contacts, the offices would be closed a long time ago. This organization is still active up to this moment.

[63] On another tack counsel asked questions concerning her knowledge of Ossama Bin Laden and Doctor Ayman Al Zawaheri. There is a denial by Mrs. El-Mashtouli that she had never heard the name and that it wasn't her business to remember anything about men.

The evidence seems to be fairly straightforward that the respondent left Pakistan for the first time in 1994 and went to Yemen. According to Mrs. El-Mashtouli, he stayed there for one year. When asked if she knew why he went to Yemen she said (p.613, line 8, Vol. 7 of the transcript):

Q. Do you recall when your husband left Pakistan for the first time?

A. It was in 1994. He went to Yemen.

Q. Do you know when in 1994?

A. It was in mid-1994, sometime between June and August.

Q. Up until what time was he in Yemen?

A. He stayed there for one year.

Q. Do you know why he went to Yemen?

A. Because then he was facing a threat of being arrested and sent back to Egypt.

[64] In the light of the various answers given by Mrs. Mashtouli I wondered, as well as counsel, why would he go alone and leave his family. Now we have at least her answer:

Q. You mentioned earlier, in response to my last question, that he felt threatened in Pakistan when those five Egyptians got into trouble. Did you feel threatened in the same way that your husband felt threatened?

A. No, I didn't feel threatened. Women are respected in Pakistan.

Q. Were you concerned about staying behind when your husband left for Yemen?

A. No.

Q. How did you support yourself and your children while your husband was in Yemen for that one year?

A. At that time, when my husband was working, I was working at the same time. My husband was keeping \$800 U.S. as salary, and my salary was \$400 U.S.

Q. How did you support yourself and your children? Was it with this money?

A. My salary was enough to cover my expenses and the children for the whole month. Life there is not expensive.

[65] Ms. Mashtouli has indicated in her evidence that the catalyst for coming to Canada was the fact that they were getting more and more concerned and worried in Pakistan because there they were looking for and arresting Arabs. Counsel then moved to another area and I will quote this at p.625, line 8, Vol. 7 of the transcript:

Q. Have you ever heard of an organization called the International Office for the Defence of the Egyptian People?

A. Yes, three years ago.

Q. Where were you when you first heard of that organization?

A. It was mentioned on the Internet in the Al-Hayat newspaper.

Q. Before coming to Canada, had you ever heard of this organization?

A. No.

Q. Your husband never mentioned this organization before you came to Canada with him?

A. No.

Q. What do you now know about this organization?

A. During all the hearings that we had here in Canada we were asked if we can submit or provide documents to support our case. When we saw that ad, he looked for it.

Q. Who is "he"?

A. I mean my husband.

Q. He looked for it? What do you mean, he looked for it?

A. The judge and the lawyer who was in charge of our case said that we needed documents to support our case.

Q. Your refugee case?

A. Yes, the refugee case.

Q. Then you saw the ad for this organization on the Internet?

A. Yes, because there would be also many ads with regard to job offers and employment.

Q. From the ad which you saw - - did you see the ad yourself on the Internet?

A. Yes, because sometimes I would sit next to him and read the newspapers on the Internet.

[66] Counsel got to the point where he asked Mrs. Mashtouli at p. 628:

Q. You mentioned that earlier and you also said that you were able to get documents from other human rights organizations.

A. Yes.

Q. What other human rights organizations?

A. The International Human Rights Organization that has branch offices everywhere.

Q. When you say "other human rights organizations", did you get in touch with those other organizations through the London organization?

A. I didn't make any contact.

Q. Do you know if your husband contacted the London organization, the International Office for the Defence of the Egyptian People, for any other purpose than what you have told us today?

A. No.

Q. You don't know of any other purpose?

A. No.

[67] Then counsel began at p. 628, Vol. 7 to question Mrs. Mashtouli about names that he put forward:

Q. ... I just want to give you some names, and I would like you to tell me if you have heard these names in the past. Adel Abdel Majid Abdel Bari.

A. I first heard about this person here, when it was mentioned that he is connected with the Office of the Defence of the Egyptian People.

Q. When did you first hear that name? Do you know when, approximately?

A. It was here. The name was also mentioned in the newspapers. It was reported that he was arrested in London.

Q. So prior to these proceedings you had never heard that name before?

A. I saw the name on the Internet when it was reported in the newspapers. I have copies of those.

Q. Had your husband been arrested when you first heard the name that we are speaking of?

A. That was in September of last year during the incidents of the bombings.

Q. Before coming to Canada, had you ever heard your husband mention the name Adel Abdel Majid Absel Bari?

A. No.

Q. Had you ever heard anyone else mention that name?

A. No.

Before coming to Canada, had you ever heard your husband mention the name Hani Al-Sibai?

A. No.

[68] Then, getting to the heart of the matter, at p. 631, Vol. 7 of the transcript, the question was posed by counsel:

Q. Could you tell us when you first heard the name "Al-Jihad"?

A. The words "Al-Jihad" were reported a long time ago, since the assassination of President Sadat.

Q. That is going back to 1981, I believe?

A. Yes.

Q. To your knowledge, has your husband ever been a member of Al-Jihad?

A. No. Up to this moment my husband has never been a member of any of these organizations.

Q. To your knowledge, has your husband ever associated with anyone who is connected with Al-Jihad?

A. The main concerns for my husband are raising the children and his job.

Q. Have you ever heard of an individual by the name of Ali Hussein?

A. Yes. That was a month and a half or two months at the most after we arrived in Canada.

Q. How did you come to know Mr. Hussein?

A. He [her husband] was praying at the mosque and he was asking for someone who would know a lawyer, because, when we were at the shelter, they told us we needed a lawyer.

Q. Who was looking for a lawyer?

A. My husband, because we were new arrivals in the country and we were looking for someone who would give us the name of a lawyer. When he used to go to the mosque, he would ask people there if they can give a name. They mentioned the name of Ali Hussein because he has been here a long time in Canada and he understands and can speak English. He introduced us to the lawyer, Steve.

Q. "He" being Ali Hussein?

A. Yes. He took my husband to the lawyer, and the lawyer helped us fill out all the papers for the case.

Q. This was, you said, a couple of months after you arrived in Canada?

A. Yes.

Q. Prior to that, had you ever heard the name Ali Hussein?

A. No.

Q. After you met Mr. Hussein, can you briefly tell us what, if anything, he did for you and your family?

A. He helped us find the lawyer. He also translated the papers for our case. He would also go with my husband to the school if the children had any questions or any problems there. At the time I was pregnant with my child, Ali, and he used to go with me to the family doctor.

Q. Why did you accompany your husband to the school?

A. Because my husband couldn't use the English language, and the children were just starting school in Canada and they were having some difficulty accommodating to life in Canada.

[69] Counsel then asked Mrs.El- Mashtouli to think back to a time when she was first able to carry on a conversation with her husband after the marriage contract to the present time. Then he says at p. 634, Vol. 7 of the transcript:

Q. I would like you to tell the Court if you have ever heard during that period of time your husband mention the following groups or the following organizations that I am going to read to you:

Q. Pakistan Scholars Society

A. Yes. He took my husband to the lawyer, and the lawyer helped us fill out all the papers for the case.

Q. This was, you said, a couple of months after you arrived in Canada?

A. Yes.

Q. Prior to that, had you ever heard the name Ali Hussein?

A. No.

Q. After you met Mr. Hussein, can you briefly tell us what, if anything, he did for your and your family?

A. He helped us find the lawyer. He also translated the papers for our case. He would also go with my husband to the school if the children had any questions or any problems there. At the time I was pregnant with my child, Ali, and he used to go with me to the family doctor.

Q. Why did you accompany your husband to the school?

A. Because my husband couldn't use the English language, and the children were just starting school in Canada and they were having some difficulty accommodating to life in Canada.

[70] At page 634, Vol. 7, counsel questioned Mrs. Mashtouli as follows:

I would like you to tell the Court if you have ever heard during that period of time your husband mention the following groups or the following organizations that I am going to read to you. Pakistan Scholars' Society

A. No.

Q. Partisan Movement in Kashmir.

Q. No.

Q. Jihad Movement in Bangladesh.

A. No.

Q. The World Islamic Front for the Jihad Against the Jews and the Crusaders.

A. No.

Q. Islamic Salvation Front Al-Qaida.

A. No.

Q. Sudan's National Islamic Front.

A. No.

Q. Vanguard of Conquest.

A. No.

Q. The Islamic Revival Foundation.

A. No.

Q. The Muslim Brotherhood.

A. The Muslim Brotherhood is a very old organization in Egypt. I used to hear that name since the 1970s when I was a little child.

Q. Do you know if your husband has ever had any dealings with The Muslim Brotherhood?

A. No.

Q. Has he ever, to your knowledge, associated with anyone who has had dealings with The Muslim Brotherhood?

A. No.

Q. The Foundation for the Rebirth of Islam's heritage?

A. No.

Q. Human Concern International?

A. No.

Q. The Liberation Army for Holy Sites?

A. No.

Q. Just so that I am straight on this point, your husband has friends, but you are not allowed to meet those friends in his presence if they are men. Is that correct?

A. No, I am not allowed to be in the presence of men whether my husband is there or not. This is in accordance with the rules and regulations of Islam.

Q. However, today you are.

A. This situation is a necessity and my husband is present.

Q. So, if it is a necessity, then Islam makes an exception. Is that right?

A. Yes, Islam would make an exception if it is a necessity.

Q. Again, this is a similar question. I am going to ask you in the same fashion, except this time I am referring to people's names, not organizations. I want you to tell me if from the time of the marriage contract to the present time you have heard your husband mention any of these names. About Al-Zummur.

A. No.

Q. Tawfik Al-Sirri.

A. No.

Q. Akram Abdel Aziz Sherif.

A. No.

Q. Mustafa Kamal.

A. No.

Q. Abu Hamza El-Masri.

A. This Abu Hamza is mentioned often these days in the newspapers. Almost every day the name is mentioned.

Q. Do you mean at the present time?

A. Yes.

Q. Do you know in what context his name is mentioned?

A. That is since the explosions at the embassies.

Q. Which embassies.

A. The name is mentioned in connection with the tourists in Yemen and that he is connected to that incident.

Q. Can you recall when you first began reading about this man's name in the newspapers?

A. A month or a month and a half ago.

Q. Before a month and a half ago, had you ever heard this name being mentioned by your husband?

A. No.

Q. Had you ever heard the name Abu Hamza El-Masri being mentioned at all prior to one and a half months ago?

A. No.

Q. I am going to continue with the names. Mohammad Jamel Khalifa.

A. No.

Q. Abu Ammar.

A. No.

Q. Kamal Ojaisa.

A. No.

Q. Ahmad Husayn Ujayzah

A. No.

Q. Murjan Mustafa Salim.

A. No.

Q. Ahmed Ibrahim Asyed Al-Mujar.

A. No.

Q. Adel al-Sayyid al-Kudus?

A. No.

Q. Kassem Daher?

A. No.

Q. Abu Dar?

A. No.

Q. Since you have known him or since you have been able to speak with him, your husband has never mentioned any of these names to you?

A. No.

Q. To your knowledge, has your husband ever been to Kenya?

A. No, he has never been there.

Q. To your knowledge, has your husband ever been in Tanzania?

A. No. It is only the countries that we mentioned.

Q. Prior to the start of these proceedings back in June of this year and since the time that you have known him, have you ever heard your husband mention the name Shei Mar Al-Rahman?

A. No.

Q. Have you ever heard that name?

A. I am familiar with this name ever since I was in Egypt, since I was a little girl.

Q. How about Mohammed Abdul Salam Faraj?

A. No.

Q. You have never heard your husband mention that name?

A. No.

Q. How about Karam Zuhdi?

A. No.

[71] Counsel then moved into a different area, namely questions with respect to the interviews that took place at her family home. Her testimony does not extend in any major way beyond what has already been indicated by her husband and by her son Ahmed. She was only able to give a very cursory answer to most of the questions because she was kept rather busy being in a second room with six children none of whom, apparently were asleep. She indicated a concern which began as soon as they saw the two people in the parking lot and I don't think the concern or apprehension ever let up. She was constantly concerned about the fact that the interpreter did not seem to be doing any speaking and she was worried because her husband had only 20 or 30 percent ability in the English language. She was concerned enough to pound on the wall and ask him to come out and when he did she said: "You are talking and he is talking and there is no interpreter".

[72] She went on (p. 650, Vol. 7 of the transcript):

A. I told him, "I am concerned because your English is weak and you are always using the dictionary. What is the other person doing?". On the first interview and the second interview I asked my son Ahmed to be with his father so that he would help him with the English language.

But that was not allowed. When asked about the third meeting she indicated, as had her husband and son before her, there was only one person. His name was David and there was no interpreter at all.

[73] Another point which she made again was the fact that she was concerned because her husband's English is poor. She was asked a question at p. 656:

Q. Did you think of having one of your children, perhaps the eldest one, Ahmed, help your husband out during the interview?

A. During the first interview and the second interview they wouldn't allow any of the children to be present, so this time I just asked the children to stay away.

[74] It had been suggested by one of the CSIS officers that the respondent had said that he would rather the interview take place without an interpreter. When asked by counsel if her husband had ever expressed to her that if he was ever interviewed again by CSIS he would rather that interview take place without an interpreter, Mrs. Mashtouli answered: "After the second interview we were not aware that there would be another interview". They did not discuss the third interview between themselves other than in general terms. She was asked the question at p. 657:

Q. How did your husband feel in general about what had taken place during the interview, the last one?

A. He was very upset as a result of the third interview because that person threatened him.

Q. Which person?

A. The investigator.

Q. Did your husband tell you how the investigator threatened him?

A. Yes. He said, "If within three or four days, you didn't call me back and you didn't give me the information I ask for, you will be arrested," and actually this is what happened.

[75] One further resolve emanated from that third interview namely, as the respondent put it in his answer at p. 658, line 11:

He said that, should the investigator come another time, I am not going to allow him into the house unless he has a paper from court.

[76] Although Mrs. El-Mashtouli could not speak English very well either she was asked the question (p. 659, line 14):

Q. When the officer would be speaking, would you be able to tell that that is who was speaking as opposed to when your husband was speaking?

A. Yes.

Q. During the third interview, do you recall the tone of the officer's voice when he was speaking to your husband?

A. Sometimes it would be a very high voice and sometimes it would be low.

Q. When you say "high", what do you mean?

A. For example, if he would ask my husband something and my husband wouldn't know the answer, the investigator would be angry and upset.

[77] Toward the end of her testimony she was asked by counsel:

Q. Have you ever heard of an individual by the name of Ahmad Khoder or Ahmad Khader?

A. The mother-in-law of this person helped me a lot. She takes care of me.

Q. Do you know Ahmad Khader or do you know his mother-in-law or do you know both of them?

A. I know the mother-in-law. I met her here in Canada at the mosque.

Q. Have you ever met Ahmad Khader?

A. No.

Q. How did you come to meet Ahmad Khader's mother-in-law?

A. That was the month of Ramadan; at the mosque.

Q. How long ago was that?

A. It was the year we came here to Canada. . . . Just toward the end of 1996.

Q. Could you describe the nature of your relationship with Mr. Khader's mother-in-law?

A. When sometimes I need to go to a female gynecologist and, if my husband is not available to come with me, I would take her with me.

Q. Is that the extent of your contact with her, to the doctor and to the mosque?

A. She also invited me at one time during the month of Ramadan to have the breakfast meal. .

Q. Did you attend?

A. Yes.

Q. Did you go alone?

A. No, I went with my husband because she is married.

Q. Do you know if your husband knows Mr. Ahmad Khader?

A. No.

Q. No you don't know or no he doesn't know this person?

A. When we were in Pakistan, he didn't know this person.

Q. What about in Canada?

A. No, because this person is not living here in Canada. When we met his mother-in-law she asked me if we had met the family back in Pakistan.

Q. How did you respond?

A. No, I said I didn't meet her daughter there, and the husband of her daughter was in Pakistan at that time.

Q. To your knowledge, your husband doesn't know Ahmad Khader?

A. No.

Q. Before the proceedings before this Court, before June of this year, had you ever heard your husband mention the name Mustafa Kreir?

A. No.

Q. That individual is also known as Al-Fadhli.

A. No.

Q. You have never heard that name either?

A. No.

Q. Before these proceedings, had you ever heard your husband mention anyone by the name of Kassem Daher?

A. No.

Q. That individual is apparently also known as Abu Dar.

A. No.

Q. Have you ever heard of an individual by the name of Hassan Farhat?

A. Yes.

Q. Do you know if your husband knows Hassan Farhat?

A. Yes, he is the first person that my husband met after we came here to Canada.

Q. Do you know how your husband came to meet Hassan Farhat?

A. He was looking for any Muslim person who would help us because we didn't know anyone here in Canada.

Q. Did Mr. Farhat help your family after you arrived?

A. Yes. After we left the shelter, that is when he met him. He helped him look for an apartment.

Q. "He" being Farhat?

A. Yes, I mean my husband and Hassan Farhat. They were looking for an apartment.

Q. For your family?

A. Yes, for my family here in Canada.

Q. Do you know if, after you found a home, whether or not your husband had any further dealings with Mr. Farhat?

A. Yes. He also helped us because, after our arrival, we were asked to go through a medical examination and to do some tests.

Q. How did he help you in that regard?

A. He was living on the same street where he had an apartment. Sometimes, when my husband was going to the mosque, he would pick him up and go with him to the mosque.

Q. Is that the extent of the relationship between your husband and Mr. Farhat as far as you know?

A. Yes. It was the kind of assistance that he provided us with.

[78] Then, at p. 666, Vol. 7:

Q. Do you know if your husband, since he has been in Canada, has worked.?

A. You mean in Canada?

Q. Yes.

A. He was attending school after we came to Canada.

Q. Did he ever work?

A. A year ago, a bit more, a person by the name of Parek would take him to work with him.

Q. What was your husband doing with Parek?

A. Cleaning.

Q. Anything else?

A. In the month of October or November of 1998 he also worked with one Magdi.

Q. "He" being your husband?

A. Yes, my husband.

Q. Where did he work, starting at that time?

A. At the Jewish Community Centre.

Q. What kind of work was he doing there?

A. Cleaning. ... He was working until Tuesday and on Wednesday he was arrested.

[79] **Mr. Hisham Bakir**

Prior to this hearing Mr. Bakir signed an affidavit in which he indicated that he is a Canadian citizen, a friend of Mahmoud Jaballah and his family, and since the incarceration of Mr. Jaballah he has acted as an aide to Mr. Jaballah's wife and family. Since a period when Mr. Jaballah retained counsel in these proceedings he has acted as his counsel's interpreter at the Metro West Detention Centre. He has attended on numerous occasions at the offices of Mr. Jaballah's counsel in these proceedings and has assisted counsel as a liaison and an assistant in the preparation of Mr. Jaballah's case. He has also executed errands under counsel's request above and beyond interpretation. He brought with him two letters of support and a petition with many names on it saying, among other things: "Mr. Mahmoud Jaballah has no connection with any terrorist group, not in the present time, nor in the past. Also, that Mr. Jaballah has a good reputation during all his stay in Canada and has proved to be a reliable person for community and for his family."

[80] Mr. Bakir was born on April 12, 1966 in Iran but today is a Canadian citizen. He is a married man with one child. He is working. Although he would like to be working as a geologist right now there is difficulty in finding a job as a geologist and so he works in a metal company.

[81] He has known Mr. Jaballah for about two and a half years and first met him in 1996 at the Mosque called Gami Mosque. They didn't see each other all that often, probably about once a month and he would classify them as family friends. They visited at each other's homes sometimes.

[82] He had not been here at the time Mr. Jaballah was arrested because he was doing his pilgrimage in Saudi Arabia as part of his religion and he returned approximately April 6, 1999.

[83] Since he returned from Saudi Arabia he has helped Mr. Jaballah and his family. In his evidence he stated: "Because he has children from one to thirteen years old and the wife is sick and she can't drive, because we are family friends I have to give them a hand and help them doing shopping for them or when they want to go and see their father."

[84] Having established the preliminaries, counsel went right to the heart of the matter with this question:

Q. I would like you to think back from the time you initially met Mahmoud Jaballah and think of the times that you spent with him socially and at the mosque. I would like you to tell me if during that time and prior to the time that he was in jail you ever heard him mention a group that has been referred to here as Al-Jihad.

A. No.

Q. He has never mentioned that group to you at all?

A. No.

Q. During that same period did you ever hear Mr. Jaballah mention - - I will give you two names, and you tell me if you ever heard him mention them. Ayman Al-Zawaheri?

A. No.

Q. Ossama Bin Laden?

A. No.

Q. So from the time that you have met him you have never heard him mention these names?

A. No.

[85] Then later in his testimony, at p. 761, Vol. 9 of the transcript:

Q. When you were reading these [news] articles and throughout the time that you knew Mahmoud Jaballah, did you ever suspect that he might be involved with Al-Jihad?

A. No.

Q. Did you ever have any suspicions as his friend that he might be involved with any group that might advocate violence of any kind?

A. No.

Q. Especially against the Egyptian government? Did you ever suspect that he might be involved in that?

A. No. I felt that he comes to this country because they put him in jail and he is not free in his country, and they don't deal with them -- they don't have rights there.

Q. So you were familiar with the problems he had in Egypt?

A. Yes. That is why he is out of his country.

[86] Mr. Bakir indicated that he had contact with the lawyers, Mr. Galati and Mr. Rodrigues. That was soon after Mr. Jaballah was in jail. Later we heard that when Mr. Bakir returned from Saudi Arabia he started to find Mr. Jaballah a lawyer and, as I have indicated earlier, he attended with Mr. Galati at the Metro West Detention Centre to help them with translation. He also had attended at the law office of Mr. Rodrigues and Mr. Galati. Mr. Jaballah's case was discussed by him with the two lawyers.

[87] Mr. Bakir was approached by CSIS on August 4, 1999 at his home but apparently they talked in the CSIS agent's car. He remembers the name Baker. When he was approached he was asked if he had someone's permission or a paper from any office that he could come and start asking personal questions about himself. In response, agent Baker showed him a paper saying, "This allows us to come and question people any time, anywhere".

A. Also, he told me, "If you don't want to speak, we can get information another way." He said, "If you cannot answer, we can get --." I said, "No, I can talk, but this is not the way to come. I have a family. I have a job. I have appointments." I told him, "I can't come and see you in your office without an appointment. How can you come and see people without an appointment?" He said, "It will take less than an hour and we will have another meeting and call you to make an appointment."

Q. So in the end you agreed?

A. Yes. I finished quickly because I had an appointment at that time.

Q. How long did you end up speaking with the officer?

A. Almost one hour.

[88] Apparently the first questions were a series of personal questions about Mr. Bakir and then counsel asked him what questions he was asked about Mr. Jaballah. He wanted to know when he met him and how often did he visit him. Mr. Bakir told him that they were friends and that he was helping the family. He told him that after he was in jail he helped with the family because they needed help. The children, and the wife was sick and did not drive. And then Mr. Bakir told him: "You don't want us to help them? He said, 'No, you can help them' ".

[89] It was pretty well all Mr. Bakir could remember except the agent asked him:

A. He asked me about another person.

Q. Such as?

A. Like Hassan Farhat or Kreir.

[90] He was asked questions about the mosque, specifically the Salaheddin Mosque in connection with Hassan Farhat. The CSIS agent said one day Farhat was on the board of the mosque and he left the board. "They kicked him out. Why? Do you know this?" Mr. Bakir said in reply: "I heard about this, but I don't go and ask personal questions". As a

matter of fact, shortly after that, when he was asking questions, Mr. Bakir replied: "No. that is personal information about that person".

[91] After this discussion about the CSIS agent asking questions, counsel then asked Mr. Bakir if he had ever worked at the Bathurst Street Jewish Community Centre and he answered that he had. He said that when Mr. Jaballah was working there he went and visited him and gave him a hand once or twice. After that people knew him and said that maybe Mr. Jaballah would soon out and that Mr. Bakir could take his position. Mr. Bakir was also out of work at that time which was in April. He ended up working there about a month and a half toward the end of May.

[92] At this point, (p. 771, Vol. 9) counsel asked:

Q. You said in connection with my last question that the people there said that Mr. Jaballah would be out soon. Do you recall saying that?

A. Yes.

Q. Could you explain what you meant by that.

A. Everybody was thinking that maybe they would question him and ask him for some information and let him go.

Q. Who told you that he will soon be out?

A. The people who were working there.

That included the workers and the supervisor. When asked later:

Q. When you took over from Mr. Jaballah, did you get the impression that he could go back to work if he wanted to?

A. That was the reason I was working so that, when he come out, he can work in this place again.

Q. Who told you that?

A. Magdi told me.

[93] Later on another item came up and counsel asked the question:

Q. Just a general question. The people that you associate with - - and let's restrict ourselves to the people you know from the mosque and other Muslims. Do you know of any people who reside in the province of Ontario that have their car insurance in the province of Quebec? Have you ever heard of this?

A. I don't know exactly who, but I heard of some people going and making insurance in Quebec because insurance is cheap there.

Mr. Bakir was asked to introduce his affidavit into Court and was questioned by Mr.

Rodrigues at p. 776, Vol. 9:

Q. Did you have anything to do with the compilation of these names and signatures? Did you have anything to do with gathering these signatures?

A. Yes. Many people in the community know Mr. Jaballah and they know he is a good person, so they decided to make this paper so the people can sign it to show to the government, so they can help this person. He is almost three years in Canada, and all these people know him and they sign it.

And the source was apparently people at two or three mosques, after Friday prayer. Mr.

Bakir also indicated at p..778:

Q. I want you to turn to page 1 of the exhibit, Bader Islamic Association of Toronto. Could you tell us what you know about this organization.

A. It is a charitable organization also helping Muslims in Canada to get education and books. Also they have a library, so you can go and read there. They are helping poor people. Recently there was an earthquake in Turkey, so the people collected money for them.

[94] When asked the question:

Q. At page 2 there is the Centre of Toronto. Could you tell us what you know about this organization?

A. This is a mosque. It is part of the centre and also people attend prayer there and Friday prayer.

[95] The question of the word Walid was touched upon when Mr. Bakir said that his wife's parents were in Morocco and he often spoke to her father on the telephone or when he visited them once a year or once a month. At p. 780, Vol. 9 the question was put to Mr.

Bakir:

Q. When you speak to your father-in-law on the telephone, how do you refer to him. Do you refer to him by his family name, first name or family name?

A. Mostly we call our father-in-law or big brother Walid or sometimes Amni, uncle, or Walid, father. He is older than my father.

Q. So you refer to him as Walid?

A. Yes. When you say father-in-law, in our language we call it like this.

[96] In a question on p. 781, Vol. 10, Mr. Bakir was asked if anyone else in his family was referred to as Walid. He answered:

A. In our culture the big brother. Because my big brother is just two years older than me, I call him by the name of his oldest daughter. Big brother, especially if the father has passed away, we call Walid because he is taking care of the family.

[97] The people who knew that Mr. Jaballah had been put in jail because after prayers the Imam would give a speech.

Dr. Aly Hindy

[98] Dr. Aly Hindy is working for Ontario Power Generation, formerly Ontario Hydro as a senior civil engineer and he has been there for nineteen years in the Project Management Department. In addition to this Doctor Hidy is also the President and Imam which is a religious leader in the Salahedin Islamic Centre in Scarborough. At p. 804, Vol. 10 he was asked:

Q. You refer to it as the Salahedin Islamic Centre. What kind of centre is it?

A. It is a mosque and also has religious education and also we teach the Arabic language, solve family problems, perform marriages - - many activities for the Muslim community in Scarborough.

Q. Do you perform marriages yourself?

A. Yes.

[99] Dr. Hindy knows Mahmoud Jaballah and tells us at p. 805:

A. It was about three years ago. I saw him in the Centre a few times. Of course, it is my function also to meet the people personally, to give them comfort. If they have any problems they can come to me for guidance.

...

Q. From that time onward, how frequently did you have contact with him?

A. About three times in general, and there was one time specifically that he came to me to ask me about this problem with CSIS.

Q. Could you tell us when you were approached by Mr. Jaballah in connection with his problem, as you referred to it, with CSIS?

A. He came and said that SCIS was almost threatening him. He came to ask, "What are my rights?"

Q. When was that; do you recall?

A. I would say about six months before his arrest.

...

Q. From what you could tell, from your observation, what was his state of mind? How was he feeling when he approached you to seek your advice?

A. He was very troubled by this. This is not only him; we feel like this is happening in the whole community, these visits from CSIS. They contact people from the community and they even come to their homes. The people don't know their rights. They don't know that they can say "no".

[100] Dr. Hindy indicated that he had some information from CSIS about Jaballah and he wanted to talk to him because he had been warned by CSIS about him. As he indicates, it was really the other way around. He started to try to know, because this was his duty, to make sure that there are no illegal activities in the mosque. He indicated that he would like to know this person so he approached him and talked to him and he kept an eye on him in

general and on people whose names had also been give to him by CSIS. He said, at the end of his study: "I didn't notice anything wrong". He reiterated that he had no concerns about Mr. Jaballah, no concerns at all from the community, or from himself, or from the people who helped him at the centre.

[101] On another point he was asked specifically by counsel (p. 809, Vol. 10):

Q. Are you familiar with a group known as Al-Jihad?

A. Yes.

Q. How are you familiar with that group? How did you come to learn about that group?

A. Mainly from the media.

Q. Throughout the time that you have known Mr. Jaballah, did you have any suspicions that he may somehow be linked with this group? Did you suspect it?

A. No, I didn't have any suspicions about this.

Q. Did anyone in your congregation, the worshippers, ever approach you and say that they were concerned about Mr. Jaballah being connected with this group?

A. No.

...

He has been living here for almost two years.

[102] All visits from CSIS weren't gut-wrenching; when Dr. Hindy had been on the job two or three months he received a call from a CSIS member asking him to join him for a chat. It was a friendly meeting, and the agent gave Dr. Hindy some information about things to be careful about in the community. Dr. Hindy felt no sense of alarm because he wasn't the subject of any investigation. The agent said he was trying to help and suggested to Dr. Hindy that security should also be his concern in his country. He advised him to be careful of things like sending money to certain organizations. Then Dr. Hindy was given some names by the CSIS officer who said: "Watch out for these people". One of the names on the list was that of Mr. Jaballah. Interestingly enough it was Michel who approached from CSIS and he warned Dr. Hindy to be careful because there were some elements connected to terrorism attending his centre and he gave a few names. Of particular interest to Dr. Hindy was Mr. Jaballah and after he had finished a most thorough study of the man and his habits, he says: "There was nothing in what he was saying".

[103] Despite some of Dr. Hindy's concerns about the approach and the conduct of CSIS he is quick to point out that if any of his parishioners could pose some threat to himself and his congregation he would contact CSIS and tell them.

[104] Probably the most powerful statement came from Dr. Hindy when being questioned at p. 821, Vol. 10:

Q. You hold a significant and, I think everyone would agree, a respected professional position, and you are also a person of respect in your community. Why have you taken so much time to be present here in these proceedings?

A. Because we care about Mr. Jaballah. We know he is innocent, and this could happen to anybody else in our community.

[105] Going back a little, Dr. Hindy said that he had done an investigation and indeed a very comprehensive study because he had been given the name from CSIS but they found nothing wrong.

[106] At this point the affidavit of Dr. Aly Hindy was filed as Exhibit No. 9. The exhibit was an affidavit signed Dr. Aly Hindy and attached to it were two copies of signatures of numerous individuals from the Islamic community in Toronto in support of Mahmoud Jaballah. Once again in this case Dr. Hindy was asked at p.831, Vol. 10:

Q. Why did you decide to engage in this exercise of collecting these names and explaining to these people what they were signing, and so?

A. Because every one of us is concerned about Mr. Jaballah and we want him to be here with us. We don't want him to go back to suffer the same situation that he was suffering before. Finally, he found a good place to live, a peaceful place. He was very peaceful and was trying to establish his life here with his children and his wife, and now he is being threatened with going back to the same situation. Maybe this time it would be even worse.

If you challenge the Egyptian government or even claiming refugee status itself is considered something against the government.

[107] Wrapping up, counsel asked Dr. Hindy at p. 833:

Q. Just one last question, Dr. Hindy. You had two interviews in total with CSIS?

A. That's right..

Q. Was CSIS aware on those occasions that you are a citizen of this country?

A. Yes.

Q. At any time were you advised by CSIS that, before speaking with them, you had the right to consult a lawyer? Were you advised of that?

A. No.

Q. Were you told that you could refuse?

A. No.

In cross-examination by counsel for the applicant this suggestion was put to Dr. Hindy

(p.836, Vol 10)

Q. Would it be fair to say, Dr.Hindy, that, in essence, your other position as Imam of the Salahedin Mosque, although a very responsible position, would be a part-time position?

A. You could say that, but the main activity is actually on Friday, and I always take Friday off from my work, from Ontario Power Generation, and then on Saturday and Sunday. Those two days, plus Friday after 12 o'clock, is the main activity. In the rest of the week the place has very little attendance because people are working. The main activity is from Friday noon until the end of Sunday, and I am always there.

Mr. Arafat El-Asahi

[108] Dr. El-Asahi was born on December 25, 1940 in Gaza, Palestine. He is a married man with seven children and thirteen grandchildren. He is a Canadian citizen. At the present time he is a full-time employee of the Muslim World League that has its

headquarters in Saudi Arabia and has over 30 offices all over the world. He was questioned at p. 855 Vol. 20 of the transcript:

Q. That is the Muslim World League?

A. Which is the mother organization of what is called IIRO, the Relief branch of the Muslim World League.

Q. Is IIRO also known as the International Islamic Relief Organization?

A. Yes, it is.

[109] It was agreed that it would be referred to as the IIRO. On p. 857, Vol. 10:

Q. In your professional capacity, do you do any work with the IRRO?

A. Yes. I am Director of this office in Canada.

Q. Where is the office located?

A. It is in Etobicoke here.

Q. Is that the only IIRO office in Canada?

A. Yes.

Q. How long has that office been operating?

A. For the last eight years or so.

Q. During those eight years, have you been associated with the IIRO in Canada? Have you been here throughout those eight years?

A. I am in charge of this - - actually, it is not a very active office in Canada. It is only representing some activities among the Muslim communities in Canada.

Q. Have you been with that office for the past eight years?

A. All the time, yes.

Q. During those eight years that you have been with the IIRO here in Canada, have you ever heard anything to the effect that the Canadian government has any concern whatsoever with respect to your office?

A. Let me tell you one thing. The Muslim World League, which is the mother of IIRO, is a fully government funded organization. In other words, I work for the Government of Saudi Arabia. I am an employee of that government. Second, the IIRO is the relief branch of that organization which means that we are controlled in all our activities and plans by the Government of Saudi Arabia. Keep that in mind, please.

Q. I will. Thank you. When you say you work for the Government of Saudi Arabia, are you also paid by that government?

A. I am paid by my organization which is funded by the government. Let me tell you one little thing. Whenever the Saudi Embassy in Ottawa required anything, to ask about any Muslim project all over Canada, they come to us. They ask us about the people who are doing this project. Do you get this point?

Q. Yes.

A. Whatever we say is acceptable, fully acceptable, by the Saudi Embassy and by the government of Saudi Arabia.

Q. For those of us who are not as familiar as you are with the Muslim World League, could you tell us a bit about the work of that organization internationally?

A. The Muslim World League was established in 1963 as an organization trying to help Muslims who live as minorities. Where ever Muslims exist as minorities, this organization tries to help them in one way or another - - in education, in social needs, in every aspect of their lives. Whatever it can give to them, it doesn't hesitate to do that.

Q. Is there any connection between that organization and the United Nations?

A. Absolutely. We have an observer status with the United Nations - - not only the United Nations, but a number of prominent international organizations. One of them is called the Arab League. The Arab League is a league of all Arab States. Also we have a status with the OIC, the Organization of Islamic Countries, which represents 55 countries who are all Muslim. We have this status with all of them.

Q. Is the Muslim World League the type of organization that would actually have physical offices in countries throughout the world?

A. Of course. I said in the beginning that we have over 30 offices all over the world? One is here; one is in Washington, D.C. They are spread all over, in Europe, in Asia.

Q. When you speak of an office that is an IIRO office, that counts as a Muslim World League office as well?

A. What happens is that sometimes the IIRO and the Muslim World League office is one, but sometimes they have two different offices, although the umbrella organization is the same, which is the Muslim World League.

[110] From this juncture on counsel for the respondent indicated that he would be referring strictly to the IIRO. We now go to p. 862, Vol. 10 of the transcript:

Q. During the eight years that you have been with IIRO/World Muslim League here in Canada, have you ever received any indication from the Canadian authorities that they are concerned in any way about your office?

A. Yes.

Q. When was that?

A. Some agents from CSIS called me, and they came and visited me.

Q. Do you recall who it was?

A. The same person representing CSIS. Everybody knows this. He came to my office and he asked me about us, what we are, what our activities here and elsewhere in the world are. When he knew, as I told you, about ourselves, he was satisfied and he said to me, "If you need any help, here is my card. Call me." Then he called again maybe one year later.

Q. When did he call you the first time?

A. About three years ago. The second time he called asking the question, which was very strange to me, "Do you receive any threats from anybody?" I said, "Yes, it so happens that I had two letters threatening us." "Can I come and see them?" He came. He said, "Are these threats from Muslim terrorists?" I said, "No. Why should Muslims threaten us when we are here to help them?" [emphasis added]

[111] Dr. El-Asahi took considerable pride, and well he should, when he said at p. 864,

Vol. 10::

We publish booklets actually to educate Muslims and Canadians non-Muslims about what we stand for, what Islam stands for. One our books fell into the hands of the Minister of Defence at the time, David Collonnette (sic). He is still the Honourable Collonnette (sic). He is a minister until now, but of course he has a different portfolio. He read one of our books called 'The Holy Koran's Message to Jews and Christians'. The Holy Koran is our holy book, like the Holy Bible. It is a message not only to Muslims; it is a message to the universe, to everybody, including the members of the other two divine religions. The book was quotations from the Koran addressed to the followers of Judaism and Christianity. He [the Minister] read the book and he expressed his happiness about it, ... and he said, "Other people, when they write about religion, concentrate on differences and, thus, they divide people. In this book by this author there is a concentration on commonalities." He was happy with the book because it concentrates on what joins us together.

[112] During Dr. El-Ashi's examination-in-chief, we come yet again across the name

Ossama Bin Laden. At p. 867, Vol. 10:

A. Everybody knows who Ossama Bin Laden is. He was with the Afghan guerillas from the beginning of their uprising against the Soviet Union. The United States used to help the Afghans during that period, before the nineties. He was on the popular level getting help from the people of Saudi Arabia and sending them - -

from what I read in the papers - - sending them to those guerillas. Then afterward, after the Soviet Union left, he continued to do the same thing.

To me, as a representative of the Muslim World League and IIRO, I feel that he has exceeded his limits, to make attacks or to say, "I want to make an international war against everybody." That is not Islam; this is against Islam.

Q. So what we have been reading in the newspapers as to what Ossama Bin Laden is supporting, you don't support?

A. Absolutely not, and I categorically say that there are no relationships between Ossama Bin Laden - - how can there be a relationship when Ossama Bin Laden himself lost his Saudi citizenship? He is no more a Saudi citizen, and the Government of Saudi Arabia, I am stating, is our government. We work for it. Whatever the government does and its attitude toward Ossama Bin Laden and other people, that is our attitude, too.

Q. So when CSIS says that Ossama Bin Laden is connected to your organization's offices in Pakistan, what do you say to CSIS?

A. I am afraid this is inaccurate. This is absolutely not correct.

Q. My recollection of CSIS' position is that, in addition to that, the IIRO offices in Pakistan are involved in fraudulent activities.

A. Again, this is an offence to the IIRO. It is absolutely unfounded.

...

Q. I would like you to tell me, Dr. El-Asahi, if you know Mahmoud Jaballah.

A. I heard the name. He called me on the phone and he said he worked for our office in Pakistan. He was a Principal. He sent me a letter, and his wife also called me. I never met any of them, and I saw the letter. The letter has been issued by the Director of our office in Pakistan. They know the person, so it is a genuine letter, that he was the Principal of the school operated and started by the IIRO for orphans in Pakistan. He was there. Because the letter is in Arabic and it is from Pakistan, he wanted me to confirm this information. I wrote a letter to that effect, to whom it

may concern, that indeed, based on this letter, this man worked for this organization during a certain period.

Q. When Mr. Jaballah approached you with that letter, do you recall if that was the name he introduced himself as, Mahmoud Jaballah?

A. Of course, Mahmoud Jaballah. I have a copy of the letter.

Q. Would you check the name on that letter, please.

A. His name is Mahmoud El-Sayy Jaballah.

Q. Is that the Arabic letter?

A. English. That is my letter, and the Arabic is here. It is the same, Mahmoud El Sayy Jaballah.

Q. That letter came to you from Mr. Jaballah?

A. Yes.

Q. And that is the letter that was issued by the organization in Pakistan?

A. The one in Arabic is written by my organization, the office in Pakistan. If you need a copy of it.

Q. Perhaps you could take us through it again. You received the letter from your branch in Pakistan?

A. No. I received the letter on behalf of Mr. Jaballah here, that he had a letter that proves that he worked as a Principal of one of our organizations in Pakistan during a certain period, and the organization says that he was of excellent character and good behaviour. This is text of the letter. I am paraphrasing it for you. So we issued this letter, to whom it may concern.

Q. In English?

A. In English. We say: "This is to certify that the IIRO is an Islamic international organization that has branches in various countries, one of which is in Pakistan, where Mr. Mahmoud used to work."

...

Q. Do you recall, Dr. El-Asahi, when you were initially approached by Mr. Jaballah?

A. It has a date. It was January 6, 1999. That is the date of my letter, January 1999.

[113] In cross-examination Dr. El-Asahi confirms (at p. 875, Vol. 10) that he is an employee of the Muslim World League. At p. 877, Vol. 10, the following questions and answers were given:

Q. Do I understand correctly from the questions that you responded to from Mr. Rodrigues that the IIRO is really only active in those places where there is need for relief?

A. Yes.

Q. In other words, in Canada, in terms of your dual role with your dual office here, you would be doing more activity in relationship to the Muslim World League than you would with regard to the IIRO?

A. Exactly, although we do have certain activities from the IIRO required to be done in Canada. For instance, in the month of fasting we have some money coming from there to spend to make parties for those who fast. The poor people here in a number of mosques would get together and eat as guests of the IIRO.

Q. When they break their fast?

A. Exactly. This is an example. There are other things.

Q. You said "money from there".

A. From Saudi Arabia.

Q. You also indicated in response to a question from Mr. Rodrigues that you would not know what was going on with the Muslim World League/IIRO office in Washington, D.C. in terms of the Americans possibly investigating them because that is an affair for their office.

A. That is true.

Q. At the same time you indicated in a response to a question from Mr. Rodrigues that you are not aware of what the IIRO office in Pakistan would do in recruiting people to teach there because that is an affair that is intrinsic to that office.

A. Ask me about what I do here and my relationship with the headquarters in Jeddah.

Q. Having said that, you are not really able to tell this Court what goes on at the IIRO office in Pakistan beyond which somebody in Pakistan is prepared to say, are you?

A. I can tell because I know about the general policy and the rules and objectives of the organization which nobody is allowed to go beyond. Everybody has to abide by the rules and the principles of the organization. In that way I can tell.

Q. You have already told us that, in your view, what Ossame Bin Laden has done is beyond the principles of Islam and is contrary to the principles of Islam

A. In his threat to declare war against civilians and to demolish and bomb targets everywhere in the world just because they are American or European, this is not Islamic at all.

Q. Given that you don't know precisely what goes on in the office in Pakistan -- and I recognize that your view is that Ossama Bin Laden is beyond the principles of

Islam - - would it be possible that there might be individuals operating within the office in Pakistan who admire what Ossama Bin Laden has done?

A. No. The answer is "no" because the office, like any other office in the world, here or in the Muslim World League, has to abide by the policy of the Government of Saudi Arabia. If anybody deviates from that, he would be fired; he would not work at all with IIRO or with the Muslim World League.

If I give any statement in the Canadian papers that goes against the policy of my organization, I would not stay in my office 11 years as I did. That gives me an indication that everybody is within - - there is also an embassy in every country. In Pakistan there is a Saudi embassy that knows what happens not only in Saudi organizations but with Saudi individuals. They know who does what.

Q. How can you say that, Dr. El-Asahi, when you don't know exactly what it is that might be going on inside the Pakistan office? Is it not possible that somebody could keep his opinions to himself about Ossama Bin Laden, but work quietly on his behalf without letting his superiors or the officials in Jeddah know what he is doing?

A. Does anybody know what goes on in my mind and your mind? We are not accountable for what goes into our minds; we are accountable for our actions. Whether he keeps this or that is not a concern of anybody as long as he or she abides by the principles of the organization or the government.

Q. Are you saying that it is possible that somebody could act or attempt to act in secret but, so long as he keeps to the official policy line of the organization and the home organization doesn't know what he is doing in secret, he might continue along at variance to official policy?

A. I am not saying that; you are saying that. I am saying that I don't know what happens in secret with anybody; nobody knows. This is what I am saying.

[114] In re-examination counsel for the respondent, at p.883 asked:

Q. In your opinion, Doctor, would the Saudi government fund any organization that is involved, perceived, or stated to be involved in terrorism?

A. This exactly as you would say: Would the U.S. government fund any organization that is involved in terrorism? The same answer.

Q. What is that answer?

A. The answer is: Impossible. How can they?

Mr. Steve Rosenbaum

[115] Mr. Galati called the next witness, Mr. Steve Rosenbaum. Mr. Rosenbaum is a barrister and solicitor and a member of the Bar of Ontario since 1984. He represented Mr. Jaballah, his wife and children during the course of the refugee claim and hearing. At p. 890, Vol. 10 Mr. Galati asked:

Q. During your representation of Mr. Jaballah, his wife and children, did anyone from CSIS ever call you to tell you that they were interviewing your client during the same time period and during the course of their claim?

A. No.

Q. Did the Minister's representative, the Refugee Claims officer or any of the interpreters during the sittings of the refugee claim ever indicate to you or tell you that CSIS was investigating my client, Mr. Jaballah?

A. Never.

[116] Then in a question at p. 892:

Q. Is it normal practice, both in your own experience and in dealing with other practitioners in your area, that refugee lawyers will encourage and request their clients to collect documentation or documentary evidence to support their refugee claim?

A. That is correct.

Q. I don't know whether you recall, but is it likely that you did so with Mr. Jaballah and his family?

A. Yes, I do recall that.

Q. Did you.

A. Yes.

Q. Do you know a Mr. Ali Hussein?

A. Yes, I do.

Q. Who is he?

A. He was the interpreter who assisted us during our preparatory meetings for the refugee hearing, together with Mr. Jaballah.

Q. Was he someone Mr. Jaballah brought to your office or was he a regular interpreter of yours that you had used?

A. He was a person that Mr. Jaballah brought to my office.

CONCLUSIONS AND REASONS FOR ORDER

[117] Both counsel emphasized the fact this case would turn on the credibility of the parties and the witnesses and I agree.

[118] There is also one major feature of applications brought pursuant to paragraph 40.1(4)(a) of the *Immigration Act* and that is the direction from Parliament which I think bears repeating here.

(4) **Judicial Consideration of Certificate** - Where a certificate is referred to the Federal Court pursuant to subsection (3), the Chief Justice of that Court or a judge of that Court designated by the Chief Justice for the purposes of this section shall

(a) examine within seven days, *in camera*, the security or criminal intelligence reports considered by the Minister and the Solicitor General and hear any other evidence or information that may be presented by or on behalf of those Ministers and may, on the request of the Minister or the Solicitor General, hear all or part of such evidence or information in the absence of the person named in the certificate and any counsel representing the person where, in the opinion of the Chief Justice of the designated judge, as the case may be, the evidence or information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(4) **Examen judiciaire** - Lorsque la Cour fédérale est saisie de l'attestation, le juge en chef de celle-ci ou le juge de celle-ci qu'il délègue pour l'application du présent article:

a) examine dans les sept jours, à huis clos, les renseignements secrets en matière de sécurité ou de criminalité dont le ministre et le solliciteur général ont eu connaissance et recueille les autres éléments de preuve ou d'information présentés par ces derniers ou en leur nom; il peut en outre, à la demande du ministre ou du solliciteur général, recueillir tout ou partie de ces éléments en l'absence de l'intéressé et du conseiller la représentant, lorsque, à son avis, leur communication porterait atteinte à la sécurité nationale ou à celle de personnes.

[119] It's not surprising that counsel have attacked this particular admonition to judges but the authority is now clearly spelled out and we have proceeded with it since at least 1994 and probably earlier.

[120] When counsel are representing a client under these terms and conditions I can appreciate that it is extremely difficult but it is a difficulty that Parliament feels should be overcome given its responsibility for protecting Canadians and other residents of Canada.

[121] This case lends itself to being divided into three points of time, namely: A. the time in Egypt; B. the time between arrival in Saudi Arabia and departure for Canada; and C. the time in Canada.

A. Time in Egypt

[122] Both the respondent and his wife gave a very careful, albeit chilling, commentary and evidence of the time they spent in Egypt and why they wanted to leave. Of all of their evidence this was certainly the most credible and really unchallenged. I accepted that they were persecuted; I accept that they were imprisoned and that no charges were brought against them; and I accept the fact that the respondent instituted an action against the government which, as I have indicated earlier, he abandoned when he left for Saudi Arabia. Nor did I find any real fault with the fact he had to tell a few lies in order to convince the captain of the ship they were sailing on that everything was in order when he knew it was not in order. I don't think that exchange really impinged upon his credibility and I suspect that anyone of us caught in that situation would be tempted to tell a few lies if it meant becoming clear of something they feared for good reason. In any event that was the way I saw it, save and except for the evidence presented to me at the *in camera* meeting and of course I cannot comment on that.

B. Time spent after left Egypt until arrival in Canada

[123] Again, the respondent brought to our attention that the pilgrimage to the holy place was for a limited time and he had to leave at the end of that specific period of the pilgrimage. He was able to stay in Saudi Arabia for a limited period of time and after that he was forced to travel to Pakistan and later Yemen. His wife was not with him in Yemen but apparently working in Pakistan during this time. He then tells us, in answer to questions from his counsel, about his going to Yemen and Azerbaijan and that the Canadian authorities would know that he had gone to Azerbaijan because it was shown on the passport. He adds that there was no stamp in his passport showing Yemen and the only way the Canadian authorities would get that information would be if he told them, as he indicated he did.

[124] On the other side of the coin is the fact that he spent a year in Yemen and we heard very few if any details other than the fact of why he went there and that he was unsuccessful in getting a job and that he sustained himself by using money that he had earned in Pakistan and his wife was able to look after her financial requirements because she had also been working and in fact was still working and had saved some money. By and large, there wasn't too much to criticize about the evidence here but this is an area where he had gone to seek protection and yet seemed to move around quite easily in what was for him a danger zone, if Egypt was apparently demanding that Egyptians be returned to Egypt.

[125] Here again the *in camera* evidence tells a different story and I can't of course comment on that information.

C. Time in Canada

[126] I don't need to belabour this again other than to say that I was impressed by the number and the calibre of people who came forward on his behalf and on behalf of his wife and children. I have already highlighted some of the actions that were taken by people who wanted to do nothing more than help.

[127] I was particularly impressed by Dr. Ali Hindy because he had taken on the responsibility of checking Mr. Jaballah out after being told by CSIS that he might be a problem. He said at the end of his study: "I didn't notice anything wrong". He also brought home to the Court that he had no concerns about Mr. Jaballah, no concerns at all from the community or from himself or from the people who help him at the centre. This was pretty strong backing coming from a person in the community who has obligations of his own to see to the members of his mosque and an indication that people were coming from various centres just to be at the mosque because of the way it was run. The wrapping-up information about Dr. Hindy's relationship with the respondent came when counsel said: "You hold a significant, and I think everyone would agree, a respected professional position and are also a person of respect in your community. Why have you taken so much time to be present here at these proceedings?" and Dr. Hindy replied:

“Because we care about Mr. Jaballah. We know he is innocent and this could happen to anybody in our community.”

[128] I don't wish to reiterate what I have already said in these Reasons but I thought it important to include strong attitudes of people who have known the respondent over a comparatively short time and would have a natural propensity, I believe, and a correct one, to support their compatriots in the community.

[129] The respondent had been given work by a friend with the initials TJ and it amounted to menial labour from time to time when a job vacancy occurred. The respondent befriended TJ and agreed to drive him to the airport with all of his luggage and his family. TJ's evidence was to the effect that neither his car nor the car of his brother was large enough for the amount of luggage they were taking and that is why they seized upon this offer from the respondent.

[130] Of interest here was that the luggage was not taken into the airport but simply unloaded at the sidewalk and TJ would have to move it the rest of the way. At this point I think it should also be pointed out that the respondent was known to TJ as Mustafa Jaballah.

[131] When TJ and his family arrived in Egypt they apparently were treated shamefully by the Egyptian authorities and I think it is pretty clear from the evidence that they were not interested in TJ but they were interested in Jaballah. The problems faced by TJ were unlike anything he had ever had happen to him before and he had made several trips to Egypt but this was the first time that he was manhandled in this particular way. He was asked a series of questions and shown pictures in which he was asked to identify the people in them.

[132] I believe that once the officials realized, or more importantly, once TJ realized that the man he knew was called Mahmoud Jaballah, he conceded that he knew him but that he didn't know him by that particular name.

[133] Once it had been settled in the minds of the Egyptian authorities they then began their questioning about contacts TJ had had with Jaballah. I believe they kept him for something like ten hours the first time at the airport and for a shorter time on the second occasion when the photographs was finally identified.

[134] This incident points out that Jaballah would have some reason to be concerned if he returned to Egypt, or so the evidence seems to say to me because the clear-cut evidence is that TJ suffered at the hands of the officials because they thought he was a good friend of, or working with, or on behalf of Jaballah.

[135] Jaballah's evidence has been that if he returned to Egypt voluntarily or if he was forced back there was clearly interest in him. His friend, TJ, made the point that he had been questioned in a very deliberate fashion and for a long period of time about the whereabouts of the respondent. And so, as the respondent indicates, they were out to get him back; certainly on this particular issue he is on pretty solid ground on that part of his testimony.

[136] If nothing else this incident squares with Jaballah using the name Mustafa with people he did not trust or did not know and he had reason to be apprehensive about meeting new people in Canada. There is also an indication here that the Egyptian authorities were well informed because they had taken a photo of Jaballah and TJ outside the airport and then showed it to TJ during the second meeting with officials.

[137] I cite this instance because it goes a long way to establishing the credibility of the respondent.

DECISION

[138] I am satisfied, based upon the evidence presented to me *in camera* and in open court, that the certificate filed by the Minister and the Solicitor General is not reasonable and the certificate is quashed.

Ottawa, Ontario
November 2, 1999

B. Cullen

J.F.C.C.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: DES-6-99

STYLE OF CAUSE: Minister of Citizenship and Immigration v. Mahmoud
Jaballah

PLACE OF HEARING: Ottawa Ontario , Toronto Ontario

DATE OF HEARING: April 6,1999
June 7, 8, 9,1999
August 16, 17, 18, 19, 20,1999
August 23, 24, 25, 26,1999
October 4, 5, 6, 1999

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE CULLEN

DATED: November 2,1999

APPEARANCES:

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For the Minister of Citizenship
and Immigration

Rocco Galati
Roger Rodrigues

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