Date: 20080530

Docket: IMM-2019-07

Citation: 2008 FC 694

Vancouver, British Columbia, May 30, 2008

PRESENT: THE HONOURABLE MADAM JUSTICE DAWSON

BETWEEN:

SHEWAINESCH TSEGAI UGBAZGHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

[1] Shewainesch Tsegai Ugbazghi is a citizen of Ethiopia who has been found to be a Convention refugee in Canada. She brings this application for judicial review of the decision of an officer that later refused her application for permanent residence. The application was refused because Ms. Ugbazghi was found to be inadmissible on security grounds under paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act). Specifically, Ms. Ugbazghi was found to be a member of the Eritrean Liberation Front (ELF), an organization that, there are reasonable grounds to believe, has engaged in terrorism. Section 34 of the Act, as well as sections 25 and 33, and subsection 83(1) are set out in Appendix A to these reasons.

[2] These reasons deal with the Minister's application under section 87 of the Act for the non-disclosure of certain information contained in the certified tribunal record and also with the merits of Ms. Ugbazghi's application. In these reasons, I discuss the section 87 process and conclude that the application for judicial review should be dismissed because the officer's decision was not unreasonable.

The Section 87 Application

[3] On February 22, 2008, an amendment to section 87 of the Act came into force. As amended, section 87 now provides that:

87. The Minister may, during a judicial review, apply for the non-disclosure of information or other evidence. Section 83 — other than the obligations to appoint a special advocate and to provide a summary — applies to the proceeding with any necessary modifications.	87. Le ministre peut, dans le cadre d'un contrôle judiciaire, demander l'interdiction de la divulgation de renseignements et autres éléments de preuve. L'article 83 s'applique à l'instance, avec les adaptations nécessaires, sauf quant à l'obligation de nommer un avocat spécial et de fournir un résumé.

[4] The relevant transitional provision, section 10 of Bill C-3,[1] provides that the amendment to section 87 applies to a proceeding, such as this one, that was pending before February 22, 2008, and was one in which an application had been made under then section 87 of the Act.

[5] By this amendment, the government cured the earlier legislative oversight that had made no provision for protecting information considered in an application for permanent residence made from within Canada. This gap had been filled by the Court applying the procedure then existing under section 78 of the Act. See: *Mohammed v. Canada (Minister of Citizenship and*

Immigration), [2007] 4 F.C.R. 300 (F.C.), and *Naeem v. Canada (Minister of Citizenship and Immigration)*, [2007] 4 F.C.R. 658 (F.C.) at paragraphs 13 to 18.

[6] The process followed under section 87 of the Act was described in general terms by the Court in *Gariev v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 657 (QL). In these reasons, I wish to deal more fully with the nature of the information filed in a section 87 application.

[7] On the public record, the Minister files a notice of motion seeking relief under section 87 of the Act. This is usually supported by an affidavit and by written submissions, all filed on the public record. The public affidavit filed in this case is attached as Appendix B to these reasons.

[8] Typically, the public affidavit states that the certified tribunal record contains both redacted (the confidential information) and unredacted information. The confidential information is said to be information which, if disclosed, would injure national security or the safety of any person. The deponent of the public affidavit, again typically, has no knowledge about the content of the confidential information.

[9] A second, secret affidavit is filed in confidence. That affidavit is sworn by someone who is said to have personal knowledge of the matters at issue. The secret affidavit is typically divided into three parts. The first part refers to the general principles that govern the non-disclosure of information under what are now paragraph 83(1)(*d*) and section 87 of the Act. Publicly available jurisprudence may be referred to or cited. The second part of the secret affidavit consists of all of

the pages of the certified tribunal record that have been redacted, but in an unredacted form. The final part of the secret affidavit consists of the deponent's evidence as to why, in the opinion of the deponent, each redaction is necessary in order to protect national security or the safety of any person.

[10] The public and secret affidavits are prepared by different counsel within the Department of Justice. The public affidavit is prepared by a lawyer with carriage of the immigration proceeding. The secret affidavit is prepared by counsel with the requisite security clearance.

[11] The bifurcation of the section 87 application between counsel creates difficulties. In my experience, one difficulty caused by this is that there is often delay in bringing section 87 applications. Chief Justice Lutfy has previously commented on this. In *Beraki v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. 1770 (QL), he wrote at paragraphs 7 through 9:

> 7 Section 87 of the *Immigration and Refuge Protection Act* is the statutory provision which allows the respondent to apply for the non-disclosure of information in the tribunal record during the judicial review proceeding in this Court. Some *obiter* comments concerning the Court's recent experience may be in order, keeping in mind that they are made without the benefit of argument from both counsel.
>
> 8 First, the respondent must endeavour to seek relief under section 87 in a more timely matter. In this proceeding and in others, the application under section 87 is made on such a late date that the substantive hearing on the judicial review must be rescheduled. This is not consistent with the good administration of justice.
>
> 9 Second, part of the delay may result from the limited, if any, communication between counsel for the respondent in the judicial review proceeding and counsel representing the government institution, often the Canadian Security Intelligence

> Service, seeking the non-disclosure of information. Enhanced communication between these two government counsel can only improve the procedural aspects of a section 87 application. [emphasis added]

[12] I adopt those comments. In this proceeding, leave was granted by an order dated November 22, 2007, which set the matter for hearing on February 14, 2008. The section 87 application was filed on January 31, 2008. This necessitated adjournment of the hearing from February 14, 2008, to May 6, 2008. An *in camera* and *ex parte* hearing date was set in respect of the section 87 application for March 11, 2008. Ms. Ugbazghi declined a public hearing in respect of the section 87 application.

[13] A second difficultly created by the bifurcation of the matter between counsel is that, in my experience, counsel involved in the preparation of the secret affidavit do not have a copy of the public certified tribunal record. This has resulted in claims being made to protect information that has previously been disclosed. See, for example, *Gariev*, cited above, at paragraph 10, and the Court's direction of December 19, 2006, in IMM-1004-06.

[14] The process would be improved if the deponent and the counsel who are seeking to protect information had available to them the information that already appears on the public record.

[15] Turning to the *in camera, ex parte* hearing held on March 11, 2008, the deponent of the secret affidavit gave *viva voce* evidence at that hearing with respect to the 7 pages of the 257 page certified tribunal record that contained redactions. I raised with the deponent two general issues.

[16] The first issue was whether the redactions sought in this case were consistent with redactions sought in other cases. A secret affidavit filed in another, unrelated section 87 application was placed before the deponent. It appeared that information had been made public in that case which the Minister sought to redact in this case.

[17] The second issue was the extent to which redactions were sought concerning information that had previously been disclosed on the public record.

[18] A third issue, raised with counsel, was that the secret affidavit contained information that, in my view, could have appeared on the public record. Of particular concern were general statements of principle and quotations from publicly available jurisprudence that appeared in the first part of the secret affidavit. Specific reference was made by the Court to Chief Justice Lutfy's comments at paragraph 10 in *Beraki*. There, he wrote:

> 10 Third, in this proceeding at least, substantial portions of the deponent's secret affidavit should have been filed on the public record, as the deponent herself acknowledged on examination during the *ex parte* hearing. In the future, all interested persons will want to assure that the open court principle is more closely adhered to in section 87 matters. [emphasis added]

[19] The *in camera, ex parte* hearing was adjourned pending receipt of further information from the Minister. Further information and submissions were provided by letter dated March 31, 2008. In response, I directed further inquiries to counsel for the Minister. The response was provided by letter dated April 15, 2008. Thereafter, for reasons to be delivered in writing together with the reasons relating to the application for judicial review, an order issued on April 21, 2008, allowing the section 87 at application in part.

[20] Specifically, four of the seven pages were disclosed in their entirety. The remaining three pages contained redactions, but some additional information was disclosed on each page. Where information remained redacted, I was satisfied that its disclosure would be injurious to national security or endanger the safety of any person.

[21] In future, the section 87 process would be improved if the deponent was assisted by someone exercising quality control to ensure that information is not disclosed in one case but protected in another.

[22] The April 21, 2008, order also required counsel for the Minister to disclose to counsel for the applicant, verbatim, the legal submissions made in counsel's letter of March 31, 2008. Those submissions were directed to the propriety of placing in a secret affidavit information that could be publicly disclosed without endangering national security or the safety of any person. The order requested that oral submissions on this issue be made at the hearing of the application for judicial review.

[23] Turning to the legal submissions, counsel for the Minister's position may be summarized as follows:

- a public version of the secret affidavit would not be filed;
- there are legitimate exceptions to the open court principle;

- a legitimate, statutory exception is found in section 87 of the Act, which specifically provides that no summary of the secret information is to be provided;
- providing a redacted version of the secret affidavit would be akin to providing a summary; and
- the secret affidavit should remain secret in its entirety.

[24] With respect, neither the Chief Justice in *Beraki* nor I in this proceeding suggested that section 87, properly applied, was not a legitimate statutory exception to the open court principle. Nor did we suggest that a summary of genuinely secret information should be provided.

[25] Our comments were directed to the facts that:

- as a general principle, disclosure of information is presumptive in our courts;
- section 87 displaces that general presumption and introduces an exception; and
- that exception is a direction by Parliament to the Court to ensure the confidentiality of information or evidence where, in the opinion of the judge, its disclosure would be injurious to national security or endanger the safety of any person.

[26] It follows that there is no basis in law for placing general legal argument based on public jurisprudence in a secret affidavit.

[27] The practice, in my respectful view, is improper for two reasons. First, that type of information can be disclosed without endangering national security or anyone's safety. It is, therefore, not protected by subsection 83(1) of the Act. Second, as a general principle, affidavits are to deal in matters of fact — not law. Domestic law is not a subject about which a Canadian court will receive opinion evidence. See: *R. v. Graat,* [1982] 2 S.C.R. 819. See also: *Paciocco & Stuesser, The Law of Evidence*, 4th ed. (Toronto: Irwin Law, 2005) at 176.

[28] In an attempt to provide assistance, I suggest that, in a section 87 application, a secret affidavit should attach, in unredacted form, each page of the certified tribunal record that contains redactions. It may also contain expert opinion evidence as to why the redactions are necessary. General legal argument should be contained in the written representations filed on the public record. As a general principle, legal argument made in the *in camera, ex parte* hearing should be so related to the specific content of the redactions that the argument could not be made in public without risking disclosure of the confidential information.

[29] I now turn to the merits of the application for judicial review.

The Application for Judicial Review

[30] Ms. Ugbazghi is a citizen of Ethiopia of Eritrean ethnicity. In 1977, she joined what she now characterizes to be a support group of the ELF. As a member of this group, she distributed written materials, participated in meetings, paid small amounts of money, and encouraged others to join the group and the ELF. Ms. Ugbazghi did not pay a membership fee, and she did not hold a

membership card. The group is said to have disbanded in 1981, and Ms. Ugbazghi says that she had no further involvement with the ELF.

[31] In 2002, Ms. Ugbazghi arrived in Canada where she has since remained. She applied for permanent residence in January of 2004. Subsequent, Ms. Ugbazghi was advised of the concerns arising from her association with the ELF, and she was provided with an opportunity to address those concerns. In addition to providing a lengthy response, Ms. Ugbazghi sought ministerial relief under subsection 34(2) of the Act and humanitarian and compassionate relief under section 25 of the Act.

(i) The officer's decision

[32] The officer's notes include the following findings:

- Ms. Ugbazghi is an admitted member of the ELF;
- her activities, described as attending meetings, making donations, and distributing ELF materials which encouraged others to join the armed struggle or to give donations, amounted to membership in the ELF because they furthered the goals of the ELF;
- Ms. Ugbazghi voluntarily joined the ELF;
- the ELF engaged in acts of terrorism, documented to have occurred from March of 1969 until August of 1991, which was before, during, and after Ms. Ugbazghi's period of membership;
- the acts that the ELF engaged in included: kidnapping two missionary nurses (one of which was killed); kidnapping three British citizens who were not released until after

the intervention of the president of Sudan, some five months later; the hijacking of an airliner during which several passengers were injured; and, the kidnapping of foreigners from a yacht in Eritrean waters;

- those acts constituted acts of terrorism because they were intended to kill or inflict serious bodily injury to civilians, who were not taking part in any armed conflict, so as to intimidate the population and compel the Ethiopian government to listen to its demands;
- the fact that Ms. Ugbazghi was not found to be ineligible to claim refugee protection did not preclude a finding of inadmissibility; and
- Ms. Ugbazghi's request for humanitarian and compassionate relief under subsection 25(1) of the Act was not properly before the officer and could not be considered.

[33] After finding that Ms. Ugbazghi was a member of the ELF, the officer concluded that there were reasonable grounds to believe that the ELF had engaged in acts of terrorism. Thus, the officer found that Ms. Ugbazghi was a member of the inadmissible class of persons described in paragraph 34(1)(*f*) of the Act.

(ii) The issues

[34] In oral argument, counsel for Ms. Ugbazghi pursued only two arguments. First, that the officer erred in law by finding that she had no jurisdiction to consider humanitarian relief under subsection 25(1) of the Act. Second, that the officer erred by finding that Ms. Ugbazghi was a member of the ELF.

[35] During oral argument on the first point, there was discussion about a number of issues, including that the consequence of the position taken by Ms. Ugbazghi would be that an officer would be able to grant relief that Parliament intended only be granted by the Minister. It was ultimately agreed by Ms. Ugbazghi's counsel that, if it is the Minister who must consider humanitarian relief in these circumstances, any discussion about subsection 25(1) of the Act was premature while the request for ministerial relief was outstanding. Thus, the first issue was not ultimately pursued and I make no comment about the merit of the argument.

(iii) The standard of review

[36] The assessment of "membership" in paragraph 34(1)(*f*) of the Act has traditionally been reviewed on the reasonableness simpliciter standard. See: *Poshteh v. Canada (Minister of Citizenship and Immigration)*, [2005] 3 F.C. 487 (F.C.A.) at paragraph 23. This standard of review reflected the factual element present in questions of membership and the expertise that officers possess when assessing applications against the inadmissibility criteria contained in subsection 34(1) of the Act. In my view, following the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, deference remains appropriate and the applicable standard of review is reasonableness. See: *Dunsmuir* at paragraphs 51 and 53.

(iv) Was the officer's finding that Ms. Ugbazghi was a member of the ELF reasonable?

[37] The word “member” is not defined in the Act. The jurisprudence of the Federal Court of Appeal is to the effect that the word is to be given an unrestricted and broad interpretation. Mr. Justice Rothstein, writing for the Federal Court of Appeal, discussed this point in *Poshteh*. At paragraphs 27 to 29, he wrote:

27 There is no definition of the term "member" in the Act. The courts have not established a precise and exhaustive definition of the term. In interpreting the term "member" in the former *Immigration Act*, R.S.C., 1985, c. I-2, the Trial Division (as it then was) has said that the term is to be given an unrestricted and broad interpretation. The rationale for such an approach is set out in *Canada (Minister of Citizenship and Immigration) v. Singh* (1998), 151 F.T.R. 101 (F.C.T.D.), at paragraph 52:

> The provisions deal with subversion and terrorism. The context in immigration legislation is public safety and national security, the most serious concerns of government. It is trite to say that terrorist organizations do not issue membership cards. There is no formal test for membership and members are not therefore easily identifiable. The Minister of Citizenship and Immigration may, if not detrimental to the national interest, exclude an individual from the operation of subparagraph 19(1)(*f*)(iii)(B). I think it is obvious that Parliament intended the term "member" to be given an unrestricted and broad interpretation.

28 The same considerations apply to paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act*. As was the case in the *Immigration Act*, under subsection [page500] 34(2) of the *Immigration and Refugee Protection Act*, membership in a terrorist organization does not constitute inadmissibility if the individual in question satisfies the Minister that their presence in Canada would not be detrimental to the national interest. Subsection 34(2) provides:

> 34... .
>
> > (2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

Thus, under subsection 34(2), the Minister has the discretion to exclude the individual from the operation of paragraph 34(1)(*f*).

> 29 Based on the rationale in *Singh* and, in particular, on the availability of an exemption from the operation of paragraph 34(1)(*f*) in appropriate cases, I am satisfied that the term "member" under the Act should continue to be interpreted broadly.

[38] In the present case, Ms. Ugbazghi stated in her personal information form that she had been a member of the ELF. The officer is said to have erred by ignoring evidence in the statutory declaration that Ms. Ugbazghi placed before the officer where she clarified that she was not a member of the ELF. Rather, Ms. Ugbazghi stated that she had been a member of an ELF support group. Thus, the officer is said to have erred by describing Ms. Ugbazghi to be a "self[-]admitted member of ELF." The officer made no express finding of credibility against Ms. Ugbazghi so, it is argued, the officer was obliged to deal with the fact that Ms. Ugbazghi claimed to have been a member of an ELF support group, not a member of the ELF.

[39] In my view, the officer committed no reviewable error because the officer did not just rely on Ms. Ugbazghi's prior admission of membership. The officer also considered that:

> Her activities (meetings, donations, distribution of ELF materials which encouraged others to join the armed struggle and or to give donations [)], amount to membership in my opinion as they furthered the goals of the organization.

[40] Obviously, it would have been preferable for the officer to have expressly dealt with the repeated statements in Ms. Ugbazghi's statutory declaration that she had been a member of an ELF support group. Such failure might have amounted to a reviewable error had the officer simply relied on Ms. Ugbazghi's admission without also considering the evidence that independently led to a conclusion of membership.

[41] As to the reasonableness of the officer's decision about membership, I note that the admission of membership contained in Ms. Ugbazghi's personal information form was not an isolated admission. As counsel for the Minister argued, Ms. Ugbazghi has consistently taken the position that she was a member of the ELF. Specifically:

- on September 16, 2002, she signed a refugee intake form in which she stated that she was a member of the ELF who had been detained twice and who would provide a letter proving her membership;
- on September 18, 2002, she told an immigration officer at an interview that proof existed in Ethiopia that she was a member of the ELF from 1977 to July, 2002, and that she had contributed $5.00 per month to the ELF; and,
- on January 26, 2004, she stated in her application for permanent residence that she was a member of the ELF.

[42] It was only in the statutory declaration, prepared by counsel, that Ms. Ugbazghi stated that she was a member of an ELF support group. She provided no evidence confirming the existence of such a separate, support group.

[43] Ms. Ugbazghi described the group's activities as follows:

> 14. With respect to the political content of our meetings, we talked about the need to bring justice and equality to Eritreans. We talked about our preference for a peaceful resolution to the problems of Eritreans, although we also talked about the need to support the freedom fighters. We talked about the aims and goals of the ELF which were, as I understood them, to bring justice, freedom and democracy to

> Eritreans. There was never any talk or reporting about taking people hostage or the hijacking of airlines.
>
> 15. We also talked about what we could do to help the cause. These things included encouraging friends to support the ELF, and distributing pamphlets and magazines.

[44] It is fair, in my view, to characterize this group as one that completely identified with the goals and activities of the ELF, and one that worked to further the goals and activities of the ELF. There is no evidence that the group had any other goals or activities. The evidence does not support a finding that this group was entirely separate and distinct from the ELF as Ms. Ugbazghi now claims.

[45] Further, Ms. Ugbazghi admitted that she: attended meetings where the participants shared the aims and goals of the ELF and talked about the need to support the "freedom fighters" and how to "help the cause" of the ELF; paid a small amount of money each month to the ELF; and, distributed pamphlets that encouraged others to join the armed struggle or to donate to it. The term "member" is to be given an unrestricted and broad interpretation. In my view, it was not unreasonable for the officer to conclude that Ms. Ugbazghi's activities furthered the goals of the ELF and that her conduct amounted to membership in the ELF. As the Federal Court of Appeal noted in *Poshteh*, at paragraph 36, in any case it is always possible to say that a number of factors support a membership finding and a number of factors point away from membership. The weighing of these factors is within the expertise of the officer.

[46] Notwithstanding that I find the officer’s decision is not unreasonable, Ms. Ugbazghi has completed only eight years of formal education. In 1966, at age 14, she entered into an arranged

marriage. She had seven children during the period 1967 to 1976. In 1977, as a 24-year-old mother of seven, she began attending group meetings. Her involvement ended in 1981.

[47] Without doubt, subsection 34(1) of the Act is intended to cast a wide net in order to capture a broad range of conduct that is inimical to Canada's interests. Parliament's intent is further reflected in section 33 of the Act, which requires that the facts that constitute inadmissibility include facts that "there are reasonable grounds to believe" occurred. Thus, the test for inadmissibility is whether “there are reasonable grounds to believe” that a foreign national was a member of an organization that “there are reasonable grounds to believe” engages, has engaged, or will engage in acts of terrorism. This is a relatively low evidentiary threshold. It is because of the very broad range of conduct that gives rise to inadmissibility that the Minister is given discretion, in subsection 34(2) of the Act, to grant relief against inadmissibility.

[48] The facts of this case, in my respectful view, show the wisdom of such a relieving provision and show the need for careful consideration of all of the facts surrounding a request for ministerial relief.

Conclusion

[49] For these reasons, the application for judicial review will be dismissed.

[50] The Minister requested the opportunity to propose a question for certification arising out of the Court’s reasons on both the section 87 application and the Court's discussion of the concept of membership. While the Minister was successful, fairness dictates that Ms. Ugbazghi be afforded

the opportunity to propose a certified question. She shall serve and file any correspondence with respect to certification within three working days of receipt of these reasons. The Minister shall have three working days in which to respond.

[51] Following consideration of any submissions, a judgment will issue dismissing the application.

"Eleanor R. Dawson"
Judge

1. Bill C-3, *An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act*, 2nd Sess., 39th Parl., 2008, cl. 7 (assented to 14 February 2008).

APPENDIX A

Sections 25, 33, 34 and subsection 83(1) of the *Immigration and Refugee Protection Act* are as follows:

25(1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.	25(1) Le ministre doit, sur demande d'un étranger interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.
(2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.	(2) Le statut ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.
[…]	[…]
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are	33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils

reasonable grounds to believe that they have occured, are occurring or may occur.	sont survenus, surviennent ou peuvent survenir.
34(1) A permanent resident or a foreign national is inadmissible on security grounds for (a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada; (b) engaging in or instigating the subversion by force of any government; (c) engaging in terrorism; (d) being a danger to the security of Canada; (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or (f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).	34(1) Emportent interdiction de territoire pour raison de sécurité les faits suivants : a) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada; b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force; c) se livrer au terrorisme; d) constituer un danger pour la sécurité du Canada; e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada; f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c).
(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.
[…]	[…]
83(1) The following provisions apply to proceedings under any of sections 78 and 82 to 82.2:	83(1) Les règles ci-après s'appliquent aux instances visées aux articles 78 et 82 à 82.2 :

(a) the judge shall proceed as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit;

(b) the judge shall appoint a person from the list referred to in subsection 85(1) to act as a special advocate in the proceeding after hearing representations from the permanent resident or foreign national and the Minister and after giving particular consideration and weight to the preferences of the permanent resident or foreign national;

(c) at any time during a proceeding, the judge may, on the judge's own motion — and shall, on each request of the Minister — hear information or other evidence in the absence of the public and of the permanent resident or foreign national and their counsel if, in the judge's opinion, its disclosure could be injurious to national security or endanger the safety of any person;

(d) the judge shall ensure the confidentiality of information and other evidence provided by the Minister if, in the judge's opinion, its disclosure would be injurious to national security or endanger the safety of any person;

(e) throughout the proceeding, the judge shall ensure that the permanent resident or foreign national is provided with a summary of information and other evidence that enables them to be reasonably informed

a) le juge procède, dans la mesure où les circonstances et les considérations d'équité et de justice naturelle le permettent, sans formalisme et selon la procédure expéditive;

b) il nomme, parmi les personnes figurant sur la liste dressée au titre du paragraphe 85(1), celle qui agira à titre d'avocat spécial dans le cadre de l'instance, après avoir entendu l'intéressé et le ministre et accordé une attention et une importance particulières aux préférences de l'intéressé;

c) il peut d'office tenir une audience à huis clos et en l'absence de l'intéressé et de son conseil — et doit le faire à chaque demande du ministre — si la divulgation des renseignements ou autres éléments de preuve en cause pourrait porter atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

d) il lui incombe de garantir la confidentialité des renseignements et autres éléments de preuve que lui fournit le ministre et dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

e) il veille tout au long de l'instance à ce que soit fourni à l'intéressé un résumé de la preuve qui ne comporte aucun élément dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la

of the case made by the Minister in the proceeding but that does not include anything that, in the judge's opinion, would be injurious to national security or endanger the safety of any person if disclosed;

sécurité d'autrui et qui permet à l'intéressé d'être suffisamment informé de la thèse du ministre à l'égard de l'instance en cause;

(f) the judge shall ensure the confidentiality of all information or other evidence that is withdrawn by the Minister;

f) il lui incombe de garantir la confidentialité des renseignements et autres éléments de preuve que le ministre retire de l'instance;

(g) the judge shall provide the permanent resident or foreign national and the Minister with an opportunity to be heard;

g) il donne à l'intéressé et au ministre la possibilité d'être entendus;

(h) the judge may receive into evidence anything that, in the judge's opinion, is reliable and appropriate, even if it is inadmissible in a court of law, and may base a decision on that evidence;

h) il peut recevoir et admettre en preuve tout élément — même inadmissible en justice — qu'il estime digne de foi et utile et peut fonder sa décision sur celui-ci;

(i) the judge may base a decision on information or other evidence even if a summary of that information or other evidence is not provided to the permanent resident or foreign national; and

i) il peut fonder sa décision sur des renseignements et autres éléments de preuve même si un résumé de ces derniers n'est pas fourni à l'intéressé;

(j) the judge shall not base a decision on information or other evidence provided by the Minister, and shall return it to the Minister, if the judge determines that it is not relevant or if the Minister withdraws it.

j) il ne peut fonder sa décision sur les renseignements et autres éléments de preuve que lui fournit le ministre et les remet à celui-ci s'il décide qu'ils ne sont pas pertinents ou si le ministre les retire.

APPENDIX B

IMM-2019-07

FEDERAL COURT

B E T W E E N :

SHEWAINESCHI TSEGAI UGBAZGHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AFFIDAVIT OF TOM HEINZE

I, Tom Heinze, Paralegal, of the Immigration Law Section of the Department of Justice's Ontario Regional Office in the City of Toronto, SWEAR THAT:

1. I am a Paralegal working for the Department of Justice in Toronto, and am assisting Counsel for the Respondent, Martin Anderson. I have personal knowledge of the facts related below.

2. On January 31st 2008, I spoke to Andre Seguin, counsel for the Respondent on this Application. I am informed and believe that the Respondent has filed an Application for non-disclosure of certain information contained in the certified Tribunal Record filed in this case.

3. I am informed by Andre Seguin and do verily believe that the tribunal record, which reflects the processing of this file, contains both unredacted as well as redacted document information (the "confidential information"), the disclosure of which would be injurious to national security or to the safety of any person in Canada in accordance with subparagraph 78(g) of the *IRPA*.

4. I am informed by Andre Seguin and do verily believe that the confidential information, which was redacted from the public tribunal record, is information which must be protected and which should not be disclosed to the Applicant, his counsel or the public.

5. I am further informed by Andre Seguin and do verily believe that this application will be supported by a secret affidavit, which will contain the confidential information. It will be sealed and filed with the Federal Court in Ottawa. The secret affidavit explains the basis for the non-disclosure of the information.

6. I am informed by Andre Seguin and I believe that this confidential information cannot be disclosed.

7. I make this affidavit in regard to an Application for non-disclosure brought by the Respondent, and for no improper purpose.

SWORN before me at the City of
Toronto in the Province of Ontario on
January 31, 2008.

Commissioner for Taking Affidavits
(or as the case may be)

Tom Heinze

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2019-07
STYLE OF CAUSE:	SHEWAINESCHI TSEGAI UGBAZGHI, Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION, Respondent
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 6, 2008
REASONS FOR JUDGMENT:	DAWSON, J.
DATED:	MAY 30, 2008

APPEARANCES:

MICHAEL CRANE	FOR THE APPLICANT
MARTIN ANDERSON ANDRE SEGUIN	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MICHAEL CRANE BARRISTER AND SOLICITOR TORONTO, ONTARIO	FOR THE APPLICANT
JOHN H. SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA	FOR THE RESPONDENT