Date: 20080623

Docket: IMM-4056-07

Citation: 2008 FC 758

Ottawa, Ontario, June 23, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

IMAD UDDIN JILANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of Immigration Division of the Immigration and Refugee Board (the Board), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), dated September 26, 2007. The Board found that the applicant, Mr. Imad Uddin Jilani, was inadmissible pursuant to paragraph 34(1)(f) of the Act and issued a removal order.

ISSUES

[2] The applicant raises three issues in the present case:

a) Did the Board consider the wrong test to determine whether MQM is a terrorist organization?

b) Did the Board err by drawing unsubstantiated inferences without regard to the evidence?

c) Did the Board err in making a negative credibility finding against the applicant?

[3] For the following reasons, the application for judicial review shall be dismissed.

FACTUAL BACKGROUND

[4] The applicant is a citizen of Pakistan, born October 23, 1964. He was a member of MQM, an organization in Pakistan. He joined MQM in 1984 and remained an active member until 2000, at which time he left for the United States where he remained for three years. He came to Canada on April 10, 2003.

[5] The applicant indicated that he joined MQM because he wanted to do social work, and through his involvement, he believed he could help the poor. He testified at the admissibility hearing that he occupied the position of “sector in charge”. In this capacity, he was responsible for the Nazimabad sector, which is comprised of 13 “units in charge”. Above the sector in charge, in the hierarchical structure of MQM, is the “zonal in charge”, and above that is a central committee.

DECISION UNDER REVIEW

[6] The Board rendered a decision regarding the admissibility of the applicant pursuant to paragraph 34(1)(f) and 35(1)(a) of the Act. The Board decided that the applicant is inadmissible pursuant to paragraph 34(1)(f) on the ground that he was a member of an organization that there are reasonable grounds to believe has engaged in acts of terrorism, pursuant to paragraph 34(1)(c) and (f). The Board concluded that the applicant was not inadmissible pursuant to paragraph 35(1)(a).

[7] In making the determination that the applicant is inadmissible pursuant to paragraphs 34(1)(c) and (f) of the Act, the Board proceeded in two steps. First, the Board found that the applicant was a member of MQM:

a) The Board noted that the applicant testified that he joined MQM in 1984 and that he remained an active member until 2000. He was personally acquainted with the leader, Altaf Hussein.

b) The Board mentioned that the applicant described the hierarchical structure of MQM, as well as his responsibilities in the position of “sector in charge”.

c) The Board concluded that the applicant was a member on the basis of his own testimony. It noted the submission of counsel that the applicant was a member of MQMA, not MQMH, which he argued did not engage in violent activity. The Board referred to documentary evidence stating that MQM is a broad and multifaceted organization, but nonetheless concluded that the political party is not separate from the rest of the organization.

[8] The Board concluded that there existed reasonable grounds to believe that MQM is an organization that engages, has engaged or will engage in terrorist activities:

a) It began its analysis by citing the definition of terrorism adopted by the Supreme Court of Canada in *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, at paragraph 98, [2002] 1 S.C.R. 3:

> … [An] act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. …

b) It proceeded to review the documentary evidence which it found to be replete with information regarding acts of terrorism and violence by MQM. The Board referred to a report from the Centre for International and Security Studies at York University, a report by UNHCR, a document published by the Research Directorate of the Board, and a document from Amnesty International. The evidence reported incidents of murders, abductions, mutilations, revenge killings and torture. The Board concluded that there was overwhelming evidence and a consensus among observers that some MQM members used violent means.

c) It considered the applicant's submission that he was a member of MQMA, not MQMH, the militant faction. It also considered the evidence of the applicant's expert witnesses. First, Dr. Robert Rizvi, a professor at Harvard University, who testified that violence within MQM was not sanctioned by party leadership; then, Dr. Given, a professor at the University of Alberta, who questioned the reliability

and rigour of the documents published by Amnesty International and the Research Directorate of the Board. Both experts noted that the documents did not report facts, but simply reported information. The Board refused to accept the expert testimony as the final authority in assessing the documentary evidence, and preferred the documentary evidence to that of the experts.

d) The Board noted the applicant's leadership role in MQM and rejected his testimony that he had not seen or heard of violent activities of MQM members.

e) On the basis of the documentary evidence, the Board was satisfied that the activities of MQM fit the definition of terrorism. It was therefore also satisfied of the existence of reasonable grounds to believe that MQM engages, engaged or will engage in acts referred to in paragraph 34(1)(c) of the Act.

RELEVANT LEGISLATION

[9] *Immigration and Refugee Protection Act*, 2001, c. 27.

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for	**34.** (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
(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;	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) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

(c) engaging in terrorism;	c) se livrer au terrorisme;
(d) being a danger to the security of Canada;	d) constituer un danger pour la sécurité du Canada;
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
(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).	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).

ANALYSIS

Standard of Review

[10] The first issue raised by the case at bar is whether the Board erred in its assessment of whether an organization is described in paragraph 34(1)(c). This Court previously applied the standard of reasonableness *simpliciter* to the review of this question (*Kanendra v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 923, at paragraphs 11 and 12, [2005] F.C.J. No. 1156). Following the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, the question is reviewable on the standard of reasonableness (*Dunsmuir*, at paragraphs 55, 57, 62, and 64).

[11] The second issue raised by the applicant is whether the Board erred in its assessment of the evidence. The standard of review applicable to a decision of the Board on questions of fact is reasonableness.

[12] For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process. The decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above at paragraph 47).

[13] The third issue raised is whether the Board erred in making a negative credibility finding against the applicant. This determination was made in the course of the Board's analysis of the applicant's admissibility pursuant to paragraph 35(1)(a). Because the Board's conclusion on this point was found in favour of the applicant, and not challenged in this application for judicial review, I will not deal with this issue.

Did the Board err in concluding that MQM is an organization described in paragraphs 34(1)(c) and (f))?

[14] The applicant seeks to review the Board's finding that there are reasonable grounds to believe that MQM has engaged in acts of terrorism. It is submitted that it was insufficient for the Board to draw this conclusion based on the fact that there were members of the organization engaged in acts of terrorism; rather, the applicant argues that the organization must have engaged in such acts. The applicant states that acts by members do not meet the requirement of the Act, which states at paragraph 34(1)(f) that the organization must commit the acts.

[15] The Board found that the activities attributed to MQM in the documentary evidence satisfied the definition of terrorism. It then went on to conclude that these acts provided reasonable grounds

to believe that MQM engages, has engaged or will engage in acts of terrorism pursuant to paragraph 34(1)(c) of the Act.

[16] It was open to the Board to consider that the acts of individual members could be attributed to the organization as a whole. The reasons reflect that the Board did not attribute any importance to the argument that different factions of the party exist, some of which might engage in acts of terrorism while others do not. Further, the Board clearly stated the definition of terrorism, and provided a lengthy review of acts reported by the documentary evidence that it considered to meet the definition.

Did the Board err in its assessment of the evidence?

[17] The applicant takes issue with the Board's assessment of the evidence in several respects. The applicant submits that the Board erred by failing to analyze the evidence and consider whether MQMA had ever engaged in acts of terrorism. In particular, he challenges the Board's finding that the political party is not separate from the rest of the organization, and reports to one leadership.

[18] It is my opinion that the Board adequately addressed the question of whether to recognize multiple factions of MQM. The applicant's testimony was considered, as well as the document from York University indicating that MQM is a large and multifaceted organization. Despite this, the Board stated:

> The political party is not separate from the rest of the organization in that it continues to draw its leadership from Altaf Hussein.

[19] It was open to the Board to conclude that because the organization reported to a single leader, the actions and intentions of certain factions can be impugned upon the organization as a whole. In essence, the applicant seeks to have the evidence presented to the Board reweighed by the Court. This function falls squarely within the purview of the Board, and not that of the Court in the context of a judicial review; the Court's role is to assess the reasonableness of the Board's decision.

[20] The applicant argues that the applicant himself never committed acts of terrorism, and even if he were aware of acts of violence, it would not make him complicit. The respondents' replies to this argument are misplaced; the Board's determination that the applicant is inadmissible is based on paragraphs 34(1)(c) and (f) of the Act, and as such the applicant needed only to be a member of an organization for which there are reasonable grounds to believe engages, engaged or will engage in acts of terrorism. I agree with the respondents that his complicity is not at issue.

[21] The applicant finally argues that the Board failed to adequately explain why the expert testimony was not accepted. The applicant cannot succeed on this argument. The Board clearly considered the expert evidence in some detail. The reasons even reveal the Board's agreement with certain aspects of the expert testimony. However, the Board stated that it would not accept the testimony as the *final* authority in assessing the documentary evidence. The evidence was not simply rejected without consideration. It is trite law that it is open to the Board to prefer certain evidence over other sources.

[22] The respondents submit that this Court has recognized the reliability of information obtained from independent non-governmental organizations. In *Mahjoub v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1503, at paragraphs 72 and 73, [2007] 4 F.C.R. 247, the Court stated:

> [72] The delegate's blanket rejection of information from agencies with worldwide reputations for credibility such as AI and HRW is puzzling, especially given the institutional reliance of Canadian courts and tribunals on these very sources. Indeed, the Minister of Citizenship and Immigration frequently relies on information from these organizations in creating country condition reports, which in turn are used by Immigration and Refugee tribunals, in recognition of their general reputation for credibility (France Houle, "Le fonctionnement du régime de preuve libre dans un système non-expert : le traitement symptomatique des preuves par la Section de la protection des réfugiés" (2004) 38 R.J.T. 263 at para. 71 and at n. 136).
>
> [73] This reputation for credibility has been affirmed by Canadian courts at all levels. The Supreme Court of Canada relied on information compiled by AI, as well as one of its reports, in *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779 (at 829, 830, 839). That Court also cited AI in *Suresh*, above, at paragraph 11 in noting the use of torture in the context of that case.

[23] Viewed in light of this line of cases, the reasonableness of the Board's conclusion is further confirmed.

[24] Generally, the respondents submit that the Board's decision is reasonable; the evidence before the Board met the standard of proof required to show reasonable grounds for believing that MQM has engages in acts of terrorism. The standard of reasonable grounds to believe requires something more than mere suspicion, but less than the standard applicable in civil matters of proof

on the balance of probabilities (*Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433 (C.A.), at paragraph 18; *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at paragraph 114, [2005] 2 S.C.R. 100; *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 246, at paragraph 27, [2006] 4 F.C.R. 471).

[25] It is my opinion that the Board's decision is justified, transparent, and intelligible, and it falls within the range of acceptable outcomes which are defensible with respect to the facts and law.

[26] The parties did not propose questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application is dismissed. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE:	**IMAD UDDIN JILANI** **and** **THE MINISTER OF CITIZENSHIP AND IMMIGRATION** **THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**
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