Date: 20080619

Docket: IMM-2182-07

Citation: 2008 FC 761

Ottawa, Ontario, June 19, 2008

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

RAHIMEEN FARIDI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of a Citizenship and Immigration Canada (CIC) Officer, dated May 29, 2007 wherein Mr. Rahimeen Faridi, (the Applicant) was found to be inadmissible to Canada pursuant to paragraph 34(1) (f) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the "*Act*"), for being a member of a terrorist organization, the Mohajir Quami Movement (Altaf faction) (MQM-A or MQM).

1 Facts

[2] The Applicant is a citizen of Pakistan who came to Canada on April 23, 1996 and made a refugee claim based upon his membership and activities in MQM-A. He was found to be a Convention refugee on December 18, 1996.

[3] On March 10, 1997, he applied for permanent residence in Canada. The application was approved in principle on March 24, 1997 and referred to the office of CIC, where it was assigned to a CIC Officer on December 8, 2006.

[4] The Applicant declared having joined the MQM-A in September 1991 and remained an active member until he left Pakistan in 1996. In Canada, he continued to support the organization providing $5 to $10 contributions on an occasional basis. He also declared having participated in the Montreal and Calgary chapters of the MQM-A in Canada. However, he has two jobs driving a taxi and running a Pizza place, which prevent him from being more involved in the MQM-A activities in Canada.

[5] In a one page letter dated February 27, 2007, the CIC Officer informed Mr. Faridi that information available suggests that his application for permanent residence may have to be refused as it appears that he may be a member of an inadmissible class under paragraph 34(1)(f) of the *Act*, on the basis of his membership in the MQM between 1990-2000. Before rendering a final decision, the CIC Officer invited the Applicant to make representations and address CIC's concerns.

[6] On March 20, 2007, Counsel for the Applicant replied to the correspondence of February 27, 2007 and objected to the cursory nature of the letter, which did not provide an adequate basis or any analysis for the conclusion that the MQM is a terrorist organization. It is the reply to Counsel's letter, dated May 29, 2007, which forms the final decision and the object this application for judicial review.

II Impugned decision

[7] Unlike the cursory notice of February 27, 2007, the CIC Officer's final decision is a 9-page document providing detailed reasons for its analysis and conclusions. Of note, the CIC Officer finds as follows:

i. With respect to MQM-A activities, the CIC Officer relied on the definition of terrorism provided in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 at paragraphs 93 to 98 where paragraph 98 states as follows:

> [. . .] "terrorism" . . . includes any "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".

ii. The documentary evidence indicates that the MQM-A committed acts of violence against civilian population, including other political groups, police constables and army officers, during the period the Applicant was its member i.e., between 1991 and 1996.

iii. The MQM-A is described in several reliable sources as a group that resorts to violence, torture and murder. Its violent activities are well documented in a variety of national, regional and international publications, including UNHCR/US Department of Homeland Security, Amnesty International, Asiaweek magazine and the South Asia Terrorist Portal. To cite but some of the many examples highlighted in the CIC Officer's decision:

- In the mid 1990s, the MQM-A was heavily involved in the widespread violence that wracked Pakistan's southern Sindh province, particularly Karachi, the port city that is the country's commercial capital. … In 1994, fighting among MQM factions and between the MQM and Sindhi nationalist groups brought almost daily killings in Karachi. By July 1995, the rate of political killings in the port city reached an average of ten per day, and by the end of that year more than 1, 800 had been killed . …The MQM-A allegedly raises funds through extortion, narcotics smuggling, and other criminal activities. In addition, Mohajirs in Pakistan and overseas provide funds to the MQM-A through charitable foundations. [Source: UNHCR/US Department of Homeland Security, "Pakistan: Information on Mohajir/Muttahida Qaumi Movement – Altaf (MQM-A). February 9, 2004.]

- It was the events of May 18, 1995 that pushed Karachi over the edge. Shortly after dawn in District Central's Nazimabad quarter, a group of MQM gunmen ambushed a patrol of paramilitary Rangers, killing two and wounding six… Repeated strikes – and the violence that inevitably attended them – were to become the MQM's weapon of choice. [Source: Asiaweek magazine, May 31, 1996.]

- The mid nineties in urban Sindh was marked by consistent strike calls from the MQM which included in announcement in July 1995 that weekly strikes on Fridays and Saturdays would be observed. Most MQM strikes were accompanied by violence leaving scores dead in their wake. [Source: Muttahida Quomi Mahaz, Terrorist Group of Pakistan, South Asian Terrorist Portal.]

- Despite protestation by MQM leader Altaf Hussain that the MQM does not subscribe to violence, there is overwhelming evidence and a consensus among observers in Karachi that some MQM party members have used violent means to further their political ends. During the period when the MQM held office, Amnesty International obtained testimonies from members of the PPP and smaller Sindh parties that their members had been tortured and killed in the custody of MQM-A. …Torture cells allegedly maintained by the MQM-A were discovered in which party members were alleged to have tortured and sometimes killed dissidents and members of other parties. [Source: Amnesty International, "Pakistan: Human rights crisis in Karachi," February 1996.]

iv. Documentary evidence also speaks of the MQM intent to intimidate reporters and journalists through threatening statements and killings. For instance:

- [. . .] On 4 December 1994, Muhammad Slahudding, editor of the Urdu weekly Takbeer was shot dead in his car outside his office in Karachi. He was highly critical of the policies of the MGM which reportedly led to his office being ransacked and his house being set on fire in late 1991, allegedly by MQM-A activists. [Source: Amnesty International, "Pakistan: Human rights crisis in Karachi," February 1996.]

v. The IRB Issue Paper on the MQM activities in 1995 and 1996 provides numerous example of human rights abuse by the MQM, which involved violence against security forces, party dissidents, political opponents and the press, violence against other ethnic groups and abuses of ordinary citizens, even mohajirs. It also describes in detail the MQM's involvement in extortion, citing among its sources the Human Rights Watch and Amnesty International.

[8] The final decision was made on the basis of these documented reliable sources and the Applicant's self declaration that he joined the organization voluntarily and was residing in Karachi during the period of the documented atrocities perpetrated by the MQM-A. He not only followed the goals of the organization but was also an active member who was appointed a Vice-Officer in charge of a 35-member unit No. 184. While there is no evidence to show that the Applicant participated personally in any of the violent activities, his engagement was limited to office work because he could not walk properly due to childhood polio, which affected his right leg. He thus provided liaison to the members. Moreover, the CIC Officer found that he did not quit his membership after he left Pakistan and was associated with the MQM following his arrival in Canada.

[9] Finally, based on the totality of this trustworthy and conclusive evidence, the CIC Officer concluded that there were reasonable grounds to believe that the MQM-A is an organization that has engaged in terrorism when the applicant was its member. As a result, he was inadmissible to Canada. Consequently, his application for permanent residence was refused pursuant to paragraph 34 (1)(f) of the *Act*.

III Relevant legislation

[10] The legal framework for determining the inadmissibility of permanent residents or foreign nationals on security grounds is set out in section 34 of the *Act.* One of these factors is membership in a terrorist organization as stipulated in paragraph 34(1)(f) below:

Security 34. (1) A permanent resident or a foreign national is inadmissible on security grounds for	Sécurité 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;
[. . .]	[. . .]

(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).

IV Issue

[11] The single issue to be determined is whether the CIC Officer erred in fact or in law in concluding that the Applicant was inadmissible to Canada on security grounds.

[12] For the reasons set out below, I have concluded that the CIC Officer did not err in fact or in law; as a result, the application will be dismissed.

V. Procedural Matter

[13] Prior to the hearing of this matter on June 18, 2008, the Minister brought a motion for an order pursuant to section 87 of the *Act*, seeking a declaration that he was not required to disclose secret information considered by the CIC Officer in arriving at the decision of May 29, 2007. Following an *in camera ex parte* hearing on April 2, 2008, and in light of the Applicant's decision not to make representations, this Court ordered on April 3, 2008 the disclosure of paragraph 5 of page 204 of the certified tribunal record, as this information will not be injurious to national security or endanger the safety of any person, within the meaning of subsection 83(1). However, the remainder of the section 87 application was granted, permitting thereby that the secret information considered by the CIC Officer shall not be disclosed to the Applicant because to do so would be injurious to the national security of Canada or endanger the safety of any person.

[14] Having reviewed the public Tribunal's Record and submissions of Counsel, the Court renders the present decision solely on the public information.

VI. Standard of Review

[15] At the outset, the Supreme Court of Canada in its recent decision in *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, observes that the court reviewing administrative decisions must first determine whether there is prior jurisprudence that has addressed the applicable standard of review and if so, it is to rely on such findings; keeping in mind the changes it has set out by collapsing the two reasonableness standards into one standard of reasonableness. [See *Dunsmuir*, above, at paragraphs 45, 47, 51, 53 and 62.]

[16] In my view, there is prior jurisprudence from the Federal Court of Appeal amply followed by this Court that establishes the applicable standard of review. Where it is to be determined whether an organization is one described in paragraph 34(1)(a), (b), or (c) of the *Act*, and whether one is a member of such an organization (paragraph 34(1)(f)), the applicable standard of review is reasonableness. See the analysis of Mr. Justice Rothstein, then of the Federal Court of Appeal in *Poshteh v. Canada (Minister of Citizenship and Immigration)*, [2005] 3 F.C.R. 511, and the subsequent analyses by me and my colleagues in *Kanendra v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1156 at paragraph 12; *Jalil v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 320, at paragraph 19; *Hussain v. Canada (Minister of Citizenship*

and Immigration), [2004] F.C.J. No. 1430 at 13; and *Naeem v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 123, at paragraph 40.

[17] To succeed when applying the standard of reasonableness in this case, the Applicant must satisfy the Court that the process of articulating the reasons and the CIC Officer's conclusions were not justifiable or transparent given the evidence before it. In other words, as *Dunsmuir*, above, at paragraph 47 observes, the decision must fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VII Analysis

[18] Counsel for the Applicant submits that the CIC Officer failed to properly consider the law and the facts. Notably, it is submitted that the CIC Officer failed to follow the two step process set out by the Supreme Court of Canada in *Mugesera v. Minister of Citizenship and Immigration*, 2005 SCC 40. First, the CIC Officer failed to determine whether there are reasonable grounds to believe the MQM-A committed the acts of violence attributed to it. Second, the CIC Officer failed to determine whether these alleged acts constitute terrorist acts. As a result, the Applicant asks that the decision be set aside and the status of permanent resident be conferred upon him.

[19] In support of this view, Counsel for the Applicant states that the MQM-A is not a terrorist organization. Rather, it is a legal political party in Pakistan, which had never engaged in acts of terrorism, although individual members may have engaged in acts of terrorism. At the hearing, Counsel for the Applicant argued that the MQM-A committed political acts of violence in response to the political situation existing in Pakistan. These political acts were not acts of terrorism, it is submitted.

[20] In addition, the Applicant was in hiding most of the time during the violent activities and was unable to participate in them because of his medical condition. Moreover, the evidence shows that there was general political violence in Pakistan and thus it cannot be concluded that the MQM-A engaged in violence as it was also not part of its objectives.

[21] Finally, the Applicant alleges that the CIC Officer relied on evidence by Amnesty International but ignored evidence that supported the Applicant's position. In particular, Counsel for the Applicant makes reference to testimonial given at an Immigration and Refugee Board (IRB) hearing by Dr. Gowher Rizvi, Director, Ash Institute for Democratic Governance and Innovation of Harvard University, an expert on South Asian politics, security and the economy. The CIC Officer also ignored the evidence by Dr. Lisa Given, Associate in the school of library and information studies, University of Alberta.

[22] After a careful review of the certified tribunal record, the submissions of the parties and the decision, I cannot find that the decision of the CIC Officer was unreasonable or based on evidence that was not before it. In particular, the decision is clear, outlining in detail the definition of terrorism as stipulated by the Supreme Court of Canada's national security jurisprudence. The CIC Officer was meticulous to explain the definition of terrorism, adopting the two-step process in *Mugesera*, above, before going on to determine whether the documented violent activities imputed to the MQM-A fit this definition. Moreover, the applicable standard of proof was clearly enunciated before the rationale for the decision was spelled out in detail.

[23] In my view, the submissions of Counsel for the Applicant are without foundation. The decision is not vague nor does it overlook the evidence that supports the Applicant's position. What is more, Counsel for the Applicant makes reference to testimonials made by experts at an IRB hearing "a few months before" without providing exact citation or copies of said testimonials for the consideration of the CIC Officer. The Applicant's affidavit makes no mention whether these testimonials were transcribed and presented to the CIC Officer before rendering the final decision and these are not included in the list of documents before the CIC Officer. While it is trite law that a CIC Officer is not required to refer to every document considered before reaching a final decision, such an officer certainly cannot be faulted for ignoring testimonials that were not properly before it.

[24] The evidence shows that the Applicant had consistently indicated that he had joined the MQM voluntarily in 1991, that he was aware of its policies and political ideology, which he actively supported. The CIC Officer carefully reviewed his membership, examined the documented activities of the organization and applied these to the relevant definitions of the *Act* and the jurisprudence. As such, I can find no element in the decision that would put it outside the range of reasonable options based both on the facts before the officer and the law, including both the *Act* and the applicable jurisprudence. For these reason the application shall be dismissed; rendering the remedy sought moot.

[25] In response to the argument that the political climate in Pakistan and the use of political acts of violence not being part of their objectives or acts of terrorism or, I agree with my colleague Tremblay-Lamer J in *Daud v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 701, when she wrote at paragraphs 15 and 19:

> [15] The applicant submits that the officer could not conclude that MQM-A engaged in violence because it did not form part of the organization's objectives. I disagree. This determination is a factual one, based on the documentary evidence which involves not only the statements of the leadership or an organization's members but also their actions. The analysis does not lend itself well to a simple tally of members who openly support violent acts; however, at some point, the magnitude and frequency of violent tactics employed by the organization in question will make it difficult to classify the perpetrators as merely rogue members acting outside the will of the group.
>
> [. . .]

> [19] According to the applicant, the officer misconstrued the evidence which showed general political violence in Pakistan by all political parties. However, in my view, the existence of general violence does not preclude a determination that an organization engages in terrorism. The existence of generalized violence is part of the context within which the officer conducts his analysis, but is not dispositive of the end determination. Indeed, terrorist acts are committed during an array of country conditions ranging from periods of relative peace to those of widespread strife and conflict.

[26] Although invited to do so, the parties declined to submit questions for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES THAT:

- The application for judicial review is dismissed;
- No questions will be certified.

"Simon Noël"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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DATED:	

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