

Date: 20090320

Docket: IMM-824-08

Citation: 2009 FC 283

Ottawa, Ontario, March 20, 2009

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

BASHEER KABLAWI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Basheer Kablawi obtained refugee status in Canada in 1998, but his application for permanent residence was turned down because of his past membership in a group called the Syrian Socialist National Party (SSNP). Mr. Kablawi argues that the immigration officer who found him to be inadmissible to Canada made unreasonable findings and failed to give him a fair chance to respond to the information on which the officer relied.

[2] Mr. Kablawi asks me to overturn the officer's decision and order a reassessment of his application by another officer. I agree that the officer erred and must, therefore, allow this application for judicial review.

[3] Mr. Kablawi raised two issues:

1. Did the officer treat Mr. Kablawi unfairly?
2. Did the officer make unreasonable findings?

[4] Given my conclusion that the officer treated Mr. Kablawi unfairly, I need not consider the second issue.

I. Factual Background

[5] Mr. Kablawi lived in Syria for thirty years, from 1949 to 1979. He and his wife then moved to the United Arab Emirates where he worked as a teacher. In 1995, he and his family arrived in Toronto.

[6] Mr. Kablawi, like his father, was a long-time member of the SSNP. The SSNP is a political party aimed at unification of Syria, Lebanon, Palestine, Iraq and Jordan. Mr. Kablawi joined the party as a student in 1972. He remained active in the party for about twenty years. He maintains that his role was confined to recruiting new members and spreading information about the party in the media.

[7] In 1991, on a visit to Lebanon, Mr. Kablawi says he spoke out against corruption in the party. The next day, someone in a passing car shot at him. He left Lebanon immediately. A family friend warned him that he was also wanted in Syria.

[8] Since arriving in Canada, immigration authorities have interviewed Mr. Kablawi several times about his involvement in the SSNP. Mr. Kablawi consistently stated that he was unaware of the SSNP's involvement in violence or terrorist activities. In 2002, an immigration officer informed him that there were grounds to find him inadmissible to Canada on the basis that he was a member of an organization for which there were reasonable grounds to believe that it engaged in terrorism (*Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*), s. 34(1)(f); see Annex "A"). In response, Mr. Kablawi applied for Ministerial relief on the basis that his presence in Canada "would not be detrimental to the national interest" (*IRPA*; s. 34(2); see Annex). The Minister refused his application in 2007. Mr. Kablawi's application for judicial review of that decision was dismissed in 2008 by Justice Robert Barnes: *Kablawi v. Canada (Minister of Citizenship and Immigration) et al.*, 2008 FC 1011.

[9] In 2008, an immigration officer formally dismissed Mr. Kablawi's application for permanent residence and Mr. Kablawi now seeks judicial review of that decision. The officer concluded that Mr. Kablawi was a member of the SSNP and, based on his role as a recruiter and media liaison officer for the party, would have been aware of its terrorist activities.

1. *Did the Officer Treat Mr. Kablawi Unfairly?*

[10] The officer based his decision to deny Mr. Kablawi permanent residence on an analysis of the nature of the SSNP. He concluded that there were reasonable grounds for believing that the SSNP was a terrorist organization and that Mr. Kablawi was clearly a member of it. The officer relied on sources available on the internet. In particular, the officer cited materials posted on the website of the Anti-Defamation League and of the Library of Congress. The officer consulted these sources after Mr. Kablawi had filed his written submissions. Mr. Kablawi was, therefore, unaware that the officer would look to those sources and had no opportunity to respond to them.

[11] The Minister argues that the officer was entitled to rely on publicly available materials. It is only where those materials are novel and significant that an officer has a duty to disclose them to an applicant and offer an opportunity to respond: *Mancia v. Canada (Minister of Citizenship and Immigration)*, [1998] 3 F.C. 461 (C.A.).

[12] The duty of fairness “requires disclosure of a document, report or opinion, if it is required to provide the individual with a meaningful opportunity to fully and fairly present her case to the decision-maker” (*Chen v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 266 [2002] F.C.J. 341, (F.C.T.D.) (QL) at para. 35). The public availability of the material is only one of the relevant factors to consider in deciding whether a decision-maker has treated an applicant fairly. One must also consider whether the applicant was aware of the material or could reasonably have anticipated that the decision-maker would seek it out. Further, the degree to which the officer relies on the material must also be considered. Materials cited merely in passing can be distinguished from

documents on which the officer substantially relies. Obviously, the nature of the materials is also a factor – that is, whether they are general descriptions of country conditions or relate to specific events or groups.

[13] Here, the material cited by the officer was obviously publicly available, as are virtually all materials posted on the internet. However, it is unlikely that Mr. Kablawi was aware of those materials; nor could he have reasonably anticipated that the officer would conduct research on the Library of Congress website or seek out the views of the Anti-Defamation League about the SSNP. The materials specifically referred to activities of the SSNP and the officer substantially relied on them in arriving at his conclusion that there were reasonable grounds to believe that the SSNP was a terrorist organization.

[14] In my view, given that he had no opportunity to respond to the evidence on which the officer relied, Mr. Kablawi was not given a fair chance to present his case.

II. Disposition and Conclusion

[15] By relying on documentary evidence that he found after Mr. Kablawi had filed his written submissions, the officer failed to treat him fairly. Therefore, this application for judicial review is allowed and Mr. Kablawi's application for permanent residence is returned to another officer for reconsideration. Neither party proposed a question of general importance for certification, and none is stated.

JUDGMENT

THIS COURT'S ORDERS that

1. The application for judicial review is allowed.
2. The matter is referred back to another officer for reconsideration.
3. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex "A"

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. 27

Security

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).

Exception

(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.

Sécurité

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).

Exception

(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.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-824-08

STYLE OF CAUSE: BASHEER KABLAWI v. MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 1, 2008

REASONS FOR JUDGMENT: O'REILLY J.

DATED: March 20, 2009

APPEARANCES:

Krassina Kostadinov

FOR THE APPLICANT

Ladan Shahrooz

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates
Barristers & Solicitors
Toronto, Ontario

FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT