Federal Court  Cour fédérale

Date: 20091015

Docket: IMM-1965-09

Citation: 2009 FC 1036

Ottawa, Ontario, October 15, 2009

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

BASSAM CHWAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision dated February 17, 2009, by the First Secretary of the Canadian Embassy in Damascus, Syria (the visa officer), denying the applicant's application for permanent residence on the ground that he is inadmissible due to his membership in an organization that allegedly committed terrorist acts as provided for in paragraph 34(1)(*f*) of the Act.

Factual background

[2] The applicant is a Lebanese citizen born on September 10, 1976, who has been a member of the Lebanese Forces political party since 1992.

[3] The Lebanese Forces are a political party and former Christian militia that played a role in Lebanon's civil war from 1975 to 1990. After the civil war ended in 1990, the movement transformed itself into a political party, before being banned in 1994. Afterwards, their political activities were restricted by the pro-Syrian government until the withdrawal of Syrian troops in 2005. Today, the Lebanese Forces are a political party represented in the Lebanese parliament.

[4] The applicant joined the student cell of the Lebanese Forces Party in 1992 and became involved in political and social activities until 1994. Since the activities of the Lebanese Forces were restricted by the pro-Syrian government in power in 1994, his participation was also very limited until 2004. He did remain, however, a member of the party.

[5] From 1999 to 2001, while living in Chicago in the United States, the applicant was also involved with a Lebanese Forces group in that city. During his stay in Canada from 2004 to 2007, the applicant got involved in the political and social activities of the Lebanese Forces Party, which was legal in Canada.

[6] While he was in Canada, he met Ruba Haidar, a Canadian citizen, and they were married on May 25, 2006.

[7] In April 2007, the applicant filed an application for permanent residence from outside Canada sponsored by his spouse. The application for sponsorship was accepted but the application for permanent residence for the applicant was denied under paragraph 34(1)(*f*) of the Act.

[8] The applicant was questioned in Damascus, Syria, by a visa officer about his political activities with the Lebanese Forces. In the decision dated February 17, 2009, the visa officer determined that the applicant failed to meet the requirements for the issuance of a permanent resident visa. The officer found that the applicant was inadmissible to Canada under paragraph 34(1)(*f*) of the Act because he had been a member of the Lebanese Forces Party since 1992 and, according to the officer, the Lebanese Forces Party was an organization that had or may have engaged in terrorism. Consequently, the applicant was inadmissible under paragraph 34(1)(*f*) of the Act.

[9] The applicant is seeking a judicial review of this decision.

Impugned decision

[10] The visa officer found that there were reasonable grounds to believe the applicant was inadmissible under subsection 34(1) of the Act on security grounds. Specifically, the officer found that the applicant had described himself several times as being a member of the Lebanese Forces Party, an organization that has or may have engaged in terrorism. Consequently, the applicant was inadmissible under paragraph 34(1)(*f*) of the Act.

Issues

[11] The issues in this matter are as follows:

1. Which standard of review is applicable to the visa officer's decision?

2. Did the visa officer err in finding the applicant inadmissible to Canada under paragraph 34(1)(*f*) of the Act?

3. Did the visa officer err by failing to give reasons for his decision?

4. Did the visa officer breach procedural fairness by failing to advise the applicant of the exemption under subsection 34(2) of the Act?

Relevant legislation

[12] The following sections of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 apply in the present case:

Security	Sécurité
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	d) constituer un danger pour la

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.

No appeal for inadmissibility
64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

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.

Restriction du droit d'appel
64. (1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant.

Analysis

1. Which standard of review is applicable to the visa officer's decision?

[13] The applicant and respondent submit that the standard of review applicable to the visa officer's decision is reasonableness. Further to the decision of the Supreme Court in *Dunsmuir v. New Brunswick*, 2003 SCC 9, [2008] 1 S.C.R. 190, the Federal Court applies the standard of reasonableness to the decisions of visa officers (*Odicho v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1039, 75 Imm. L.R. (3d) 45; *Mukamutara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 451, 166 A.C.W.S. (3d) 954).

[14] Accordingly, in his role as visa officer, he must assess the evidence submitted and has broad discretion in making his decision.

[15] However, the insufficiency of reasons given for the visa officer's decision is a matter of procedural fairness, and therefore the standard of correctness applies (*Fetherston v. Canada (Attorney General)*, 2005 FCA 111, 332 N.R. 113; *Sketchley c. Canada (Attorney General*, 2005 FCA 404, [2006] 3 F.C.R. 392).

2. Did the visa officer err in finding the applicant inadmissible to Canada under paragraph 34(1)(f) of the Act?

[16] According to the applicant, the visa officer erred when he found that the Lebanese Forces Party was described in 34(1)(*f*) of the Act on the grounds that it was an organization that engages, has engaged or will engage in terrorism within the meaning of paragraph 34(1)(*c*) of the Act.

[17] A finding that an organization has committed terrorist acts must be based on fact (*Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433, 163 N.R. 197 (C.A.)). The applicant contends that the visa officer has no proof or information whatsoever to conclude that the Lebanese Forces Party is or has been involved in acts of terrorism since it was founded in 1990 or since the applicant joined in 1992. The determination as to whether the organization to which the applicant belonged has committed or commits acts of terrorism must be supported by reasons that can stand up to a somewhat probing examination (*Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, at paragraph 56).

[18] For his part, the respondent notes that paragraph 34(1)(*f*) of the Act declares inadmissible any person who is a member of an organization that there are reasonable grounds to believe engages or has engaged in an act of espionage, an act of subversion against a democratic institution, the subversion by force of any government, or terrorism.

[19] In the present case the respondent claims that during his interview with the visa officer on February 3, 2009, in Damascus, Syria, the applicant admitted to being a member of the Lebanese

Forces since 1992. Furthermore, the applicant admitted that the Lebanese Forces had, in the past, used weapons to pursue their goals and engaged in terrorism to achieve their objectives.

[20] Therefore, according to the respondent, given the wording of paragraph 34(1)(*f*) of the Act, the visa officer's decision that there were reasonable grounds to believe that the Lebanese Forces had engaged in terrorism, and that the applicant, as a member of this organization, was inadmissible to Canada, was reasonable under the circumstances.

[21] I am of the view that the visa officer erred in finding the applicant inadmissible under paragraph 34(1)(*f*) of the Act. More specifically, the officer erred in his assessment of the nature of the organization to which the applicant belonged, namely, the Lebanese Forces Party.

[22] The officer's decision is terse and makes no reference to any evidence showing that this organization, within the meaning of paragraph 34(1)(*f*) of the Act, took part or participates in terrorist acts since the militia was disbanded in 1990 or since the applicant became a member in 1992:

> Specifically, you have consistently described yourself on several occasions as a member of the Lebanese Forces Party (LFP) since 1992. The LFP is an organization that is or has engaged in terrorism. As a result, you are inadmissible to Canada pursuant to section 34(1)(*f*) of the Act. I am therefore refusing your application.

[23] As the applicant explained, and the respondent did not deny this claim, this organization, which had been a Christian militia between 1975 and 1990, was disbanded at the end of the civil war. From 1990 on, the movement transformed itself into a political party before being banned in 1994. Afterwards, their political activities were restricted by the pro-Syrian government until the withdrawal of Syrian troops in 2005.

[24] The Court is of the opinion that the officer erred by failing to assess the organization's role prior to 1990 and its role after 1990. This is an organization which underwent a transformation in 1990 after the civil war when the Christian militia was disbanded. The evidence in the record shows that the applicant joined the ranks of the Lebanese Forces in 1992, after this transformation, and thus after the dissolution of the Christian militia. It is also worth noting that the transformation of this organization happened in the form of seeking representation in the Lebanese parliament as a political party. This fact is not addressed in the officer's assessment.

[25] In addition, the visa officer does not refer to any act or evidence in his decision that demonstrates that the applicant had participated or been complicit in any terrorist acts committed by the organization (*Sadakah v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1494, 151 A.C.W.S. (3d) 90, at paragraph 22).

[26] There is no evidence in the record that this organization had perpetrated terrorist acts from the moment the applicant joined or anytime thereafter. As for the applicant's participation, it must be noted that at the time the Christian militia was active, which was between 1975 and 1990, he was

still a young child and, furthermore, the evidence in the record shows that he was not involved with the Lebanese Forces Party at that time.

[27] Consequently, the officer's decision must be set aside on the ground that he did not analyze the nature of the organization in issue and therefore examined the issue of the applicant's participation by using an inappropriate standard (*Sadakah*, at paragraph 24).

[28] For the reasons cited above, the application for judicial review is allowed. No question of general importance was proposed by the parties and there is none in the record.

[29] Given the finding with respect to this issue, the other issues are not before the Court.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is allowed and the matter is referred back to a different officer for reconsideration. No question is certified.

''Richard Boivin''
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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