Federal Court  Cour fédérale

Date: 20100119

Docket: IMM-1450-09

Citation: 2010 FC 51

Ottawa, Ontario, January 19, 2010

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

ZAHEER MOHIUDDIN MOHAMMAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) for judicial review of a March 10, 2009 decision of an immigration officer finding the applicant to be inadmissible to Canada pursuant to paragraph 34(1)(f) of the Act.

[2] The applicant requests that the officer's decision be set aside and the matter referred back to a different officer for redetermination.

Background

[3] Mohammad Zaheer Mohiuddin (the applicant) was born in Karachi and is a citizen of Pakistan. He belongs to an ethnic subgroup of Mohajirs in the Southern Pakistan province of Sindh. Most Urdu-speaking Mohajirs residing in Pakistan were of families who had fled India pursuant to that country's 1947 partition. The Mohajir Quami Movement (MQM) was formed in 1984 to represent the interests of Sindh's Urdu-speaking Mohajirs.

[4] Immediately after admission to college in 1987, the applicant joined the All Pakistan Mohajir Student Organization (APMSO), the student wing of the MQM of which he was also a member.

[5] The applicant was an active member of the APMSO and worked for the MQM. In September of 1988, the applicant was appointed Joint Secretary of the APMSO at his college for one year. After ceasing to be Joint Secretary in 1989, the applicant continued to be active in the APMSO, volunteering at most events. Most of the applicant's activity in the MQM was volunteer work on an events basis during election campaigns and at charitable events. In 1989, the Pakistani government took a hard stance against the MQM (dubbed Operation Clean-up), causing the applicant and many other MQM workers, to leave Sindh province or to hide. From 1992 to 1997,

the applicant was periodically in hiding in other regions of Pakistan. During those periods, the applicant was not involved with the MQM on a regular basis, but did meet with non-Urdu speakers at various locations to explain what the MQM stood for and to dispel negative MQM opinions.

[6] In all, the applicant was a member of the APMSO from September 1987 to June 1992, was a worker for the MQM from June 1987 to December 1997 and was a worker for MQM(Canada) from January 1998 to May 2005.

[7] The applicant came to Canada on January 2, 1998 seeking refugee protection which was granted on December 4, 1998. The circumstances leading to his application for refugee status are as described in his Personal Information Form (PIF). In his refugee application, the applicant claimed that his membership in the above organizations resulted in harassment by Pakistani officials.

[8] The applicant's application for permanent residence was approved in principle on February 17, 1999 although a background check was requested. The applicant was interviewed by the Canadian Security Intelligence Service (CSIS) on November 18, 1999. Since then, the applicant has been the subject of three separate inadmissibility findings pursuant to paragraph 34(1)(f) of the Act or the corresponding section of the former *Immigration Act*.

[9] On May 8, 2002, the applicant attended an admissibility interview with an immigration officer. By letter dated May 21, 2002 the applicant was advised that he was inadmissible under subparagraph 19(1)(f)(iii)(b) of the former *Immigration Act*. The applicant applied to this Court for

judicial review, but the matter was settled prior to the hearing because the Minister of Citizenship and Immigration agreed to remit the matter back for determination by another officer.

[10] By a decision dated December 5, 2005, the applicant was found inadmissible pursuant to paragraph 34(1)(f) of the Act due to his membership in the MQM. In *Mohammed v. Canada (Minister of Citizenship and Immigration*), [2006] F.C.J. No. 1767, this Court quashed the decision and sent the matter back for redetermination by a different officer. The only issue in that case was whether the immigration officer's decision was subject to judicial review. In November 2008, Officer A. Sorenson sent a letter to the applicant again stating that the CIC possessed information that the applicant may be inadmissible to Canada pursuant to paragraph 34(1)(f) of the Act due to the applicant's membership with MQM. An information package about the MQM was attached. The applicant sent a responding letter containing a revised application for permanent residency and a package of information on MQM to counter CIC's information. The package included transcripts of evidence given by Dr. Lisa M. Given and Dr. Gowher Rizvi at a refugee hearing in 2006 (the expert transcripts).

[11] On February 3, 2009, the applicant attended an interview at Scarborough CIC accompanied by counsel. At the interview, the applicant took issue with the term "membership", and would only admit that he worked for the MQM during the years in question. When asked about MQM violence from 1987 to 1992 and from 1992 to 1997, the applicant stated that the MQM was never violent and it never supported or promoted violence. The applicant added that any violence that may have occurred in 1995 would have been caused by rogue MQM members acting against the group's

sanctioned activities. The applicant also responded to the reports of MQM violence by stating that most of the reports cited by CIC came from Pakistani newspapers which were biased against the MQM. In submitting that the MQM-A was not a terrorist group, the applicant pointed out that the United States Assistant Secretary of State went to meet with MQM-A leader, Altaf Hussain and also mentioned that the MQM mayor of Karachi was well-respected. He also questioned the fact that all of the CIC's documents were written by people who were not actually present during the reported violence. Finally, the applicant pointed out that any MQM violence was likely attributable to the MQM-Haqiqi (MQM(H)) faction, which had been removed from the party, or other rogue members.

The Officer's Decision

[12] In his decision dated March 10, 2009, Officer A. Sorensen, (the officer) determined that the applicant was a member of the MQM/MQM(A) and its student wing, APMSO and that there were reasonable grounds to believe that the MQM/MQM(A) had engaged in terrorism.

[13] The officer determined with little analysis that the applicant's involvement in the MQM-A and the APMSO constituted membership in both organizations. In making this determination, the officer reviewed the broad and unrestricted definition of "member" in Canada's Enforcement Manual 2 Section 4.5, and reviewed the applicant's 1998 PIF (in which he described himself as a

member of both organizations) and his applications for permanent residence. The officer also determined that during the period from 1992 to 1997, the applicant was an advocate for the MQM.

[14] The applicant's involvement with MQM-A and APMSO was confirmed during the interview on February 3, 2009.

[15] The officer then reviewed the following sources of documentary evidence on the MQM (CIC's sources):

- IRB's November 1996 Paper, "*Pakistan: the Mohajir Qaumi Movement (MQM) in Karachi January 1995 to April 1996*": described the origins of the MQM and the APMSO, both founded by Altaf Hussain in 1984 and 1978 respectively.
- Jane's World Insurgency and Terrorism profile (Jane's): chronology of major MQM-A events including:
    - 1986 – Altaf Hussain told an MQM rally that Mohajir men should stockpile weapons. At another rally he said, "if our rights are not given to us we will use every kind of force".
    - 1988 – the MQM was believed to have perpetrated the killings of 90 Sindhi's in various incidents.
    - 1990 – violent rioting and political terror took place in Karachi and Hyderbad; the MQM refused to participate in a conference to broker peace in Sindh.
- New York Times, 1986 report on widespread violence between the Mohajirs and other groups in Karachi.

- A document titled: “Muttahida Quomi Mahaz, Terrorist Group of Pakistan” issued by the South Asian Terrorism Portal (SATP).
- An academic article from the *Asian Survey* describing the creation of the MQM as the result of ethnic violence.
- Reports of violence in 1995 when the MQM reportedly engaged in terrorist activities by starting riots and having its members storm anti-MQM neighbourhoods. Sources stated the violence stemmed from the killing of a high ranking MQM member and the rape of the sister of an MQM member.
    - The officer reviewed and quoted articles from the following sources: IRB, Toronto Star, New York Times, Reuters News and Agence France-Presse.
- Amnesty International’s 1996 paper, “*Pakistan: Human rights crisis in Karachi*” outlines violence and human rights abuses attributed to the MQM during the 1995 Karachi riots.

[16] The officer set out the definition of terrorism adopted by the Supreme Court in *Suresh v. Canada (Minister of Citizenship and Immigration*), [2002] 1 S.C.R. 3, at paragraph 98:

> … 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.

[17] The officer also reviewed the applicant’s material including:

- Manifesto of MQM (Pakistan).
- Articles from the MQM website.

- Articles about the South Asian Terrorism Portal, which questioned the SATP's objectivity and the character of its director.
- Pictures of MQM(Canada) officials with Prime Minister Stephen Harper at a campaign stop.
- Articles about Altaf Hussain's meetings with western government officials.
- The expert transcripts.
- Affidavit of Dr. Lisa Given – University of Alberta, dated September 21, 2006, including Curriculum Vitae and testimony at a refugee hearing before the RPD
- MQM research by Dr. Gowher Rizvi – Harvard. Curriculum Vitae and his testimony before the RPD in 2006.

[18] The officer noted that Dr. Givens stressed possible problems with the research methodology found in some of the CIC sources, namely Jane's and Amnesty International. The officer also noted that Dr. Givens did not discuss any problems with many of CIC's sources and that CIC relied on many distinct sources for information on MQM, and not just Jane's and Amnesty International.

[19] The officer also took issue with Dr. Given's critiques and noted that Jane's and Amnesty International have been upheld as reliable sources by the IRB and courts. Despite the critiques, the officer stated that he was satisfied that CIC's sources, when considered together, were reliable and valid.

[20] The officer noted that Dr. Rizvi's 2006 statement and testimony was that the MQM did not subscribe to violence, but also noted that Dr. Rizvi could not deny that individual MQM members had engaged in violence.

[21] The officer concluded that given his review of the above sources and the expert transcrips, he was satisfied that the MQM-A has engaged in acts of terrorism, and was not satisfied that MQM-A acts of terrorism could be attributable to members acting individually.

[22] In conclusion, the officer determined that after reviewing the documents on file there are reasonable grounds to believe that the MQM or MQM-A engaged in acts of terrorism referred to in paragraph 34(1)(c), that the APMSO is the student wing of the MQM, that the applicant's involvement with both organizations constituted membership. Therefore, the applicant is inadmissible to Canada.

Issues

[23] The applicant submitted the following issues for consideration:

1. Did the officer err in law because he failed to consider the proper test for when an organization qua organization engages in acts of terrorism?

2. Did the officer err in law in his finding that MQM(A) has engaged in acts of terrorism because he failed to explain how he understood and applied the definition of "terrorism" and failed to provide a proper analysis and reasons for his conclusion?

3. Did the officer err in law by misunderstanding the expert evidence of Dr. Given and Dr. Rizvi by failing to provide valid reasons for not accepting the expert evidence?

[24] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the officer analyse and apply the evidence to the definition of terrorism correctly?

3. Was it reasonable for the officer to conclude that there were reasonable grounds to believe that the MQM-A is an organization that has engaged in acts of terrorism. In particular:

a. Was it reasonable to reject the applicant's evidence that violent acts were only committed by rogue members?

b. Did the officer disregard the expert transcripts?

Applicant's Written Submissions

[25] The applicant submits that the appropriate standard of review is reasonableness.

The test when an organization engages in acts of terrorism

[26] The applicant submits that the case raises a serious issue as to the proper test to be applied when determining that an organization engages in acts of terrorism. The applicant admits that there

were members of the MQM(A) who engaged in violence, but submits that the official position of the leadership of the MQM is to not condone or encourage any violence, and that members who engaged in violence were expelled. It was the MQM(H) which engaged in acts of violence that might constitute terrorism, and the MQM(A) deny any connection with the MQM(H). While the officer concluded that members of the organization engaged in acts of terrorism he was required to find that the organization itself engaged in such acts, and to provide some legal reasoning for his position. This is because the legislation refers to organizations that commit acts of terrorism, not members or activists of an organization who commit acts of terrorism. The officer failed to understand this difference. Nowhere in his reasons did he refer to the MQM's manifesto or political platform, or the fact that the organization rejected violence.

[27] The applicant submits that there was nothing in the MQM Manifesto or the Philosophy of "Realism and Practicalism" by Altaf Hussain to indicate the MQM believes in or advocates for violence. On the contrary, the documents disclose belief in tolerance, democracy and equal rights. The officer was also provided with a policy statement by Altaf Hussain responding to the Pakistani authorities' unfounded allegations. Moreover, significantly, neither Canada nor the US has declared the MQM(A) to be a terrorist group, and the MQM(A) operates openly in Canada.

[28] The applicant submits that the MQM(A) is a political party in Pakistan with representation in the Legislature and Cabinet in Sindh and the National Parliament and Senate. The MQM(A) also operates openly in the UK where its head office is located.

Lack of proper analysis in determining the MQM(A)'s involvement in acts of terrorism

[29] The applicant submits that the officer erred in law because he failed to explain how he understood and applied the definition of terrorism, thereby failing to give proper analysis and reasons for his conclusion.

[30] The applicant submits that the officer just recited documented incidents of violence. The officer recited the correct stipulative definition of terrorism adopted in *Suresh* above, and concluded that his review of documentation from credible sources described that the MQM(A) engaged in acts of terrorism. In *Fuentes v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 540, Mr. Justice Lemieux concluded that there must be an evidentiary foundation to support a finding that an organization was engaged in acts of terrorism. In *Ali v. Canada (Minister of Citizenship and Immigraiton)*, 2004 FC 1174, this Court expressed concern when an officer failed to identify specific acts carried out by the MQM(A) that would meet the *Suresh* definition of terrorism, or to provide any analysis of that evidence. Additionally in *Alemu v. Canada (Minister of Citizenship and Immigraiton)*, 2004 FC 997, this Court indicated that the decision maker must specify what acts the organization is engaged in. In *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 246, [2006] 4 F.C.R. 471 (*Jalil 2006*) at paragraph 32, the Court held that the officer has to provide the definition of "terrorism" and explain how the listed acts met the definition. See also *Naeem v. Canada (Minister of Citizenship and Immigration)*, [2007] 4 F.C.R. 658, [2007] F.C.J. No. 173 at paragraph 46, where Madam Justice Dawson held that it was incumbent on the officer to explain why she viewed certain acts to be terrorist acts.

[31] The applicant submits that under the approach required by *Fuentes*, *Ali* and *Alemu*, an officer must find that the acts committed must be intended to cause death or serious bodily injury, the act must be committed against civilians, and the purposes of the act must be to intimidate a population or to compel a government to do or to abstain from doing any act. In the case at bar, the officer failed to discuss why he viewed these violent acts as terrorism. Importantly, the officer never made any findings of fact with respect to the purpose of the acts and whether they were part of MQM(A)'s purposes or endorsed by MQM(A) leadership.

[32] The applicant submits that the New York Times report from 1986 only refers to generalized violence in Karachi and in fact discusses events wherein Mohajirs are the victims of violence, and where the government blamed disgruntled drug and arms traffickers for the violence.

[33] The applicant submits that the Jane's report on the MQM(A) is of questionable reliability and trustworthiness and cannot be characterized as providing "credible and compelling" information in order to meet the "reasonable grounds to believe standard" as articulated in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, [2005] S.C.J. No. 39 (QL).

[34] The applicant submits that many of those instances of violence occurred in June and July 1995 in Karachi when the applicant was not there. The officer should not have relied on evidence from 1992 to 1997 since the applicant was not an active member of MQM(A) at this time and was in hiding.

Misconstruing expert evidence

[35] The applicant submits that the officer misconstrued, ignored and failed to provide reasons for rejecting the expert evidence of Dr. Givens and Dr. Rizvi. *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74 (QL) teaches of the importance of expert evidence in resolving contested factual issues.

[36] The applicant submits that the officer failed to understand the purpose of Dr. Given's evidence, which was to provide an outline of how to judge the reliability and credibility of source information and that this was a reviewable error. Dr. Given stressed that issues of authority, currency, objectivity and coverage must be addressed. These issues went to the heart of the reliability of the documents relied on by the officer. She also warned of the phenomenon when one document gets unwarranted credibility simply because it becomes a source for other documents. The officer's failure to explain then why he still accepted the evidence from Jane's and Amnesty despite Dr. Given's critiques, is a reviewable error.

[37] The applicant submits that the officer erred in law by failing to provide analysis and reasons why he rejected Dr. Rizvi's evidence. This was a more egregious error because the evidence corroborated the applicant's testimony regarding the policies of MQM(A). This Court has held that the more important the evidence that is not mentioned specifically and analysed in the tribunal's reasons, the more willing the Court will be to infer that the tribunal made findings of fact without regard to the evidence before it. (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and*

Immigration), 157 F.T.R. 35, [1998] F.C.J. No. 1425 (F.C.T.D.) (QL)). Dr. Rizvi is highly renowned in Pakistan politics and was a disinterested party in the case, agreeing to testify free of charge in order that the truth get out. Dr. Rizvi was unequivocal that MQM(A) did not subscribe to violence and is a democratic political party. Dr. Rizvi's documentation also stated that the Pakistani military has been quick to ban political parties in the past but has never banned MQM, and that the MQM advances secular goals. None of this crucial evidence was considered by the officer.

Respondent's Written Submissions

[38] The respondent agreed that for inadmissibility decisions based on paragraph 34(1)(f) of the Act, the appropriate standard of review is reasonableness. Such a decision is fact-based, discretionary, and involves the interpretation of the decision maker's own statute and policies.

[39] The respondent then submits that due to his PIF, his specific admissions, and the law regarding "membership", the applicant falls well within the ambit of "member" in paragraph 34(1)(f) of the Act.

Officer's reasonable grounds to believe

[40] The respondent submits that there is no requirement for direct evidence that terrorist acts were officially sanctioned. The law only requires the officer to determine whether there is enough evidence to establish that the organization sanctioned the acts.

[41] The respondent then submits that evidence of the MQM-A leader's personal involvement in promoting violence and evidence of the MQM-A head office's role in coordinating violence are enough to establish that the MQM-A sanctioned the terrorist acts.

[42] The respondent argues that this Court has affirmed findings that MQM-A is an organization described in paragraph 34(1)(f) in several recent cases (see *Omer v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 478, [2007] F.C.J. No. 642 (QL) at paragraph 31, *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 568, [2007] F.C.J. No. 763 (QL) (*Jalil 2007*), *Jilani v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 758, [2008] F.C.J. No. 974 (QL) at paragraph 16, *Memom v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 610, [2008] F.C.J. No. 779 (QL) at paragraphs 29 and 30 and *Qureshi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 7, 78 Imm. L.R. (3d) 8, at paragraph 32).

[43] The respondent further submits that the applicant's arguments that he was not involved or was not even in the area during MQM-A's alleged terrorist acts are without merit. The legislation does not require complicity, nor is there a temporal requirement. The question is only whether the person is or has been a member of that organization (see *Al Yamani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1457, [2006] F.C.J. No. 1826 (QL) at paragraphs 11 and 12).

[44] The legislation only requires that there are reasonable grounds to believe that the organization does, has or will engage in acts of terrorism. It does not require proof.

[45] The respondent submits that the officer set out the correct definition of terrorism from *Suresh* above, considered the acts of violence attributed to the MQM-A and determined that those acts constituted acts of terrorism. This follows the process set out by Mr. Justice Teitlebaum in *Jalil* above, at paragraph 18.

[46] In *Jalil 2007* above, at paragraphs 33 to 35, it was held that the same MQM-A activities cited by the officer in this case constitute terrorism under *Suresh*, because they were committed for political purposes and caused death or serious bodily injury.

Expert transcripts

[47] The applicant's arguments regarding the officer's assessment of the expert transcripts amount to a disagreement with the officer's weighing of the evidence. The respondent submits that the officer discussed each expert's transcript in detail and considered their arguments, but in the end described why he preferred the other evidence. This weighing of the evidence is within the officer's discretion.

Analysis and Decision

[48] **Issue 1**

What is the appropriate standard of review?

This Court has previously held that the standard of review applicable to a determination of whether an organization is one for which there are reasonable grounds to believe engages, has engaged, or will engage in acts of terrorism pursuant to paragraph 34(1)(f) of the Act is reasonableness (see *Qureshi v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 7, 78 Imm. L.R. (3d) 8 at paragraph 16, *Daud v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 701, [2008] F.C.J. No. 913 (QL) at paragraph 5, *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 568, [2007] F.C.J. No. 763 (QL) (*Jalil* 2007) at paragraph 15, *Jalil v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 246, [2006] 4 F.C.R. 471 (*Jalil 2006*) at paragraphs 19 and 20). I agree that reasonableness is the appropriate standard or review.

[49] It bears noting that applying the standard of reasonableness in these cases involves an added wrinkle, for the legislation itself contains the qualification that there need only be "reasonable grounds to believe". Therefore, to require on review that those reasonable grounds to believe did in fact exist, would be to apply a correctness standard. Applying the reasonableness standard means the Court does not need to satisfy itself that reasonable ground to believe existed, only that the officer's conclusion that there were reasonable grounds to believe, was a reasonable conclusion on his or her part.

[50] The "reasonable grounds to believe" standard mandated by section 33 of the Act has been held to require more than mere suspicision, but less than the civil standard of or proof on a balance of probabilities. It is a *bona fide* belief in a serious possibility based on credible evidence (see *Jalil 2006* at paragraph 27).

[51] The "reasonable grounds to believe" standard however does not apply to an officer's determination of law (see *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, [2005] S.C.J. No. 39 (QL) at paragraph 116). What constitutes an act of terrorism is a matter of law. While the officer need only to have had reasonable grounds to believe that an act occurred, and may make findings of fact regarding the purposes behind the act, his determination that the act was an act of terrorism must be correct.

[52] **Issue 2**

Did the officer analyze and apply the evidence to the definition of terrorism correctly?

The applicant's long-term affiliation with the MQM-A and APMSO is not in dispute in this judicial review proceeding, and in any event, the officer's conclusion with respect to the applicant's membership in the above organizations was reasonable. Nor is it disputed that the applicant was not personally involved in any alleged acts of terrorism. The sole subject of this review is the evidence surrounding the MQM-A's involvement, as an organization, in acts of terrorism.

[53] The officer appropriately set out the following stipulative definition of "terrorism" provided by the Supreme Court of Canada in *Suresh* above, at paragraph 98:

> … 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.

[54] The officer had previously provided a list of the evidence of reported acts attributed to the MQM-A, listed above. Many of those reported acts clearly fall within the *Suresh* definition of terrorism because they involved violence perpetrated by the MQM-A for political purposes and resulted in death or serious bodily injury. The applicant acknowledges the political purposes of the MQM-A, but denies that they use violence to promote their goals. The articles and sources referred to by the officer however, clearly implicate the MQM or MQM-A, as an organization in killings.

[55] The applicant argues that in applying the definition of terrorism, an officer must explicity: (i) comment on how the acts committed were intended to cause death or serious bodily injury, (ii) that the acts were committed against civilians, and (iii) find that the purposes of the acts were to intimidate a population or to compel a government to do or to abstain from doing any act. I disagree. The law does not require such precise analysis by an immigration officer.

[56] In *Ali v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1174, [2005] 1 F.C.R. 485, this Court determined that it was a reviewable error when an officer failed to set out the *Suresh* definition of terrorism because it was impossible to discern how the officer defines the term. Having omitted the proper definition, the Court was also concerned that the officer failed to "…identify any specific acts carried out by the MQM-A that would meet the *Suresh* definition of 'terrorism', or to provide any analysis of that evidence." (paragraph 64). Clearly, omitting the proper definition of terrorism resulted in a higher burden on the officer to analyze the evidence before her.

[57] In *Alemu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 997, [2004] F.C.J. No. 1210 (QL), this Court again expressed concern that the definition of terrorism from *Suresh* was omitted and found the analysis lacking (paragraphs 33 and 41):

> …the decision-maker must specify what acts the organization engaged in, i.e., those referred to in [s.34(1)](a), (b) or (c), or any combination thereof. A sweeping statement that merely references paragraph 34(1)(f), without more, will not suffice.
>
> . . .
>
> A finding of exclusion must provide some basis for the determination regarding the nature of the group and the determination regarding an applicant's membership in the group.

[58] In *Jalil 2006* above, at paragraph 32, the Court held that the officer has to provide the definition of "terrorism" and explain how the listed acts met the definition.

[59] In *Naeem v. Canada (Minister of Citizenship and Immigration)*, [2007] 4 F.C.R. 658, [2007] F.C.J. No. 173 (*Naeem 2007*) at paragraph 46, Madam Justice Dawson referred to *Jalil 2006* in stating:

> In my view, the officer's decision in the present case suffers from the same inadequacy. There is no indication as to how the officer understood and applied the definition of terrorism. The reasons do not set out the details and circumstances of the acts characterized to be terrorist acts. Acts such as kidnapping, assault and murder are undoubtedly criminal, but are not necessarily acts of terrorism. It was incumbent on the officer to explain why she viewed them to be terrorist acts. Her failure to do so leads to the conclusion that her reasons do not withstand somewhat probing scrutiny.

[60] The officers in the above cases all made the same fatal error by failing to provide a definition of terrorism. Once such an omission is made, the officer can only remedy the situation with an extensive analysis of why he or she believed the acts to be acts of terrorism, so the reviewing court can determine whether the officer had the correct understanding of what constitutes “terrorism” despite omitting the definition.

[61] When the correct definition of terrorism is displayed by the decision maker, such an extensive analysis is not always required. In *Jalil 2007* above, a less than explicit explanation of how the impugned acts constituted terrorism was accepted by this Court:

> 33 The respondent submits that it is apparent from the Officer's reasons that the acts attributed to the MQM-A clearly fall within the Suresh definition of terrorism as all the cited activities involve violence perpetrated by the MQM-A for political purposes that caused death or serious bodily injury. Moreover, the respondent submits that the case at bar is distinguishable from *Naeem* and *Jalil* because in those cases the immigration officers did not provide any definition of the term "terrorism" or identify how they considered violent acts attributed to the MQM-A to be terrorist in nature.
>
> 34 I agree with the respondent. Unlike in *Jalil* and *Naeem*, the Officer included a definition of terrorism in her decision. While she did not explicitly explain how she understood and applied this term, she implicitly did so when she held that "there is an overwhelming evidence and a consensus among observers in Karachi that some MQM party members have used violent means to further their political ends" (emphasis added). This seems to me to indicate that the Officer considered the acts attributed to the MQM-A to more than criminal acts.
>
> 35 While it would be desirable for the Officer to have provided a more detailed analysis of how the acts attributed to the MQM-A meet the definition of terrorism provided in *Suresh*, I am satisfied that her reasons stand up to a "somewhat probing examination" (*Canada (Director of Investigation and Research) v. Southam*, [1997] 1 S.C.R. 748).

[62] Likewise, in this case, the officer quoted from the same Amnesty International passage "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". The officer also listed and discussed the evidence from numerous sources of the killings attributed to the MQM-A. In all, the officer dedicated over five pages of the decision to the definition of terrorism and discussing relevant evidence. I would be reluctant to make ever increasing demands on the written reasons of officers.

[63] The law does not require that an officer's decision to surpass such a probing analysis as the applicant suggests. The concept of deference as respect was enunciated by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, [2008] S.C.J. No. 9 (QL), and reiterated in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12 (QL), at paragraphs 4, 51 and 59. This concept dictates that while the written reasons of tribunals constitute a primary form of accountability, it should be recognized that those written reasons are not formal judgments and need not satisfy meticulous or microscopic legal scrutiny. *Dunsmuir* at paragraph 47, teaches that as long as a decision can be shown to have "justification, transparency, and intelligibility" and "falls within a range of possible, acceptable outcomes," courts should not interfere.

[64] The officer here set out the correct legal definition of terrorism, then cited and discussed evidence of MQM-A activities that fell within that definition. In my view, the officer's application

of the definition of terrorism to the listed evidence was plainly justified, transparent and intelligible. I would not grant judicial review on this ground.

[65] **Issue 3**

Was it reasonable for the officer to conclude that there were reasonable grounds to believe that the MQM-A is an organization that has engaged in acts of terrorism?

a. Was it reasonable to reject the applicant's evidence that violent acts were only committed by rogue members?

Paragraph 34(1)(f) requires reasonable grounds to believe that the organization has, is or will engage in acts of terrorism. Thus, it is insufficient for an officer to find that individuals who happen to be members of an organization have engaged in such acts. The acts must be acts of the organization.

[66] The applicant's contention is that the MQM-A is a legitimate political party in Pakistan. Unfortunately, even legitimate political events in Pakistan have occasionally resulted in violence. However, the applicant alleges that the official position of the leadership of the MQM is to not condone or encourage any violence, and that members who engaged in violence were expelled.

[67] To this end, the applicant submitted the MQM Manifesto and the Philosophy of "Realism and Practicalism" by Altaf Hussain to indicate that the MQM does not believe in or advocate the use of violence. On the contrary, the documents disclose belief in tolerance, democracy and equal rights.

[68] This Court, however, has rejected this very same argument in respect of other MQM-A members. In *Jalil 2007* above at paragraph 38, Mr. Justice Teitlebaum held that whether an organization engaged in terrorist acts is a factual determination based on the documentary evidence. It can include not only the statements of the leadership or members but also their actions.

[69] The officer need not provide evidence that the organization officially sanctioned acts of terrorism. In *Daud v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 701, [2008] F.C.J. No. 913 (QL), Madam Justice Tremblay-Lamer specifically addressed this issue:

> [14] With respect to the related issue of whether the MQM-A, as an organization, engaged in acts of terrorism, the applicant submits that violence was not part of MQM-A's objectives. While there is no legal requirement for evidence that the organization "sanctioned or approved" of the acts forming part of the s. 34(1)(f) analysis, the officer must assess whether there is enough evidence to establish that they were indeed sanctioned (*Jalil v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 568, [2007] F.C.J. No. 763 (QL), at para. 38).
>
> [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 leader-ship 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.
>
> (emphasis added)

[70] In the case at bar, the evidence does not suggest that the officer failed to understand that he was required to have reasonable grounds to believe that the MQM-A, as an organization, had been

involved in acts of terrorism. The officer's reasons suggest that he was interested in hearing evidence on the nature and mandate of the MQM-A. The officer noted the evidence that the MQM-A condemns any action where the innocent are killed, evidence that the MQM-H faction was removed or expelled, and evidence that the MQM-A was totally against religious fanaticism. The officer also directed the applicant to a list of violent incidents attributed to the MQM or the APMSO and solicited the applicant's comments on those documents.

[71] The officer balanced the evidence of the MQM-A's stated purposes and the applicant's evidence against the evidence of violence attributable to the MQM-A and even evidence that MQM-A leadership had endorsed the use of force and determined that there were reasonable grounds to believe that the MQM-A had engaged in acts of terrorism. In my view, this was a factual determination that falls well within the range of possible, acceptable outcomes. I would not grant judicial review on this ground.

[72] **Issue 3**

b. Did the officer disregard the expert transcripts?

The applicant contends that there is a duty on officers to give special attention to expert evidence. In *Naeem v. Canada (Minister of Citizenship andImmigration)*, 2008 FC 1375, [2008] F.C.J. No. 1750 (QL) (*Naeem 2008*), a similar case involving the MQM-A, Mr. Justice Gibson allowed judicial review on three grounds, the final of which was the officer's failure to understand and discuss the expert evidence submitted:

> [24] While the foregoing brief analysis is sufficient to justify allowing this application for judicial review, I will go further and

> express the Court's view that, with great respect, the Officer's analysis of Dr. Given's relevant expertise together with the rejection, without any analysis whatsoever, of Dr. Rizvi's evidence constituted further reviewable error. A decision such as that here under review is critical to an individual such as the Applicant in this matter. Where substantive expert evidence is put forward, by respected counsel, on behalf of a person such as the Applicant in this matter, it de-serves more thoughtful and comprehensive analysis if it is to be rejected.

[73] The evidence of Dr. Given and Dr. Rizvi was originally given as testimony before the Refugee Protection Division of the Immigration and Refugee Board in 2006. The applicant's reference to the transcripts as "expert evidence" is a stretch. First, it is unclear whether either Dr. Given or Dr. Rizvi have ever been qualified as experts in a court of law. Second, neither Dr. Given nor Dr. Rizvi testified before the decision maker in the hearing in this case. Transcripts of their testimony and statements were merely submitted along with the applicant's other supporting documentation. I will refer to them as expert transcripts.

[74] Nonetheless, the officer in the case at bar devoted a considerable portion of his decision to discussing the expert transcripts. The officer discussed each expert's transcript in detail and considered their arguments, but in the end, described why he preferred the other evidence. The officer acknowledged Dr. Given's report, and her comments regarding the reports from Jane's, Amnesty International and the IRB. However, the officer noted that:

a. Dr. Given's report did not discuss other evidence, such as the Asian Survey, and newspaper articles from the NY Times and Toronto Star;
b. Reports from Jane's and Amnesty International have been relied upon by the IRB and Federal Court; and,

c. The assessment of MQM-A was not limited to reports from Jane's and Amnesty International. Several articles from distinct sources were used to assess MQM-A's activities.

[75] It was also clear from the reasons that the officer understood that Dr. Given's evidence was not expert evidence on MQM-A, but was evidence impugning some of the CIC sources, particularly in terms of objectivity, reliability and trustworthiness.

[76] Similarly, the officer considered the evidence of Dr. Rizvi. He acknowledged Dr. Rizvi's view that the MQM-A was an organization that did not subscribe to violence, but could not deny that individual members of MQM had engaged in acts of terrorism.

[77] In my view, this was more than enough to alleviate the concerns expressed by Mr. Justice Gibson in *Naeem 2008*.

[78] In my view, the applicant's arguments regarding the officer's assessment of the expert transcripts amount to a disagreement with the officer's weighing of the evidence. This weighing of the evidence is within the officer's discretion. It is not the place of courts on judicial review to re-weigh the evidence before an administrative tribunal. The officer in this case certainly regarded the significance of the evidence, but explained why it was not enough to sway his final determination.

[79] I am satisfied that this portion of the officer's decision had the required justification, transparency and intelligibility and fell well within the range of possible, acceptable outcomes. It

was reasonable for the officer to have reasonable grounds to believe that MQM-A engaged in terrorism. I would not allow the judicial review on this ground.

[80] As a result of the above findings, the application for judicial review is dismissed.

[81] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[82] **IT IS ORDERED that** the application for judicial review is dismissed.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

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

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 reasonable grounds to believe that they have occurred, are occurring or may occur.	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 sont survenus, surviennent ou peuvent survenir.
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).

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Krassina Kostadinov	FOR THE APPLICANT
Amy Lambiris	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman and Associates Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT